



# ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

Gerald J. Fiorini  
Chairman  
(315) 798-5900

Mikale Billard  
Clerk  
(315) 798-5404

George Joseph  
Majority Leader

Philip M. Sacco  
Minority Leader

## COMMUNICATIONS WITH DOCUMENTATIONS August 14, 2019

(Correspondence relating to upcoming legislation, appointments, petitions, etc.)

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ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.  
County Executive  
ce@ocgov.net

August 9, 2019

FN 20     A 253    

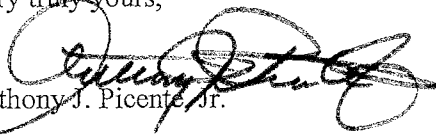
Vincent B. Karl, Vice-Chair  
Upper Mohawk Valley Memorial Auditorium Authority  
400 Oriskany Street West  
Utica, New York 13502

Re: Re-appointment of Carl A. Annese

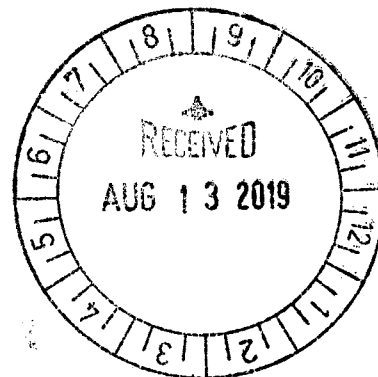
Dear Mr. Karl:

In accordance with §1942(1) of New York State Public Authorities Law, I am re-appointing Carl Annese to the Upper Mohawk Valley Memorial Auditorium Board. This term will expire on December 31, 2022.

Very truly yours,

  
Anthony J. Picente, Jr.

Cc: Carl A. Annese  
5839 Cavanaugh Road  
Marcy, New York 13403





County of Oneida

Undersheriff Joseph Lisi  
Chief Deputy Jonathan G. Owens

Chief Deputy Gregory Pflieger  
Chief Deputy Derrick O'Meara

*Sheriff Robert M. Maciol*

August 08, 2019

FN 20 19-254

The Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building  
800 Park Avenue  
Utica, NY 13501

**PUBLIC SAFETY**

**WAYS & MEANS**

Dear County Executive Picente:

In an effort to curb the introduction of contraband into the Oneida County Correctional Facility, I have determined that there is a need for a K-9 and a handler to be assigned exclusively to the jail. Contraband continues to be introduced into the facility through inmate visitation, inmate mail, and inmate admissions. While staff members at the jail have been proactive in their attempts to keep contraband out of the facility, the addition of a K-9 unit would be a very important and vital tool in maintaining the safety and security of the facility, staff, and the inmate population. The \$10,500.00 cost would include the purchase of the dog, the training of the dog and handler, and all other costs associated with the program.

The patrol unit would like to purchase two pieces of equipment. The first, an OSCR360 Data Collection kit for crash & crime scenes with 3D imaging. This is to be utilized by the Sheriff's Office for 360 degree viewing of crash and crime scene investigations. The second piece of equipment is an M-Vac DNA Evidence Collection Unit. The M-Vac System is a wet-vacuum based forensic DNA collection device that is used to help investigators solve more crime. It can be used in cases to produce DNA profiles when traditional methods such as swabbing and cutting have failed to produce viable results. It is ideal for touch DNA scenarios and can capture many times more DNA material than other methods from porous services, like clothing or fabrics as well as rough surfaces. It also can be used to collect DNA material from a victim. We intend to use the M-Vac to collect DNA from our youngest victims at the CAC which will potentially increase our conviction rate. It will also be available to investigators to use on major crime scenes to assist with DNA collection, which will also increase the amount of DNA collected.

I respectfully request a 2019 budget transfer be acted on at the September 2019 Board of Legislator's meeting.



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 8-12-19

**Administrative Office**  
6065 Judd Road Oriskany, NY 13424  
Voice (315) 736-8364  
Fax (315) 765-2205

**Law Enforcement Division**  
6065 Judd Road Oriskany, NY 13424  
Voice (315) 736-0141  
Fax (315) 736-7946

**Correction Division**  
6075 Judd Road Oriskany, NY 13424  
Voice (315) 768-7804  
Fax (315) 765-2327

**Civil Division**  
200 Elizabeth Street Utica, NY 13501  
Voice (315) 798-5862  
Fax (315) 798-6495



County of Oneida

Undersheriff Joseph Lisi  
Chief Deputy Jonathan G. Owens

Chief Deputy Gregory Pflieger  
Chief Deputy Derrick O'Meara

*Sheriff Robert M. Maciol*

<u>Transfer from Account</u>		<u>Amount</u>
A3150.197	Medical Services	\$10,500
A3110.2512	Automotive Equipment	\$51,500

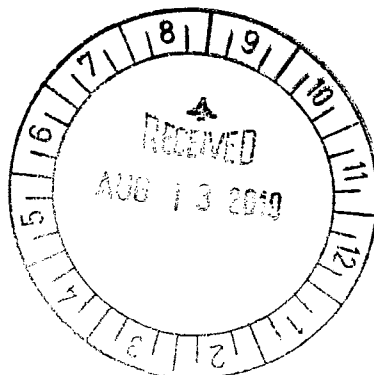
<u>Transfer to Accounts</u>		<u>Amount</u>
A3150.295	Other Equipment	\$10,500
A3120.295	Other Equipment	\$51,500

I would like to thank you for your time and diligent attention to this matter in advance. If you have any questions, require clarification or seek additional information from me in order to help you make a decision regarding my request, please do not hesitate to contact me at any point in time.

Sincerely,

Robert M. Maciol,  
Oneida County Sheriff

Cc: Tom Keeler, Budget Director



**Administrative Office**

6065 Judd Road Oriskany, NY 13424  
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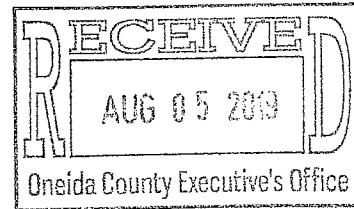
Chief Deputy Gregory Pflieger  
Chief Deputy Derrick O'Meara

*Sheriff Robert M. Maciol*

August 1, 2019

The Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building  
800 Park Avenue  
Utica, NY 13501

FN 20 19-255  
PUBLIC SAFETY



Dear County Executive Picente:

**WAYS & MEANS**

The Sheriff's Office would like to request a Supplemental Appropriation of Funds of \$39,378 to be used to purchase ballistic shields and body armor for the school SPO positions and a license plate reader for the patrol division. The Sheriff's Office has been provided funds thru the DCJS Body Armor reimbursement program. No County dollars will used for these expenses.

It would be important for us to provide the SPO's the protection the body armor and shields provide before school starts in September 2019. I respectfully request that this matter be acted on at the August 14, 2019 Board of Legislators board meeting.

The Supplemental Appropriation Request is as follows:

<u>Increase Expense Accounts</u>	<u>Amount</u>
A3120.295 Equipment	\$18,064
A3121.295 Equipment	\$15,290
A3121.4365 Body Armor	\$ 6,024

This supplemental appropriation will be fully supported by revenue currently held in:

<u>Revenue Account</u>	<u>Amount</u>
A4389.3 Federal Aid	\$ 39,378

I would like to thank you for your time and diligent attention to this matter in advance. If you have any questions, require clarification or seek additional information from me in order to help you make a decision regarding my request, please do not hesitate to contact me at any point in time.

Sincerely,

Robert M. Maciol,  
Oneida County Sheriff



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 8-6-19

Cc: Tom Keeler, Budget Director



ONEIDA COUNTY  
DEPARTMENT OF EMERGENCY SERVICES  
FIRE COORDINATOR  
911 CENTER

ANTHONY J. PICENTE, JR.  
County Executive

KEVIN W. REVERE  
Director

120 Base Road • Oriskany, New York 13424  
Phone: (315) 765-2526 • Fax: (315) 765-2529

FN 20 19 256

August 1, 2019

PUBLIC SAFETY

Hon. Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

WAYS & MEANS

Dear County Executive Picente,

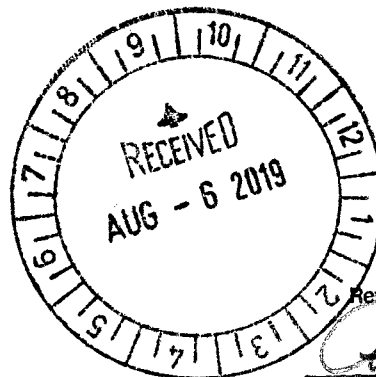
In partnership with this office, the Rome Fire Department has agreed to take possession of one of the "Fit Test" Machines owned by the County that is used for the purpose of testing firefighter's use of self-contained breathing apparatus. Enclosed with this letter is an agreement transferring the Fit Test Machine to be housed and maintained at the Rome Fire Department in exchange for their assistance in continuing to carry out the Mutual Aid Plan of the County.

Maintaining this equipment at the Rome Fire Department will enable it to be better utilized. The Rome Fire Department will supply this equipment to other neighboring departments as necessary. The Rome Fire Department has been a valued partner of ours for a number of years.

I respectfully request that this agreement be forwarded and approved by the Board of Legislators. Thank you for your personal attention to this matter. Should you have any further questions, please contact my office.

Sincerely,

Kevin W. Revere  
Director of Emergency Services



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 8-6-19

Oneida Co. Department: Emergency Services

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other   X  

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

Name & Address of Vendor: City of Rome- Rome Fire Department  
158 Black River Blvd  
Rome, NY 13440

Title of Activity or Service: Transfer of one Fit Test Machine to be housed and  
maintained at the Rome Fire Department

Proposed Dates of Operation: August 1, 2019 to July 31, 2020 (renewed automatically for  
additional 1 year periods)

Client Population/Number to be Served: Fire Department members of Oneida County

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** This Fit Test Machine is used for the purpose of testing firefighters' use of self-contained breathing apparatus.
  
- 2) **Program/Service Objectives and Outcomes:** The machine is being transferred to the Rome Fire Department to be housed there in return for their agreement to coordinate and monitor this important operation as part of the Mutual Aid Plan for the County, as they are well situated to maintain and operate the Fit Test Machine.
  
- 3) **Program Design and Staffing:** N/A

**Total Funding Requested:** NONE **Account #** N/A

**Oneida County Dept. Funding Recommendation:** NONE

**Proposed Funding Sources (Federal \$/ State\$/County \$):** N/A

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** The Fit Test Machine will be an additional resource that Rome will be able to share with other neighboring departments.

## FIT TEST MACHINE AGREEMENT

This AGREEMENT (the "Agreement") is made and entered into by and between COUNTY OF ONEIDA, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," through its OFFICE OF THE FIRE COORDINATOR, located at 120 Base Road, Oriskany, New York 13424, hereinafter referred to as "Fire Coordinator," and CITY OF ROME, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 198 N. Washington Street, Rome, New York 13440, by and through its CITY OF ROME FIRE DEPARTMENT, located at 158 Black River Blvd., Rome, New York 13440, hereinafter collectively referred to as the "Fire Department" (collectively referred to as the "Parties").

### WITNESSETH

WHEREAS, the County owns a Fit Test Machine, a device which properly fits and measures respiratory equipment for firefighters;

WHEREAS, the County no longer has a need for the Fit Test Machine and wishes to transfer the Fit Test Machine to the Fire Department, and the Fire Department has expressed a willingness to maintain and utilize the Fit Test Machine;

WHEREAS, the Fire Coordinator is tasked with administering Oneida County's Mutual Aid Plan and assisting fire companies of Oneida County in accessing the necessary resources to handle the given fire or emergency situation;

WHEREAS, the County, through its Fire Coordinator, and the Fire Department, have identified the Fit Test Machine as a necessary resource and a piece of equipment that represents a public purpose and serves the health interests of the firefighters, as well as the greater public health interests of the residents of Rome and the County of Oneida, and the Parties acknowledge that the Fit Test Machine is being provided as a means to continue caring for the health, safety, and welfare of the residents of Oneida County;

WHEREAS, in consideration of the successful continuation of the County's Mutual Aid Plan, the safety interests of the Fire Department, and in extension, the safety needs of the people of Oneida County, the Parties have determined that effective utilization of the Fit Test Machine for the greatest benefit necessitates that it be transferred by the County to be housed and maintained by the Fire Department;

NOW, THEREFORE, the Parties to this Agreement mutually agree as follows:

- 1) The Fire Coordinator, on behalf of the County, agrees to do the following:
  - a) The Fire Coordinator will provide one (1) Fit Test Machine to the Fire Department. Responsibility for the Fit Test Machine shall rest with the Fire Department, which shall account



for and maintain the Fit Test Machine in a manner specified below until the termination of this Agreement.

2) The Fire Department agrees to do the following:

- a) The Fire Department will house and maintain the Fit Test Machine at their station located at 158 Black River Blvd., Rome, NY 13440.
- b) The Fire Department will provide the Fit Test Machine to any other fire agency in Oneida County upon their request and mutually agreed to schedule.
- c) The Fire Department acknowledges and agrees that during this Agreement, they are solely responsible for the proper inspection and maintenance of the Fit Test Machine and shall pay any and all cost of any necessary repairs or other costs associated with their operation.
- d) The Fire Department will provide any necessary training exercises for their employees and others who may utilize the Fit Test Machine.
- e) The Fire Department will hold harmless and indemnify the Fire Coordinator and the County of Oneida from liability upon any and all claims for injuries to persons or for damages to property on account of any neglect, fault, or default of the Fire Department, its officers, trustees, agents, servants, volunteers, or independent contractors.
- f) The Fire Department shall maintain the proper liability insurance to cover potential claims of injury, property damage, and negligence.
- g) The Fire Department shall maintain the proper workers' compensation and employer's liability insurance coverages in accordance with the Workers' Compensation Law.

3) Term of Agreement.

- a) This Agreement shall be for a period of one (1) year, and will be automatically renewed for successive one (1) year periods, up to a total of five (5) years, unless terminated earlier in writing by either party upon thirty (30) days' notice, or until the Parties agree in writing that the Fit Test Machine is no longer able to provide the function for which it is intended, or is inadequate and out of date.
- b) Upon receipt or delivery of notice of termination, the Fire Department shall return the Fit Test Machine to the County in a manner mutually agreed upon by the Parties.

4) Independent Contractor Status.

- a) It is expressly agreed that the relationship of the Fire Department to the County shall be that of an independent contractor. The Fire Department shall not be considered an employee of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Fire Department, in accordance with their status as an independent contractor, covenants and agrees that they will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b) The employees of the Fire Department shall not be eligible for compensation from the County due to absence due to i) illness; ii) normal vacation; or iii) attendance at school or special training, or a professional convention or meeting.

- c) The Fire Department acknowledges and agrees that neither the Fire Department nor any employee thereof shall be eligible for any County employee benefits, including retirement membership credits.
- d) If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Fire Department's independent contractor status, it is agreed that both the County and the Fire Department shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- e) The Fire Department agrees to comply with Federal and State Laws as supplemented in the Department of Labor regulations, and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.

5) Training.

- a) Neither the Fire Department, nor any of its employees, shall be required to attend or undergo any training by the County.
- b) The Fire Department will ensure that its employees attend trainings mandated by Federal and/or State Law or Regulation necessary to perform the general duties of the Fire Department. The Fire Department shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the general duties of the Fire Department, and shall be solely responsible for the cost of the same.

6) Entire Agreement.

- a) The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the Parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the Parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Addendum I (Standard Oneida County Contract Clauses). No waiver, alterations, or modifications of and provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the Parties sought to be bound.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK  
SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have signed this Agreement on the day and year written below.

ONEIDA COUNTY

\_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

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

ONEIDA COUNTY FIRE COORDINATOR

\_\_\_\_\_  
Kevin W. Revere  
Fire Coordinator

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

CITY OF ROME FIRE DEPARTMENT

\_\_\_\_\_  
Ronald Brement  
Chief, City of Rome Fire Department

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

Approved  
Oneida County Attorney's Office

\_\_\_\_\_  
Alison M. Stanulevich  
Assistant County Attorney

## ADDENDUM I - STANDARD ONEIDA COUNTY CONTRACT CLAUSES

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

### 1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

### 2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

### 3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress,

an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

- ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

- D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;
  - ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.
- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
- i. The Contractor will or will continue to provide a drug-free workplace by:
    - A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
    - B. Establishing an ongoing drug-free awareness program to inform employees about:
      - 1) The dangers of drug abuse in the workplace;
      - 2) The Contractor's policy of maintaining a drug-free workplace;
      - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
      - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
    - C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
    - D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
      - 1) Abide by the terms of the statement; and

2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building Campus,  
Albany, NY 12240. Notice shall include the identification number(s) of  
each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to



computers and paper files that contain protected health information of the County's clients.

- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
  - i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
  
- c. The Contractor shall:
  - i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  - ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  - iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  - iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  - v. Make available protected health information in accordance with 45 CFR §164.524;
  - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
  - vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
  - viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or

received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

d. The Contractor agrees that this contract may be amended if any of the following events occurs:

- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
- ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
- iii. There is a material change in the business practices and procedures of the County.

e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for

the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

#### 10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.

- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



ONEIDA COUNTY

DEPARTMENT OF EMERGENCY SERVICES

Anthony J. Picente, Jr.  
County Executive

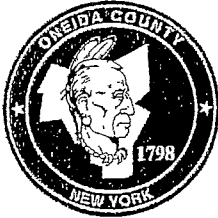
FIRE COORDINATOR

911 CENTER

STOP-DWI PROGRAM

Kevin W. Revere  
Director

120 Base Road \* Oriskany, New York 13424  
Phone: 315-765-2526 \* Fax: 315-765-2529



FN 20 19-257

August 1, 2019

Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

**PUBLIC SAFETY**

**WAYS & MEANS**

Dear County Executive Picente:

Please find the attached three (3) copies of an amendment between the Oneida County STOP-DWI Program and the Town of Whitestown through its Whitestown Police Department. This amendment provides additional funding for the Whitestown Police Department to conduct Selective Stop-DWI Crackdown Patrols during the holidays. This funding is 100% reimbursable to Oneida County from a grant received from the New York State STOP DWI Foundation. This amendment is necessary because Stop-DWI was recently granted additional funding for crackdown enforcements. No County dollars are needed for this amendment.


I respectfully request that this amendment for the Town of Whitestown be approved by the Board of Legislators as a template for all listed police agency amendments listed below, which are of the same content, with the exception of agency name, locality, dollar amounts, and County contract number being amended.

These amendments total four thousand dollars (\$4,000.00):

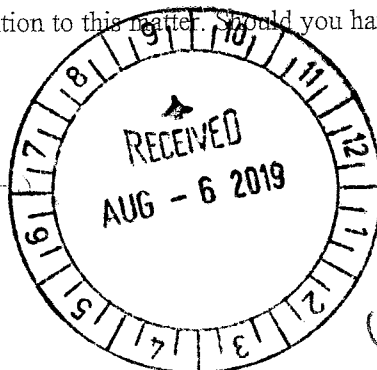
- Whitestown Police Department - \$800.00
- Yorkville Police Department - \$700.00
- City of Utica Police Department - \$2,500.00

Thank you for your personal attention to this matter. Should you have any further questions, please contact my office.

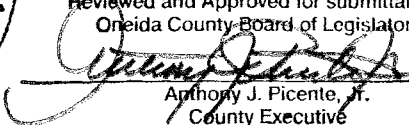
Sincerely,

  
Kevin W. Revere  
Director of Emergency Services

KWR/dck



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

  
Anthony J. Picente, Jr.  
County Executive

Date 8-6-19

Oneida Co. Department: Stop-DWI Program

Completing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD OF LEGISLATORS  
CONTRACT SUMMARY**

Name & Address of Vendor: Town of Whitestown  
8539 Clark Mills Rd  
Whitesboro, NY 13492

Title of Activity or Service: Amendment- Selective STOP-DWI Crackdown Patrols

Proposed Dates of Operation: December 15, 2018 – September 30, 2019

Client Population/Number to be Served:

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Whitestown Police Department will provide special holiday patrols, in addition to their normally scheduled patrols, with the sole function focusing on Selective STOP-DWI Crackdown Patrols.
- 2) **Program/Service Objectives and Outcomes:** To increase annually the number of selective enforcement patrols and corresponding arrests for DWI and related offenses.
- 3) **Program Design and Staffing:** Staff is drawn from the agency's sworn police officers.

**Total Funding Requested: \$800.00**

**Account#: A3313.495**

**Oneida County Dept. of Funding Recommendation: \$800.00**

**Proposed Funding Sources (Federal \$ /State\$ / County \$):** County dollars, 100% reimbursed from the New York State STOP-DWI Foundation Crackdown grant.

**Cost per Client Served:** N/A

**Past Performance Data:** Agency currently participates in Selective Enforcement activities and other STOP-DWI Program initiatives and special operations.

**O.C. Department Staff Comments:** This amendment brings the total funding amount to \$2,800.00. This amendment with the Town of Whitestown is intended to become the template agreement for all Stop-DWI Crackdown Amendments for the 2018-2019 year.

**AMENDMENT TO ONEIDA COUNTY SELECTIVE  
STOP-DWI CRACKDOWN PATROLS AGREEMENT**

THIS AMENDMENT made on this \_\_\_\_\_ day of \_\_\_\_\_ 2019 is by and between the TOWN OF WHITESTOWN through its WHITESTOWN POLICE DEPARTMENT, both having offices at 8539 Clark Mills Road, Whitesboro, New York 13492, hereinafter referred to as the "Police Agency," and the COUNTY OF ONEIDA, having its principal offices at 800 Park Avenue, Utica, New York 13501, through its STOP-DWI PROGRAM, hereinafter referred to as the "County" (collectively referred to as the "Parties").

WHEREAS, the Parties hereto entered into an agreement that was fully executed on December 21, 2018 (County contract no. 73435), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A;" and

WHEREAS, the Original Agreement provided funding to the Police Agency in the amount of \$2,000.00; and

WHEREAS, the County seeks to amend that funding amount and increase it by \$800.00 for a total funding amount of \$2,800.00; and

WHEREAS, the Police Agency wishes to accept the additional funding in the amount of \$800.00 for a total funding amount of \$2,800.00;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties do hereby agree as follows:

1. Paragraph 2 of the Original Agreement shall be amended to read as follows:

"The County shall reimburse the Police Agency up to the sum of two thousand eight hundred dollars and no cents (\$2,800.00) for its participation in Selective STOP-DWI Crackdown Patrols. The funds paid to the Police Agency under this Agreement are intended to be used to support hours worked by police officers during the Selective STOP-DWI Crackdown Patrols. Payments shall be made upon receipt from the Police Agency of a properly completed County voucher and related New York State Stop-DWI Foundation activity forms, which will itemize and set forth in detail the costs incurred and/or services performed. Said voucher and forms must be submitted within thirty (30) days of said Selective STOP-DWI Crackdown Patrols."

2. All other terms and conditions of the Original Agreement shall remain in full force and effect.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, this Amendment has been duly executed and signed by:

TOWN OF WHITESTOWN

\_\_\_\_\_  
By: Shaun J. Kaleta  
Title: Town Supervisor

Date \_\_\_\_\_

ONEIDA COUNTY

\_\_\_\_\_  
By: Anthony J. Picente, Jr.  
Title: County Executive

Date \_\_\_\_\_

\_\_\_\_\_  
By: Kevin W. Revere  
Title: Emergency Services Director

Date \_\_\_\_\_

Approved

\_\_\_\_\_  
Alison Stanulevich  
Assistant County Attorney

**ONEIDA COUNTY SELECTIVE STOP-DWI HOLIDAY  
CRACKDOWN PATROLS AGREEMENT**

**THIS AGREEMENT** made this 15<sup>th</sup> day of December 2018, by and between the **TOWN OF WHITESTOWN** through its **WHITESTOWN POLICE DEPARTMENT**, both having offices at 8539 Clark Mills Road, Whitesboro, New York 13492, hereinafter referred to as the "**POLICE AGENCY**," and the **COUNTY OF ONEIDA**, having its principal offices at 800 Park Ave, Utica, NY 13501, hereinafter referred to as the "**COUNTY**," through its **STOP-DWI PROGRAM**, having its offices at 120 Airline Street, Oriskany, NY 13424 (all collectively referred to as the "Parties").

WHEREAS, the **COUNTY** operates and conducts a **STOP-DWI PROGRAM**, which seeks the County-wide reduction of alcohol-related traffic injuries and fatalities; and

WHEREAS, the **STOP-DWI PROGRAM** has been the recipient of a grant from the New York State STOP-DWI Foundation to support a program entitled "**Selective STOP-DWI Crackdown Patrols**;" and

WHEREAS, the **POLICE AGENCY** has expressed the willingness, ability, and desire to participate in **Selective STOP-DWI Crackdown Patrols**;

NOW, THEREFORE, the Parties agree as follows:

1. The **POLICE AGENCY** shall provide **Selective STOP-DWI Crackdown Patrols** on targeted holiday dates, as set by the New York State STOP-DWI Foundation. These services and activities shall be related to the mission of the **STOP-DWI PROGRAM**: the County-wide reduction of alcohol related traffic injuries and fatalities.
2. The **COUNTY** shall reimburse the **POLICE AGENCY** up to the sum of two thousand dollars and no cents (**\$2,000.00**) for its participation in **Selective STOP-DWI Crackdown Patrols**. The funds paid to the **POLICE AGENCY** under this Agreement are intended to be used to support hours worked by police officers during the **Selective STOP-DWI Crackdown Patrols**. Payments shall be made upon receipt from the **POLICE AGENCY** of a properly completed **COUNTY** voucher and related New York State STOP-DWI Foundation activity forms, which will itemize and set forth in detail the costs incurred and services performed. Said voucher and forms must be submitted within thirty (30) days of said **Selective STOP-DWI Crackdown Patrols**.
3. This **AGREEMENT** shall be effective from December 15, 2018 through September 30, 2019.
4. All activities associated with this **AGREEMENT** shall be governed by the officially published "Standard Operating Procedures of the Oneida County Stop-DWI Program," as same may be amended.

5. The **POLICE AGENCY** warrants and represents that the program to be conducted by it under this **AGREEMENT** does not violate Section 1197 of the Vehicle and Traffic Law of the State of New York, as same may be amended.

6. The **POLICE AGENCY** agrees to comply with all applicable Federal, State and Local statutes, rules and regulations, as same may from time to time be amended.

7. The **POLICE AGENCY** shall notify the **STOP-DWI PROGRAM** Coordinator of all traffic fatalities occurring within the **POLICE AGENCY'S** jurisdiction during the term of this **AGREEMENT**, upon completion of the investigation of that fatality. Such notification shall include a photocopy of the final MV-104A and MV-104D Police Reports.

8. The **COUNTY** reserves the right to terminate this **AGREEMENT** upon thirty (30) days' written notice to the **POLICE AGENCY**. In the event of termination, the **COUNTY** will have no further obligation to the **POLICE AGENCY** other than payment for costs or services actually incurred prior to termination. In no event will the **COUNTY** be responsible for any actual or consequential damages as a result of termination.

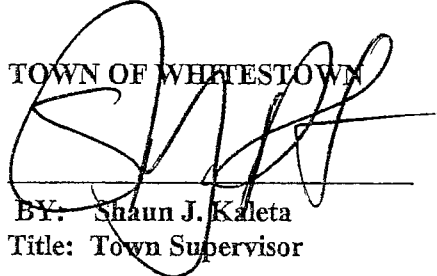
9. This **AGREEMENT** may not be assigned by the **POLICE AGENCY** without the prior written consent of the **COUNTY**.

10. The Standard Oneida County Contract Clauses Addendum, which contains additional terms, covenants and conditions that the Parties agree to be bound by and follow, is incorporated by this reference and made a part of this **AGREEMENT** as Addendum A.

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BLANK.  
SIGNATURE PAGE TO FOLLOW.

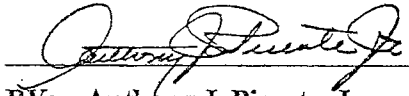
IN WITNESS WHEREOF, this AGREEMENT has been duly executed and signed by:

TOWN OF WHITESTOWN

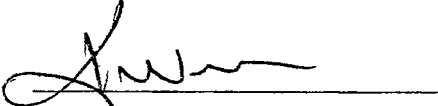
  
BY: Shaun J. Kaleta  
Title: Town Supervisor

11/17/18  
DATE

ONEIDA COUNTY

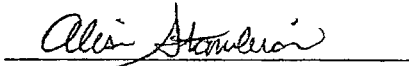
  
BY: Anthony J. Picente, Jr.  
Title: Oneida County Executive

12/21/18  
DATE

  
BY: Kevin W. Revere  
Title: Emergency Services Director

11/13/18  
DATE

Approved

  
Alison Stanulevich, Esq.  
Assistant County Attorney



**ONEIDA COUNTY  
DEPARTMENT OF PROBATION**

Boehlert Center at Union Station  
321 Main Street, 2<sup>nd</sup> Floor, Utica, New York 13501  
Utica ~ Phone: (315) 798-5914 Fax: (315) 624-3684

300 West Dominick Street, Rome, New York 13440  
Rome ~ Phone: (315) 356-2900 Fax: (315) 337-5025

E-mail: [probation@ocgov.net](mailto:probation@ocgov.net) · Web Site: [www.ocgov.net](http://www.ocgov.net)

ANTHONY J. PICENTE, JR.  
County Executive

Patrick Cady  
DIRECTOR

July 9, 2019

FN 20 19 258

Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building  
800 Park Avenue – 10<sup>th</sup> Floor  
Utica, New York 13501

**PUBLIC SAFETY**

**WAYS & MEANS**

Dear Mr. Picente:

Enclosed is the proposed Gun Involved Violence Elimination (GIVE) grant which the New York State Division of Criminal Justice Services has awarded our office in the amount of \$24,520.00. The grant period is from July 1, 2019 through June 30, 2020. Matching funds are not required. These funds are used for overtime costs for one Probation Officer to make home visits in partnership with the Utica Police Department for the purpose of eliminating shootings and homicides through integrated initiatives. A portion of the funds are also for a GPS tracking device to monitor probationers' locations.

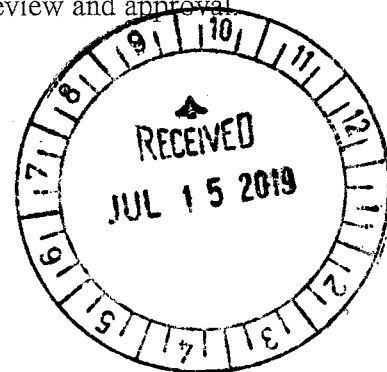
I am hereby requesting your review and approval of this grant. After doing so, please forward this information to the Oneida County Board of Legislators for their review and approval.

Thank you for your time and assistance in this matter.

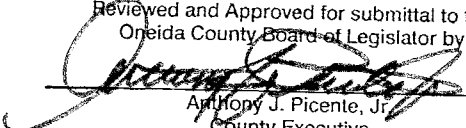
Sincerely,

  
PATRICK CADY  
PROBATION DIRECTOR

PC:kas  
Enclosures



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

  
Anthony J. Picente, Jr.  
County Executive

Date 7/12/19



Oneida Co. Department: Probation

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other   X  

**ONEIDA COUNTY BOARD OF LEGISLATORS  
CONTRACT SUMMARY**

**Name and Address of Vendor:** New York State Division of Criminal Justice Services  
80 South Swan Street,  
Albany, New York 12210-8001

**Title of Activity or Service:** Project GIVE

**Proposed Dates of Operation:** July 1, 2019 – June 30, 2020

**Client Population/Number to be served:** Oneida County

**Summary Statements:**

- 1) **Narrative Description of Proposed Services:** GIVE funds will be used for overtime costs for one probation officer to work in partnership with the Utica Police Department, as well as for a GPS tracking device to monitor probationers' locations.
- 2) **Program/Service Objectives and Outcomes:** GIVE funds help support coordinated reduction and prevention initiatives with the express goal of reducing violent firearm related offenses. This project is designed to achieve sustained, long term gun crime reduction through the application of proven evidence-based practices.
- 3) **Program Design and Staffing:** Existing Probation Department Staff

**Total Funding Requested:** \$24,520.00                      **Account#:** A3140  
A3027

**Oneida County Department Funding Recommendation:** \$24,520.00

**Proposed Funding Sources (Federal \$/State \$/ County \$):** State \$

**Cost Per Client Served:** NA

**Past Performance Data:** NA

**O.C. Department Staff Comments:** Coordinated effort with the Oneida County District Attorney, Oneida County Sheriff's Office, and Utica Police Department.

<p><u>STATE AGENCY</u>                  Division of Criminal Justice Services                  80 South Swan Street                  Albany, NY 12210</p>	<p><u>NYS COMPTROLLER'S NUMBER:</u> T484671                  (Contract Number)   <u>ORIGINATING AGENCY CODE:</u> 01490 - Division of Criminal Justice Services</p>
<p><u>GRANTEE/CONTRACTOR:</u> (Name &amp; Address)                  Oneida County                  800 Park Avenue                  Utica, NY 13501-2939</p>	<p><u>TYPE OF PROGRAMS:</u> GIVE Initiative  <u>DCJS NUMBERS:</u> GV19484671  <u>CFDA NUMBERS:</u></p>
<p><u>FEDERAL TAX IDENTIFICATION NO:</u> 156000460  <u>MUNICIPALITY NO:</u> (if applicable) 300100000000</p>	<p><u>INITIAL CONTRACT PERIOD:</u>                  FROM 07/01/2019 TO 06/30/2020  <u>FUNDING AMOUNT FROM INITIAL PERIOD:</u> \$24,520.00</p>
<p><u>STATUS:</u>                  Contractor is not a sectarian entry.                  Contractor is not a not-for-profit organization.</p>	<p><u>MULTI-YEAR TERM:</u> (if applicable): 0 1-year renewal options.</p>
<p><u>CHARITIES REGISTRATION NUMBER:</u>  <input type="text"/>                  (Enter number or Exempt)                  if "Exempt" is entered above, reason for exemption.  <u>N/A</u></p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-top: 10px;"> <p>Contractor has ___ has not ___ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.</p> </div>	<p><u>APPENDIX ATTACHED AND PART OF THIS AGREEMENT</u></p> <p><input checked="" type="checkbox"/> APPENDIX A Standard Clauses required by the Attorney General for all State contracts</p> <p><input checked="" type="checkbox"/> APPENDIX A1 Agency-specific Clauses</p> <p><input checked="" type="checkbox"/> APPENDIX B Budget</p> <p><input checked="" type="checkbox"/> APPENDIX C Payment and Reporting Schedule</p> <p><input checked="" type="checkbox"/> APPENDIX D Program Workplan</p> <p><input type="checkbox"/> APPENDIX F Guidelines for the Control and Use of Confidential Funds</p> <p><input type="checkbox"/> APPENDIX G Procedural Guidelines for the Control of Surveillance Equipment</p> <p><input type="checkbox"/> APPENDIX M</p> <p><input type="checkbox"/> Other (Identify)</p>
<p>IN WITNESS THERE OF, the parties hereto have electronically executed or approved this AGREEMENT on the dates of their signatures.</p>	
<p>NYS Division of Criminal Justice Services                  BY: , Date:                  Office of Program Development and Funding  <u>State Agency Certification:</u> "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract".                  GRANTEE:</p>	

BY: Hon. Anthony J. Picente jr., County Executive      Date: _____	
ATTORNEY GENERAL'S SIGNATURE _____ Title: _____ Date: _____	APPROVED, Thomas P. DiNapoli, State Comptroller _____ Title: _____ Date: _____

**Award Contract**

**GIVE Initiative**

<b>Project No.</b>	<b>Grantee Name</b>	
GV19-1034-D00	Oneida County	06/14/2019
AGREEMENT		

STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

A. This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X) Amendment. Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.

B. Funding for the first PERIOD shall not exceed the funding amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix amendment for that PERIOD.

C. This AGREEMENT incorporates the face page attached as presented in the Grants Management System (GMS) AWARD online printable report, and all of the marked appendices identified on the face page hereof.

D. For each succeeding PERIOD of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement. Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

To modify the AGREEMENT within an existing PERIOD, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in term is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A-1.

E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be

deemed to exist between the subcontractor and the STATE.

G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

#### II. Payment and Reporting

A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.

B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.

C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

#### III. Terminations

A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.

B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.

C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A-1.

D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.

F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

#### IV. Indemnification

A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

#### V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A-1.

#### VI Safeguards for Services and Confidentiality

A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of the laws and regulations, or specified in Appendix A-1.

Certified by - on

Award Contract

## GIVE Initiative

## Project No.

## Grantee Name

GV19-1034-D00

Oneida County

06/14/2019

## APPENDIX A

## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, 'the contract' or 'this contract') agree to be bound by the following clauses which are hereby made a part of the contract (the word 'Contractor' herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State

citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, 'the Records'). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have

access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the 'Statute') provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will

not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of 'a', 'b', and 'c' above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the 'Work') except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ('CPLR'), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.



19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (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 Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, New York 10017  
212-803-2414  
email: mwbecertification@esd.ny.gov <http://esd.ny.gov.MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current

list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a 'procurement contract' as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the - Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012 - (Prohibited Entities List) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

January, 2014

Certified by - on

Award Contract

GIVE Initiative

Project No.

Grantee Name

GV19-1034-D00

Oneida County

06/14/2019

APPENDIX A1

AGENCY-SPECIFIC CLAUSES

1. If this Agreement exceeds \$50,000, it shall not take effect until it is executed by the parties hereto and approved by the Attorney General and the Comptroller of the State of New York. If this Agreement is for \$50,000 or less, it shall not take effect until it is executed by both parties.

2. This Agreement sets forth the entire understanding of the parties and may not be altered or amended except in format approved by DCJS and the NYS Office of the State Comptroller, and electronically signed by the parties hereto.

3. The failure of a party to enforce a contractual obligation shall not eliminate the other party's obligation to perform such contractual obligation.

4. In the event that any provision of this Agreement is determined to be null and void, all remaining provisions shall continue to be in full force and effect.

5. The Grantee shall submit detailed itemization forms for personal service and fringe benefit expenditures, in a format determined by DCJS, with any voucher and Fiscal Cost Reports requesting payment for expenditures. The Grantee agrees to properly account for and will submit for payment according to the agreed titles and budget amounts unless otherwise approved by DCJS.

6. The Grantee must maintain specific documentation as support for project related personal service expenditures, depending upon whether this grant contract project is supported by State or Federal funds:

a. For State funded grants:

For all Grantee's staff whose salaries are paid in whole or in part from grant funds provided under this Agreement, the Grantee shall maintain a time recording system which shows the time devoted to the grant project. The system shall consist of time sheets, computerized workload distribution reports, or equivalent systems. The time devoted to grant activities must be determinable and verifiable by DCJS. If time sheets are used, each must be signed by the individual and certified by the individual's supervisor in a higher level position at the end of each time reporting period.

b. For Federally funded grants:

Depending upon the nature or extent of personal service provided under this Agreement, the Grantee shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with the requirements of the Federal Office of Management and Budget (OMB) Circulars A-21, A-87 or A-122, as applicable:

i. OMB Circular A-21 [Item J, General provisions for selected items of cost] identifies documentation required for educational institutions as support for grant project personnel costs.

ii. OMB Circular A-87 [Attachment B, Selected Items of Cost] identifies the documentation required for local government agencies as support for grant project personnel costs.

iii. OMB Circular A-122 [Attachment B, Selected Items of Cost] identifies the documentation required for non-profit organizations as support for grant project personnel costs.

The most current version of these Federal OMB Circulars may be viewed on-line at:  
<https://www.whitehouse.gov/omb/circulars/>

*The Grantee is to ensure full compliance with specific personal service documentation requirements of these OMB Circulars as applicable directly to the Grant recipient and to any sub-recipient (or collaborative agency/organization). Failure to do so may result in disallowance of costs upon audit.*

7. Budget amendments are governed as follows:

a. Requests for modifications must be made in writing by an authorized representative of the Grantee. Any proposed modification to the contract must be submitted for prior approval by DCJS and the NYS Office of the State Comptroller (OSC) when:

i. The amount of the modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of five million dollars or less; or

ii. The amount of the modification is, as a portion of the total value of the contract, equal to or greater than five percent for contracts in excess of five million dollars.

An Appendix X setting forth the proposed amendment must be electronically signed via the Grants Management System by the Grantee for approval by DCJS and the NYS Office of the State Comptroller before the next voucher and/or fiscal cost report will be approved.

b. For proposed modifications to the contract less than the DCJS/OSC approval thresholds as set forth in 7 a, the following shall apply:

i. For contracts equal to \$100,000 or less, no formal budget reallocation is required for a budget reallocation that would result in a transfer of funds between budget cost categories where the amount of such modification is, as a portion of the total value of the contract, equal to or less than ten percent.

ii. For contracts over \$100,000, no formal budget reallocation is required for a budget reallocation that would result in a transfer of funds between budget cost categories where the amount of such modification is, as a portion of the total value of the contract, equal to or less than five percent.

For budget reallocations involving amounts above the thresholds established in paragraph b (above), a grant amendment setting forth the proposed reallocation must be approved by DCJS via the Grants Management System before the next payment will be approved.

c. Any other budget changes not covered in paragraphs a or b (above), such as reallocations within budget cost categories or changes in the number, title, job duties or rate of remuneration of project staff, must be requested and approved via email by a DCJS Criminal Justice Program Representative. Such approval shall be retained by the Grantee.

8. Space rental provided by this Agreement must be supported by a written lease, maintained on file and made available by the Grantee upon request.

9. Grant-supported travel is governed as follows:

a. The Grantee's request for travel, meals or lodging reimbursement shall be in accordance with Appendix B, Budget, and, unless prior written authorization has been received from DCJS, shall not exceed rates authorized by the NYS Office of the State Comptroller (OSC). Travel shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Grantee or the OSC travel

guidelines.

b. Prior approval and written authorization from DCJS is required for out-of-state travel. Such approval shall be retained by the Grantee and submitted upon request.

10. The Grantee's employment of a consultant must be supported by a written agreement executed by the Grantee and the consultant. A consultant is defined as an individual or organization hired by the Grantee for the stated purpose of accomplishing a specific task relative to the funded project. A copy of the written agreement must be submitted to DCJS as an attachment in the DCJS Grants Management System by the due date of the second quarterly progress report. All consultant services must be obtained in a manner that provides for fair and open competition. The Grantee shall retain copies of all solicitations seeking a consultant, written agreements and documentation justifying the cost and selection of the consultant. The Grantee further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Agreement and the Grantee must guarantee the work of the consultant as if it were its own.

a. The rate for a consultant should not exceed \$650 for an eight-hour day (not including travel and subsistence costs). A rate exceeding \$650 per eight-hour day requires prior written approval from DCJS and may be approved on a case-by-case basis where adequate justification is provided and expenses are reasonable and allowable.

b. In addition to the above requirements, a Grantee that is a local government or a not-for-profit must adhere to the following guidelines at a minimum when obtaining consultant services:

i. Consultant services that cost up to \$999 under this grant agreement can be obtained at the Grantee's discretion.

ii. Consultant services that cost between \$1,000 and \$4,999 under this grant agreement must be supported by at least three telephone quotes and a record created of such quotes.

iii. Consultant services that cost between \$5,000 and \$9,999 under this grant agreement must be supported by at least three written quotes on a vendor's stationery and a record created of competitive procurement process utilized.

iv. A Grantee obtaining consultant services that cost in excess of \$10,000 must use a competitive bidding process. Guidance may be obtained from DCJS. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; sealed bids opened at one time before a committee who will certify the process; establishment of the methodology for evaluating bids before the bids are opened; and maintenance of a record of competitive procurement process.

c. A Grantee who proposes to obtain consultant services from a vendor without competitive bidding, must obtain the prior written approval of DCJS. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and basis upon which the price was determined to be reasonable. Further, such consultant services must be in accordance with the guidelines, bulletins and regulations of the NYS Office of the State Comptroller, State Procurement Council, and the U.S. Department of Justice. DCJS's approval shall be retained by the Grantee and submitted upon request.

d. Notwithstanding the provisions of this paragraph, the Parties agree that DCJS' prior written approval is not required for the employment of a consultant when such employment is secured in relationship to a criminal matter as an expert witness, consultant or investigator. The Parties agree that the employment shall be supported by a written agreement and that all supporting documentation identifying the criminal matter involved, services provided, time commitment, and schedule shall be retained by the Grantee and submitted upon request.

11. All procurements, other than consultant services, shall be conducted in the following manner. Written justification and documentation for all procurements must be maintained on file and made available upon request. Detailed itemization forms for non-personal service expenditures, in a format determined by DCJS, shall accompany each voucher and Fiscal Cost Report requesting payment. All procurements must be made in a fair and open manner and in accordance with the pre-determined methodology established for evaluating bids (e.g., lowest responsive bidder or best value).

a. A Grantee that is a state entity must make all procurements in accordance with State Finance Law Article 11, and any other applicable regulations.

b. A Grantee that is a local government must make procurements in accordance with General Municipal Law Article 5-A and any other applicable regulations.

c. In addition, a Grantee that is a not-for-profit must also make all procurements as noted below:

i. If the Grantee is eligible to purchase an item or service from a government contract or is able to purchase such item or service elsewhere at a lower than or equal price, then such purchase may be made immediately.

ii. A Grantee may purchase any single piece of equipment, single service or multiples of each that cost up to \$999 at its discretion.

iii. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost between \$1,000 and \$4,999, a Grantee must secure at least three telephone quotes and create a record for audit of such quotes.

iv. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost between \$5,000 and \$9,999, the Grantee must secure at least three written quotes on a vendor's stationery and maintain a record of the competitive procurement process for audit purposes.

v. A Grantee spending in aggregate of \$10,000 and above must use a competitive bidding process. Guidance may be obtained from DCJS. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; sealed bids opened at one time before a committee who will certify the process; establishment of the methodology for evaluating bids before the bids are opened; and maintenance of a record of competitive procurement process.

vi. A Grantee who proposes to purchase from a vendor without competitive bidding must obtain the prior written approval of DCJS. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined to be reasonable. Further, such procurement must be in accordance with the guidelines, bulletins and regulations of the NYS Office of the State Comptroller, State Procurement Council, and the U.S. Department of Justice. A copy of DCJS' approval shall be retained by the Grantee and submitted upon request.

12. Applicable equipment purchased with funds provided by this Agreement as listed in Appendix B, Budget, shall be assigned a unique inventory number. The Grantee shall list all applicable equipment purchased with such funds in the GMS Property Module at the time the last program progress report is filed or sooner. Items of equipment costing less than \$500 do not need to be listed in the GMS Property Module although the Grantee is encouraged to maintain an internal inventory for audit purposes. Upon completion of all contractual requirements by the Grantee, DCJS will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in conducting a criminal justice program.

13. Grant funds may be expended only for purposes and activities set forth in this Agreement. Accordingly, the most important single requirement of accounting for this grant is the complete and

accurate documentation of grant expenditures. If the Grantee receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.). Grantee agrees it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.

This Agreement may be subject to a fiscal audit by DCJS to ascertain financial compliance with Federal and/or State laws, regulations, and guidelines applicable to this Agreement. Such audits may include review of the Grantee's accounting, financial, and reporting practices to determine compliance with the Agreement and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable Federal, State, and DCJS guidelines.

14. Where advance payments are approved by DCJS, the Grantee agrees to expend the advance payments in accordance with the purposes set forth in Appendix D and consistent with Appendix B.

15. DCJS reserves the right to suspend program funds if the Grantee is found to be in noncompliance with the provisions of this Agreement or other grant agreements between the Grantee and DCJS or, if the Grantee or principals of the Grantee are under investigation by a New York State or local law enforcement agency for noncompliance with State or Federal laws or regulatory provisions or, if in DCJS' judgment, the services provided by the Grantee under the Agreement are unsatisfactory or untimely. DCJS shall provide the Grantee with written notice of noncompliance. Upon the Grantee's failure to correct or comply with the written notice by DCJS, DCJS reserves the right to terminate this Agreement, recoup funds and recover any assets purchased with the proceeds of this Agreement. DCJS reserves the right to use approved grant related expenditures to offset disallowed expenditures from any grant funded through its offices upon issuance of a final audit report and appropriate notification to the Grantee, or upon reasonable assurance that the Grantee is not in compliance with Agreement terms.

16. The Grantee agrees, as a material condition of the Agreement, to comply with all applicable provisions of the Hatch Act (5 U.S.C. "1501 et seq.) as amended.

17. Program income earned by the Grantee during the funding period as a direct result of the grant award must be reported in writing to DCJS, in addition to any other statutory reporting requirements. This includes income received from seized and forfeited assets and cash, as well as: sale of grant purchased property; royalties; fees for services; and registration/tuition fees. Interest earned on grant funds is not program income unless specified in Appendix D. The Grantee agrees to report the receipt and expenditures of grant program income to DCJS. All income, including interest, generated by the use of these grant funds will be used to enhance the grant project.

18. If applicable, the Grantee agrees to obtain not-for-profit status, a federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DCJS with this information as soon as it is available.

19. Unless otherwise specified, in accordance with the State Finance Law, the availability of all State funds for liabilities already incurred thereunder shall cease on September 15th of the year following the fiscal year in which the funds were appropriated, unless such funds are reappropriated by the New York State Legislature. To ensure payment, vouchers must be received by DCJS by August 1st of the year following the fiscal year in which the funds were appropriated.

20. The Grantee will submit program progress reports to DCJS via the GMS system and additional information or amended data as required in Appendix D.

a. Program progress reports will be due on the last day of the month following the end of each calendar quarter or on an alternate schedule as prescribed in Appendix D. The first program progress report will be due on the last day of the month following the last day of the calendar quarter from the start date of the contract.

Program progress reports thereafter will continue to be made until such time as the funds subject to this Agreement are no longer available, have been accounted for, and/or throughout the Agreement period or project duration.

Calendar quarters, for the purposes of making program progress reports, shall be as follows:

Calendar Quarter Report Due January 1 - March 31 April 30 April 1 - June 30 July 31 July 1 - September 30 October 31 October 1 - December 31 January 31

b. The final progress report will summarize the project's achievements as well as describe activities for that quarter.

c. Grantees must be current on all program progress reports. Failure to submit program progress reports may result in placement of a stop payment and withholding of funds.

21. If for any reason the State of New York or the federal government terminates its appropriation through DCJS or fails to pay the full amount of the allocation for the operation of this program, this Agreement may be terminated or reduced at the discretion of DCJS, provided that no such reduction or termination shall apply to allowable costs already incurred by the Grantee where funds are available to DCJS for payment of such costs. Upon termination or reduction of the Agreement, all remaining funds paid to the Grantee that are not subject to allowable costs already incurred by the Grantee shall be returned to DCJS. In any event, no liability shall be incurred by DCJS or by the State of New York beyond monies available for the purposes of this Agreement. The Grantee acknowledges that any funds due to DCJS because of disallowed expenditures after audit shall be its responsibility.

22. If Appendix B, Program Budget, makes provisions for overtime payment, the Grantee agrees to submit vouchers for such payment of overtime charges by the last day of the month following the last day of the quarter for the reporting period. The Grantee further agrees to limit overtime earnings to no more than 25 percent (25%) of the employee's annual personnel cost (salary plus fringe benefits) during the term of this Agreement. Prior written approval from DCJS is required for overtime charges in excess of the 25 percent (25%) limit. A copy of DCJS' approval shall be retained by the Grantee and submitted upon request.

23. None of the goals, objectives or tasks set forth in Appendix D shall be subawarded to another organization without specific prior written approval by DCJS. Where the intention to make subawards is clearly indicated in the application, DCJS' approval is deemed given, if these activities are funded as proposed.

If this Agreement makes provisions for the Grantee to subgrant funds to other recipients, the Grantee agrees that all subgrantees shall be held accountable by the Grantee for all terms and conditions set forth in this Agreement. The Grantee further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Agreement and the Grantee must guarantee the work of any subgrantee as if it were its own.

The Grantee agrees that all subgrantee arrangements shall be formalized in writing between the parties involved. The writing must, at a minimum, include the following information:

- Activities to be performed;
- Time schedule;
- Project policies;



- Other policies and procedures to be followed;
- Dollar limitation of the Agreement;
- Appendix A, Appendix A-1, Appendix C, Appendix M, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Agreement; and
- Applicable Federal and/or State cost principles to be used in determining allowable costs.

The Grantee will not be reimbursed for subgranted funds unless all expenditures by a subgrantee are listed on certification forms. Backup documentation for such expenditures must be made available upon request. All expenditures must be programmatically consistent with the goals and objectives of this Agreement and with the financial plan set forth in Appendix B.

#### 24. Federal Funds

a. In accordance with Federal requirements, a Grantee which receives during its fiscal year \$500,000 or more of Federal funds (including pass-through and direct) from all sources, including this Agreement, must agree to have an independent audit of such Federal funds conducted in accordance with the Federal Office of Management and Budget (OMB) Circular A-133. OMB Circular A-133 further requires that the final report for such audit be completed within nine months of the end of the Grantee's fiscal year. The Grantee further agrees to provide one copy of such audit report(s) to DCJS within nine months of the end of its fiscal year(s).

b. In accordance with Federal requirements, a Grantee receiving Federal pass-through funds must also agree to comply with the terms and conditions of any and all applicable Federal OMB Circulars. For the convenience of the Grantee, the following OMB circulars are noted as the most common applicable to federal funds passed through DCJS:

- OMB Circular A 21, Cost Principles for Educational Institutions;
- OMB Circular A 87, Cost Principles for State, Local and Indian Tribal Governments;
- OMB Circular A 102, Grants and Cooperative Agreements with State and Local Governments;
- OMB Circular A 110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non Profit Organizations; and
- OMB Circular A 122, Cost Principles for Non Profit Organizations.

The Parties agree that, dependent upon the status of the Grantee; additional circulars may also be applicable. The most current version of all Federal OMB Circulars may be viewed on-line at:<https://www.whitehouse.gov/omb/circulars/>.

*The Grantee is to ensure full compliance with all cost documentation requirements of OMB Circulars as applicable directly to the Grant recipient and to any sub-recipient (or collaborative agency/organization). Failure to do so may result in disallowance of costs upon audit.*

25. No materials, items or publications resulting from award activities may use the DCJS logo or provide any attribution to DCJS in any form, without prior approval from the Executive Deputy Commissioner of DCJS or his designee. Requests for such approval must be submitted in writing to DCJS's Agency Counsel at least 30 days before requested use. Determinations of such requests will be made by the DCJS Executive Deputy Commissioner on a case-by-case basis.

26. Any creative or literary work developed or commissioned by the Grantee with grant support provided by DCJS shall become the property of DCJS, entitling DCJS to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.

a. If DCJS shares its right to copyright such work with the Grantee, DCJS reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant;

and (b) any rights of copyright to which a Grantee, Subgrantee, or a Contractor purchases ownership with grant support.

b. If the grant support provided by DCJS is federally sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, subgrant or contract under a grant or subgrant; and (b) any rights of copyright to which a Grantee, Subgrantee, or a Contractor purchases ownership with such grant support.

c. The Grantee shall submit one copy of all reports and publications resulting from this Agreement to DCJS. Any publications must contain the following statement, in visible print, of any document generated pursuant to a grant administered by DCJS:

This project was supported by a grant administered by the New York State Division of Criminal Justice Services. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Division of Criminal Justice Services.

27. Original records must be retained for six years following the submission of the final claim against this Agreement. In the event of a fiscal audit, the project manager or a designated responsible party must be prepared to produce source documents that substantiate claimed expenditures. DCJS requires that all documentation materials be organized, readily accessible, and cross-referenced to the Fiscal Cost Reports previously submitted. If fiscal records, such as purchase orders, vouchers, payroll registers, payroll tax records, etc., are to be kept in a fiscal office which is separate and apart from the program office, the project manager must have access to these original records. Such fiscal records must readily identify the associated project. In addition, a separate set of records must be retained for each project year.

28. Grant-related expenditures shall be reported on Fiscal Cost Reports and detailed itemization forms provided by DCJS. These reports must be prepared periodically as defined in Appendix C of this Agreement. All reported expenditures must reconcile to the program accounting records. Prior period adjustments shall be reported in the same accounting period that the correction was made.

29. General Responsibility Language The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

30. Suspension of Work (for Non-Responsibility) The Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

31. Termination (for Non-Responsibility) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Contract may be terminated by the Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee to be non-responsible. In such event, the Executive Deputy Commissioner of the New York State Division of Criminal Justice Services or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

VER 04/16/2018  
 Certified by - on

**Award Contract**

GIVE Initiative

Project No.  
 GV19-1034-D00

Grantee Name  
 Oneida County

06/14/2019

**APPENDIX B - Budget Summary by Participant**

Oneida County  
 Oneida County Probation Department - Version 1

#	Personnel	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Probation Officer OT (\$30/hr x 51hrs x 12 months)	1	\$18,520.00	\$18,520.00	\$18,520.00	\$0.00
Justification: tbd						
Total				\$18,520.00	\$18,520.00	\$0.00

#	All Other Expenses	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Focused Deterrence - GPS Offender Tracker	1	\$6,000.00	\$6,000.00	\$6,000.00	\$0.00
Justification: tbd						
Total				\$6,000.00	\$6,000.00	\$0.00

Total Project Costs	Total Cost	Grant Funds	Matching Funds
	\$24,520.00	\$24,520.00	\$0.00

Total Contract Costs	Total Cost	Grant Funds	Matching Funds
	\$24,520.00	\$24,520.00	\$0.00

**Award Contract**

GIVE Initiative

Project No.  
 GV19-1034-D00

Grantee Name  
 Oneida County

06/14/2019

APPENDIX C  
 PAYMENT AND REPORTING SCHEDULE

NOTE: Additional payment provisions associated with the schedule(s) below are detailed in Appendix A-1.

For All Grantees:

1. The Grantee agrees that this is a reimbursement-based contract; an advance may be provided through Appendix D (Special Conditions). All requests for reimbursement must reflect actual costs that have been disbursed or items received by the Grantee. A purchase order issued without receipt of the items or service is not eligible for reimbursement.

2. Grantees must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements will result in the rejection of associated vouchers. Failure to submit the final program report, or interim progress report designated as the final report, may result in a disallowance of 25 percent (25%) of the grant amount. The Grantee must also refund all unexpended advances (see item three below.) Final vouchers, reimbursement payment and reports must be submitted by the last day of the month following the end of the grant contract period. Failure to voucher within this period may result in the loss of grant funds.

3. If at the end of this grant contract there remains any unexpended balance of the monies advanced under this contract in the possession of the Grantee, the Grantee shall submit a certified check or money order for the unexpended balance payable to the order of the State of New York and return it to the DCJS Office of Financial Services with its final fiscal cost report by the last day of the month following termination of this grant contract.

4. Vouchers shall be submitted in a format acceptable to DCJS and the Office of the State Comptroller (see <http://www.criminaljustice.ny.gov/ofpa/forms.htm>). Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the Project Budget (Appendix B) and during the contract period. When submitting a voucher, such voucher shall also be deemed to certify that: a) the payments requested do not duplicate reimbursement from other sources of funding; and b) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Grantee for this program. Requirement b) does not apply to Legislative sponsored State grants.

5. For purposes of prompt payment provisions, the Designated Payment Office for the processing of all vouchers is the DCJS Office of Financial Services. Payment of grant vouchers shall be made in accordance with the provisions of Article XI-A of the State Finance Law. Payment shall be preceded by an inspection period of 15 business days which shall be excluded from calculations of the payment due date for purposes of determining eligibility for interest payments. The Grantee must notify the Office of Financial Services in writing of a change of address in order to benefit from the prompt payment provision of the State Finance Law. When progress reports are overdue or the required MWBE reporting is not included, vouchers will not be eligible for prompt payment.

6. Timely and properly completed New York State vouchers, with supporting documentation when required, shall be submitted to:

NYS Division of Criminal Justice Services  
Office of Financial Services  
80 S. Swan St.  
Albany, NY 12210

#### 7. Payment Schedule

##### PAYMENT PAYMENT DUE DATE

1 Pending appropriation, 30 days after commencement date of contract with proper documentation or upon receipt of proper documentation, whichever is later.

2-4 Quarterly

A not-for-profit Grantee operating on a multi-year contract may voucher for an optional fifth quarter advance against the succeeding year's appropriation, pursuant to NYS Finance Law, Section 179-u.

All submitted vouchers will reflect the Grantee's actual expenditures and will be accompanied by supporting detailed itemizations of personal service and non-personal service expenditures and other documentation as required, and by a fiscal cost report for the reporting period. DCJS reserves the right not to release subsequent grant awards pending Grantee compliance with this Agreement. In the event that any expenditure for which the Grantee has been reimbursed by grant funds is subsequently disallowed, DCJS in its sole discretion may reduce the voucher payment by the amount disallowed. If necessary, the Grantee may be required to submit a final budget reallocation. Fiscal cost reports showing grant expenditures and/or obligations for each quarter of the grant must be submitted by the last day of the month after the last day of the reporting period.

Advance payments shall be permitted as specified in Appendix A-1, and in the amount specified in Appendix D (Special Conditions).

Payment requests need to include the following documents as required:

- Detailed Itemization of Personal Service Expenditures
- Detailed Itemization of Non-Personal Service Expenditures
- Detailed Itemization of Consultant Expenditures
- Expert witness agreement and supporting documentation
- Voucher and Fiscal Cost Report signed
- Written documentation of all required DCJS prior approvals as follows:
  - DCJS approval of non-competitive consultant.
  - DCJS approval of non-competitive vendor for services.
  - DCJS approval of consultant services reimbursement greater than \$650 per eight hour day.
  - DCJS approval of change to Personal Services by more than 10 percent.
  - DCJS approval to exceed NYS Office of the State Comptroller travel, meals and lodging rates.
  - DCJS approval to subaward to another organization.
  - DCJS approval for overtime payments exceeding 25 percent of an employee's annual personnel cost.
  - DCJS and NYS Office of the State Comptroller approval to modify the budget by more than 10 percent of the total value of the contract if the contract is less than five million.
  - DCJS and NYS Office of the State Comptroller approval to modify the budget by more than 5 percent of the total value of the contract if the contract is five million or more.
  - DCJS approval to reallocate funds between Personal Services and Non Personal Services.

8. CONTRACT PAYMENTS: Contractor shall provide complete and accurate billing invoices to the agency in order to receive payment. Billing invoices submitted to the agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), or by email at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us). Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

VER05/13/2013

Certified by - on

Award Contract

**GIVE Initiative**

**Project No.**

**Grantee Name**

GV19-1034-D00

Oneida County

06/14/2019

**APPENDIX D - Work Plan****Goal**

The goal of the Gun Involved Violence Elimination (GIVE) Initiative is the elimination of shootings and homicides, or aggravated assaults where applicable, through the integrated use of evidence-based strategies that are incorporated into the four core elements of GIVE: People, Places, Alignment, and Engagement.

**Objective #1**

To launch the partnerships comprehensive plan outlined in the GIVE VI proposal to directly combat shootings and homicides, or aggravated assaults where applicable, by implementing the key elements of each chosen evidence-based strategy.

**Task #1 for Objective #1**

On a quarterly basis, the agency (PD, DA, Probation, Sheriff) will complete and submit the DCJS Hot-Spot Self-Assessment Tool (SAT) with a written description of the actions taken to implement each of the key components, along with plans for implementing components not yet in place.

**# Performance Measure**

- 1 Attach a copy of the completed GIVE SAT to GMS by the end of the month following the end of each quarter.
- 2 Email a copy of the completed SAT to the county District Attorney (DA) representative by the end of the month following the end of each quarter.

The county DA office is to merge individual partner SAT responses for each strategy into a final SAT. This should be completed within 30 days of the end of each reporting quarter. Additionally, electronic copies of the final SATs should be distributed to the DCJS GIVE Representative and all GIVE partners within the jurisdiction, including but not limited to, the executive heads of each agency and the day-to-day operations liaison previously identified.

**Task #2 for Objective #1**

On a quarterly basis, the agency (PD, DA, Probation, Sheriff) will complete and submit the DCJS Focused Deterrence Self-Assessment Tool (SAT) with a written description of the actions taken to implement each of the key components, along with plans for implementing components not yet in place.

**# Performance Measure**

- 1 Attach a copy of the completed GIVE SAT to GMS by the end of the month following the end of each quarter.
- 2 Email a copy of the completed SAT to the county District Attorney (DA) representative by the end of the month following the end of each quarter.

The county DA office is to merge individual partner SAT responses for each strategy into a final SAT. This should be completed within 30 days of the end of each reporting quarter. Additionally, electronic copies of the final SATs should be distributed to the DCJS GIVE Representative and all GIVE partners within the jurisdiction, including but not limited to, the executive heads of each agency and the day-to-day operations liaison previously identified.

**Award Contract****GIVE Initiative****Project No.****Grantee Name**

GV19-1034-D00

Oneida County

06/14/2019

**Award Conditions**

Upon approval of this grant by the Office of the State Comptroller, or DCJS for "T" contract only, the Grantee is authorized to initially voucher for advance payment of those prospective expenses previously approved by DCJS not to exceed \$0.00 from the total contracted amount. Consistent with paragraph 15 of Appendix A-1 of this grant contract, vouchers for advance payments for the purchase of equipment and supplies must be supported by a copy of the purchase order.

**APPENDIX D - Special Conditions****A. Publications:**

1. The implementing agency will submit to DCJS for review all proposed publications (written, visual or sound) prior to their public release. Any such publications shall contain the following statement... "This project is supported by a grant from the New York State Gun Involved Violence Elimination (GIVE) Initiative. Points of view in this document are those of the author and do not necessarily represent the official position of policies of the Division of Criminal Justice"

2. No materials, items or publications resulting from award activities associated with the GIVE Initiative grant may use the DCJS logo or provide any attribution to DCJS in any form, without the prior approval from the Executive Deputy Commissioner of DCJS or his/her designee. Requests for such approval must be submitted in writing to DCJS Executive Deputy Commissioner and Counsel at least 30 calendar days before requested use. Determinations of such requests will be made by the DCJS Executive Deputy Commissioner on a case-by-case basis.

**B. Programs:**

1. Grantee agrees that if funding is being provided for the implementation of any DCJS crime reduction strategies, the implementing agency will coordinate their GIVE strategy with those other strategy initiatives in the county.

2. Grantee agrees that if the project is not implemented within 60 calendar days of the award date, it will report by letter to OPDF the steps taken to initiate the project, the reasons for delay, and the expected implementation date. If the project is not operational within 90 calendar days of the original starting date of the grant period, the Grantee will submit a second statement to OPDF explaining the delay. At the discretion of the Executive Deputy Commissioner of DCJS, in consultation with the Board, the State may either revoke and redistribute the funds or extend the implementation date of the project beyond the 90-day period when warranted by extenuating circumstances.

3. The following special conditions apply to contracts with county or municipal governments as appropriate: Participating law enforcement agencies that are funded by DCJS to conduct drug, firearms or vehicle theft or vehicle related insurance fraud investigations shall register with SAFETNet. Participation in SAFETNet obligates the registered agency to submit information regarding persons or addresses under active investigation in accordance with SAFETNet standard operating procedures. In addition, the agency agrees to participate in the Upstate New York State Intelligence Center (NYSIC) or the New York/New Jersey High Intensity Drug Trafficking Area Regional Intelligence Center (NY/NJ HIDTA RIC) as appropriate.

4. Grantee shall enroll as a user of the Integrated Justice Portal (IJPortal) and make use of the IJPortal services as applicable. Law enforcement agencies are required to submit all monthly crime reports to DCJS through the Integrated Justice Portal (IJPortal) IBR/UCR Reporting Interface within 30 calendar days after the close of the reporting period. Failure to submit this information may result in grant funds being withheld.

Instructions for accessing and submitting crime reports through the IJPortal can be found at:  
[http://www.criminaljustice.ny.gov/crimnet/ojsa/crimereporting/ucr\\_refman/IJPortal-UCR-Data-Entry-](http://www.criminaljustice.ny.gov/crimnet/ojsa/crimereporting/ucr_refman/IJPortal-UCR-Data-Entry-)

Manual.pdf

All law enforcement agencies must stay current with their monthly submissions. When the police department is unable to submit the data within 30 days, the Chief must submit the reasoning to DCJS, while ensuring the data is submitted as soon as possible. If it is deemed that the reasoning for the late submission was out of the control of the police department, a waiver will be granted to avoid the fiscal penalty.

Monthly Gun Data - Both primary and DCJS designated secondary police departments must submit the Monthly Gun Data Report within 30 days of the end of the month that is being reported on. When the police department is unable to submit the data within 30 days, the Chief must submit the reasoning to DCJS, while ensuring the data is submitted as soon as possible. If it is deemed that the reasoning for the late submission was out of the control of the police department, a waiver will be granted to avoid the fiscal penalty.

**B. Program: Cont'd**

5. Incident-Based Reporting (IBR) agencies are required to use the IJPortal IBR Submission interface to upload their monthly NYSIBR extract file, and the IJPortal UCR Data Entry Interface to submit their monthly Hate Crime and Law Enforcement Officers Killed or Assaulted (LEOKA) reports.

Summary (UCR) reporting agencies are required to use the IJPortal UCR Data Entry Interface to submit all monthly UCR reports including the Return A (Monthly Offenses known to Police), Arrests of Persons 18 and Over, Arrest of Persons Under 18, Supplemental Homicide Report (SHR), Arson, Hate Crime, and the Law Enforcement Officers Killed or Assaulted (LEOKA).

6. Grantee shall enroll as applicable in the DCJSContact Directory established and administered by DCJS. DCJSContact is a statewide directory service provided free-of-charge by the Division of Criminal Justice Services to the criminal justice community of New York State. Information regarding enrollment in the DCJSContact Directory can be obtained by downloading the enrollment form: <http://www.criminaljustice.ny.gov/ojis/documents/dcjscontactenrollform.pdf> or by calling NYS DCJS Office of Public Safety at (518) 457-2667.

7. All criminal justice information management software which a grantee may purchase or develop with funds provided under the terms of this agreement must conform to established New York State criminal justice data standards as documented in the most current version of the New York Statewide Criminal Justice Data Dictionary. In addition, all such information management software purchased or developed with funds provided under the terms of this agreement must conform to statewide standards for the collection, processing and reporting of criminal justice information as documented in the New York State Standard Practices Manual for the Processing of Fingerprintable Criminal Cases. The latest versions of both documents referenced above can be accessed on the DCJS web site at <http://www.criminaljustice.ny.gov/dict/dict.htm> and [http://www.criminaljustice.ny.gov/pio/fp\\_services.htm](http://www.criminaljustice.ny.gov/pio/fp_services.htm) or obtained by calling the DCJS Customer Contact Center at (800) 262-3257.

8. Participating law enforcement agencies receiving GIVE funds shall enforce the provisions of Orders of Protection, particularly with respect to those provisions prohibiting the ownership or possession of firearms, when so ordered in family or criminal court and served upon the defendant and will enforce the firearms prohibition provisions of the federal Violence Against Women Act.

9. Participating agencies receiving funding through the GIVE Initiative will be required to participate in a GIVE program evaluation. This may require agencies to provide DCJS or its contractors with data and information relating to jurisdictional GIVE operations, initiatives, and enforcement efforts.

10. Grantee agrees to comply with all requirements included within the Project GIVE Request for Applications (RFA).

**C. Funding:** 1. Notwithstanding the provisions of paragraph 11 of Appendix A1, the parties agree that DCJS' prior approval is not required for the employment of a consultant when such employment is secured in



relationship to a criminal matter as an expert witness, consultant or investigator. The parties agree that the employment shall be supported by a written agreement and requests for reimbursement supported by documentation identifying the criminal matter involved, services provided, time commitment, and fee schedule.

2. This contract may be extended, increased, decreased, renewed, amended or renegotiated at the discretion of the Executive Deputy Commissioner of the Division of Criminal Justice Services or as otherwise agreed upon by the Parties.

3. Grantee agrees that these funds will be used to supplement and not supplant existing funds and services.

4. The following condition will apply to contracts between two New York State governmental entities:

This is an agreement between two New York State governmental entities, and as such the provisions contained herein with respect to grants are applicable only to the extent that the provisions would otherwise be applicable between New York State governmental entities.

5. Grantee agrees that all specifications for technology purchases exceeding \$5,000 (excluding laptops and desktop computers) must be reviewed by the DCJS Office of Justice Information Services. The review will take place within three business days and should be coordinated through the DCJS Office of Program Development and Funding.

**Supplemental GIVE Special Conditions - 3/21/2016**

1. Participating police departments will attend monthly meetings, at a minimum, with the Operation SNUG (also known as Neighborhood Violence Prevention Project) program manager or his/her designee and regional crime analysts to discuss firearm related crime, gang activity, and violence. Meeting frequency may be increased at the discretion of DCJS based on shootings, homicides, and the incidence of violence crime within a jurisdiction.

2. By the 15th day of each month, participating police departments will provide Operation SNUG personnel with a monthly list of high risk individuals who have been identified as known or suspected gang members, gang leaders who promote gun violence, and candidates most likely to carry guns and/or be involved in shooting incidents. Police agencies may use discretion when it comes to supplying sensitive information regarding these high-risk individuals (i.e. persons involved in active criminal investigations).

3. By the 15th day of each month, the participating police department will provide DCJS a crime map pinpointing the locations of the prior month's shooting incidents for both the Operation SNUG target area(s) and the entire city.

**Supplemental GIVE Special Conditions - 3/21/2016**

4. Participating police departments will provide DCJS an annual crime map pinpointing the locations of all shooting incidents which have occurred between July 1 and June 30 of the preceding GIVE contract period for both the Operation SNUG target area(s) and the entire city. This annual crime map will be due on the last day of the month following the expiration date of the contract.

5. By the 15th day of each month the participating police department will provide DCJS a report detailing a month to month comparison of shootings and homicides for the current calendar year and the two preceding calendar years for the target area(s) and the entire city.

6. Participating police departments will provide DCJS an annual report detailing a year to year comparison of shootings and homicides for the current GIVE contract period and the two preceding GIVE contract periods for the target area(s) and the entire city. This annual comprehensive report will be due on the last day of the month following the expiration date of the contract.

7. Participating police departments will develop written protocols detailing established procedures to notify the

Operation SNUG program manager or his/her designee of all shootings and/or homicides within 24 hours of each incident. The written procedures must be submitted to DCJS with the first Quarterly Progress Report.

ONEIDA COUNTY  
OFFICE OF THE DISTRICT ATTORNEY

Scott D. McNamara

District Attorney  
FN 20 19-259

Dawn Catera Lupi  
First Assistant

Michael A. Coluzza  
First Assistant

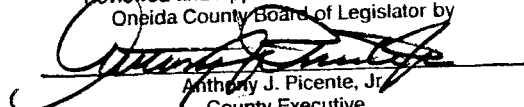
Laurie Lisi  
Matthew P. Worth  
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Travis J. Yoxall  
Maria Murad Blais  
Rebecca G. Kelleher  
Kimberly R. Sudakow

**PUBLIC SAFETY**

July 26, 2019 **WAYS & MEANS**

The Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente, Jr.  
County Executive  
Date 7-30-19

Dear Mr. Picente:

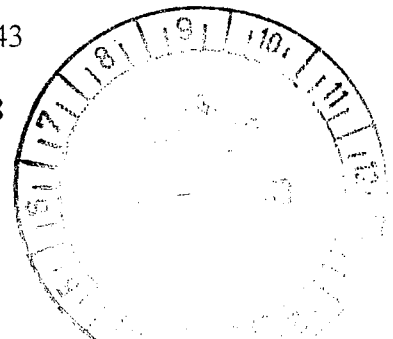
Enclosed is the proposed Victim and Witness Assistance Program grant award which the New York State Office of Victim Services has awarded our office in the amount of \$688,567.84 over the course of three years. \$261,914.06 has been awarded in year one, \$211,368.23 has been awarded for year two, and \$215,285.55 has been awarded for year three. Grant funds will be used to create three new Victim/Witness Coordinator positions, as well as fund travel and training expenses, emergency relocation costs, and the cost of computers and cellphones for victim/witness staff members.

The initial grant period is from October 1, 2019 through September 30, 2022, with a potential two year extension at the end of the grant. A 25% match is required, with existing/routine county expenditures being used to fulfill this requirement.

I am hereby requesting your review and approval, as well as that of the Board of Legislators, for the following 2019 supplemental appropriation:

To:

A1165.101	
Salaries.....	\$26,698.50
A1165.810	
Retirement.....	\$4,563
A1165.830	
Social Security.....	\$2,043
A1165.840	
Workers Compensation.....	\$748
A1165.850	
Unemployment Insurance.....	\$67



The Honorable Anthony J. Picente  
July 12, 2019  
Page Two

A1165.860  
Health Insurance.....\$10,500  
A1165.495131  
Victim/Witness Coordination Grant Expenditures.....\$6,369  
  
Total: \$50,988.50

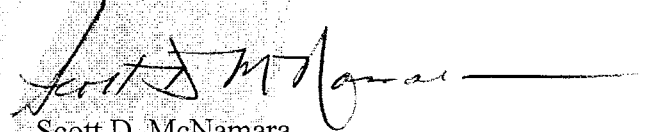
This appropriation will be supported by revenue in:

A4321.3 Federal Aid - Victim/Witness Coordination Grant..... \$50,988.50

At your earliest convenience, please forward this information to the Oneida County Board of Legislators for their review and approval. Should you have any questions or concerns, please notify me.

Thank you for your time and assistance in this matter.

Sincerely,



Scott D. McNamara  
Oneida County District Attorney

SDM/kn  
Enc.

- cc: Hon. Gerald J. Fiorini, Chairman of the Board of Legislators  
Hon. George E. Joseph, Majority Leader  
Hon. Philip M. Sacco, Minority Leader  
Hon. James D'Onofrio, Chairman, Ways and Means Committee  
Hon. Richard A. Flisnik, Chairman, Public Safety  
Thomas Keeler, Budget Director

Anthony J. Picente, Jr  
Oneida County Executive



John P. Talerico  
Commissioner of Personnel

**ONEIDA COUNTY DEPARTMENT OF PERSONNEL**

County Office Building 800 Park Avenue Utica, New York 13501-2986  
Phone: (315) 798-5725 Fax: (315) 798-6490 Email: personnel@ocgov.net  
Web site: www.ocgov.net

August 5, 2019

FN 20 19-260

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

**PUBLIC SAFETY**

**WAYS & MEANS**

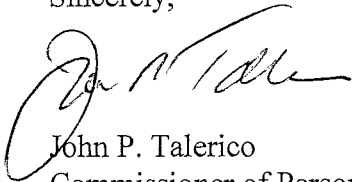
Dear County Executive Picente:

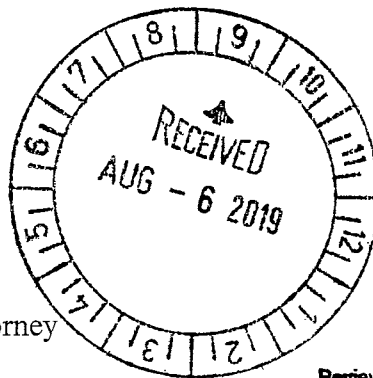
Attached for you review and approval is correspondence from Oneida County District Attorney, Scott D. McNamara, requesting the creation of three (3) new full-time grant-funded Victim/Witness Coordinator positions (grade 24W, step 2 at \$35,598).

As stated in Mr. McNamara's letter, the salaries for these positions would be covered in full for a period of three (3) years by a grant awarded to the District Attorney's Office from the New York State Office of Victim Services. The grant would begin October 1, 2019 and end September 30, 2022 with the potential for a two (2) year extension. No new/additional county funds would be required during this period of time to fund these positions.

If you concur with his request, please forward this letter to the Board of Legislators and ask that they create three (3) full-time grant-funded Victim/Witness Coordinator positions (grade 24W, step 2 at \$35,598) effective October 1, 2019.

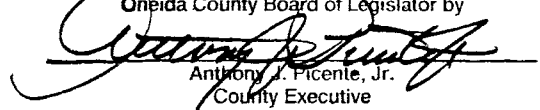
Sincerely,

  
John P. Talerico  
Commissioner of Personnel



Copy: Scott D. McNamara, District Attorney  
County Attorney  
Budget

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

  
Anthony J. Picente, Jr.  
County Executive

Date 8-6-19

ONEIDA COUNTY  
OFFICE OF THE DISTRICT ATTORNEY

Scott D. McNamara  
District Attorney

Michael A. Coluzza  
First Assistant

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Travis J. Yoxall  
Maria Murad Blais  
Rebecca G. Kelleher  
G. Lawrence Dillon

July 23, 2019 FN 20 19-260

**PUBLIC SAFETY**

John P. Talerico, Commissioner  
Oneida County Department of Personnel  
800 Park Avenue  
Utica, New York 13501

**WAYS & MEANS**

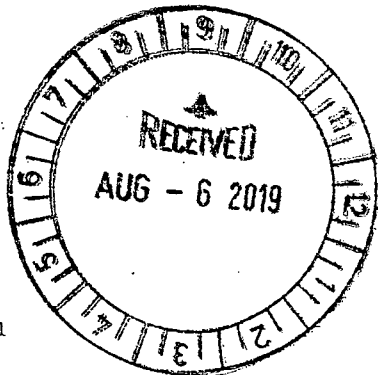
Dear Mr. Talerico:

The New York State Office of Victim Services has awarded a grant to our office in the amount of \$688,567.84 over the course of three years. \$261,914.06 has been awarded in year one, \$211,368.23 has been awarded for year two, and \$215,285.55 has been awarded for year three. The grant period is to begin on October 1, 2019 and end on September 30, 2022. There will be a potential two year extension after the end of the three-year grant period.

By this letter, I am hereby requesting the creation of three additional Victim/Witness Coordinator positions. The three new salaries will be covered in full by the victim/witness grant, with a 25% match required by the county. The match will take the form of Kathryn Buckley's salary, who is already employed at the Oneida County District Attorney's Office. No new/additional county funds are required.

Should you have any questions or concerns, do not hesitate to contact me.

Thank you for your time and assistance in this matter.



SDM/kn  
Enc.

Sincerely,

A handwritten signature in black ink that reads "Scott D. McNamara".

Scott D. McNamara  
Oneida County District Attorney

Received  
ONEIDA  
COUNTY  
JUL 25 2019  
PERSONNEL  
DEPARTMENT  
Received

ONEIDA COUNTY  
OFFICE OF THE DISTRICT ATTORNEY

Scott D. McNamara  
District Attorney

Michael A. Coluzza  
First Assistant

Dawn Catera Lupi  
First Assistant

Laurie Lisi  
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Stephanie N. Singe  
Paul S. Kelly  
Travis J. Voxall  
Maria Murad Blais  
Rebecca G. Kelleher  
Kimberly R. Sudakow

July 26, 2019

FN 20 19-261

The Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

**PUBLIC SAFETY**

**WAYS & MEANS**

Dear Mr. Picente:

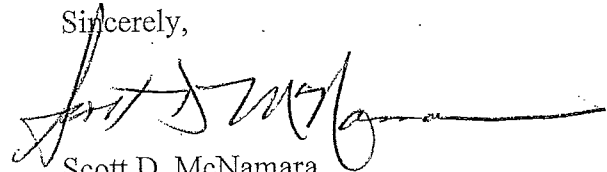
Enclosed is the proposed Victim and Witness Assistance Program grant award, which the New York State Office of Victim Services has awarded our office in the amount of \$688,567.84 over the course of three years. Grant funds will be used to create three new Victim/Witness Coordinator positions, as well as fund travel and training expenses, emergency relocation costs, and the cost of computers and cellphones for victim program staff members.

The grant period is from October 1, 2019 through September 30, 2022, with a potential two year extension at the end of the grant. A 25% match is required, and the District Attorney's Office plans to show that existing/routine county expenditures are being used to fulfill this requirement.

I am hereby requesting your review and approval of this grant. After doing so, please forward this information to the Oneida County Board of Legislators for their review and approval. Should you have any questions or concerns, please do not hesitate to contact me.

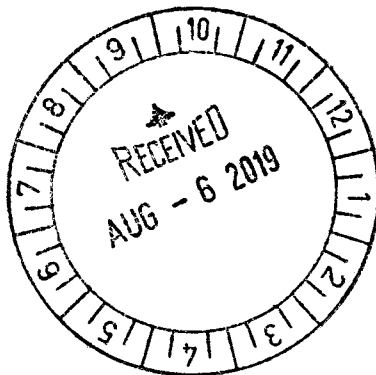
Thank you for your time and assistance in this matter.

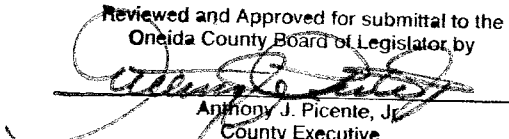
Sincerely,



Scott D. McNamara  
Oneida County District Attorney

SDM/kn  
Enc.



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente, Jr.  
County Executive

Date 8-6-19

Oneida Co. Department: District Attorney

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

Name & Address of Vendor: New York State Office of Victim Services  
80 South Swan Street, 2<sup>nd</sup> Fl.  
Albany, NY 12210-8002

Title of Activity or Service: Victim and Witness Assistance Grant Program

Proposed Dates of Operation: 10/01/2019 – 09/30/2022

Client Population/Number to be Served: Oneida County

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Grant funds will be used to create three new Victim/Witness Coordinator positions, as well as fund travel and training expenses, emergency relocation costs, and the cost of computers and cellphones for victim/witness staff members.
- 2) **Program/Service Objectives and Outcomes:** To increase the number of dedicated victim/witness staff members that can guide victims and witnesses through the legal process, as well as coordinate victim services and ensure victim/witness safety.
- 3) **Program Design and Staffing:** The grant will provide funds for three (3) new Victim/Witness Coordinator positions, for a total of four (4) Coordinators at the District Attorney's Office.

**Total Funding Requested:** \$688,567.84

**Account:** A1165.495131  
A4321.3

**Oneida County Dept. Funding Recommendation:** \$688,567.84

**Proposed Funding Sources (Federal \$/ State \$/County \$):** Federal \$/State \$, County \$

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** This grant requires a 25% County match, and the District Attorney's Office plans to show that existing/routine county expenditures are being used to fulfill this requirement.



**STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE**

<p>STATE AGENCY (Name &amp; Address): Office of Victim Services  80 S Swan Street, 2nd Floor Albany, NY 12210</p>	<p>BUSINESS UNIT/DEPT. ID: OVS01 CONTRACT NUMBER: OVS01-C11027GG-1080200 CONTRACT TYPE: <input checked="" type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME: ONEIDA COUNTY OF</p>	<p>TRANSACTION TYPE: <input checked="" type="checkbox"/> New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME: ONEIDA COUNTY DISTRICT ATTORNEY'S OFFICE</p>	<p>PROJECT NAME: Victim/Witness Coordinator Program</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:  NYS Vendor ID Number: 1000002595 Federal Tax ID Number: 156000460 DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER:  CFDA NUMBER (Federally Funded Grants Only): 16.575</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS: 800 PARK AVE UTICA, NY 13501  CONTRACTOR PAYMENT ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address  CONTRACT MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS: <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit  Charities Registration Number:  Exemption State/Code:  <input type="checkbox"/> Sectarian Entity</p>

Contract Number: # OVS01-C11027GG-1080200

**STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE**

<p><b>CURRENT CONTRACT TERM:</b></p> <p>From: 10/01/2019                      To: 09/30/2022</p> <p><b>CURRENT CONTRACT PERIOD:</b></p> <p>From: 10/01/2019                      To: 09/30/2022</p> <p><b>AMENDED TERM:</b></p> <p>From:    To:</p> <p><b>AMENDED PERIOD:</b></p> <p>From:    To:</p>	<p><b>CONTRACT FUNDING AMOUNT</b></p> <p>(Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):</p> <p><b>CURRENT:</b>            \$688,567.84</p> <p><b>AMENDED:</b></p> <p><b>FUNDING SOURCE(S)</b></p> <p align="center"> <input type="checkbox"/> State  <input checked="" type="checkbox"/> Federal  <input type="checkbox"/> Other         </p>
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*FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:*

(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1	10/01/2019-09/30/2020	\$199,494.30		
2	10/01/2020-09/30/2021	\$242,578.11		
3	10/01/2021-09/30/2022	\$246,495.43		
4				
5				

Contract Number: # OVS01-C11027GG-1080200

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A:  A-1 Program Specific Terms and Conditions  
 A-2 Federally Funded Grants

Attachment B:  B-1 Expenditure Based Budget  
 B-2 Performance Based Budget  
 B-3 Capital Budget  
 B-4 Net Deficit Budget  
 B-1 (A) Expenditure Based Budget (Amendment)  
 B-2 (A) Performance Based Budget (Amendment)  
 B-3 (A) Capital Budget (Amendment)  
 B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other: Project Summary

Contract Number: # OVS01-C11027GG-1080200

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and ( if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:  
ONEIDA COUNTY OF

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

Printed Name

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

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

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:

Office of Victim Services

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

Printed Name

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

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

ATTORNEY GENERAL'S SIGNATURE  
APPROVED AS TO FORM

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

Printed Name

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

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

STATE COMPTROLLER'S SIGNATURE

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

Printed Name

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

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

**STATE OF NEW YORK  
MASTER CONTRACT FOR GRANTS**

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

**WITNESSETH:**

**WHEREAS**, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

**WHEREAS**, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

**NOW THEREFORE**, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

**STANDARD TERMS AND CONDITIONS**

**I. GENERAL PROVISIONS**

**A. Executory Clause:** In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

**B. Required Approvals:** In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

**Budget Changes:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

**C. Order of Precedence:**

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2<sup>1</sup>, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2<sup>2</sup>, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

**D. Funding:** Funding for the term of the Master Contract shall not exceed the amount specified as “Contract Funding Amount” on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

**E. Contract Performance:** The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

**F. Modifications:** To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

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<sup>1</sup> To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

<sup>2</sup> To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).  
Contract Number: # OVS01-C11027GG-1080200  
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OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

**G. Governing Law:** The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

**H. Severability:** Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

**I. Interpretation:** The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

**J. Notice:**

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
  - a) by certified or registered United States mail, return receipt requested;
  - b) by facsimile transmission;
  - c) by personal delivery;
  - d) by expedited delivery service; or
  - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

**K. Service of Process:** In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

**L. Set-Off Rights:** The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

**M. Indemnification:** The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

**N. Non-Assignment Clause:** In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**O. Legal Action:** No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from



any of the State of New York, the State Agency, or any county, or other local government entity. The term “regulatory action” shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

**P. No Arbitration:** Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**Q. Secular Purpose:** Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

**R. Partisan Political Activity and Lobbying:** Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

**S. Reciprocity and Sanctions Provisions:** The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.<sup>3</sup>

**T. Reporting Fraud and Abuse:** Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

**U. Non-Collusive Bidding:** By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor’s behalf.

**V. Federally Funded Grants and Requirements Mandated by Federal Laws:** All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

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<sup>3</sup>As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

## II. TERM, TERMINATION AND SUSPENSION

**A. Term:** The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

**B. Renewal:**

**1. General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

**2. Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

## C. Termination:

### 1. Grounds:

- a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.
- b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.
- c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.
- d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.
- e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.
- f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

### 2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
  - (i) personal messenger service; or
  - (ii) certified mail, return receipt requested and first class mail.

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

**3. *Effect of Notice and Termination on State's Payment Obligations:***

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

**4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property:***

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

**D. Suspension:** The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

### III. PAYMENT AND REPORTING

#### A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.
6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.
7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

## **B. Advance Payment and Recoupment:**

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).
2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).
3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.
4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.
5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

## **C. Claims for Reimbursement:**

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:
  - a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:<sup>4</sup> Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:<sup>5</sup> Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:<sup>6</sup> Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:<sup>7</sup> The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

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<sup>4</sup> A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

<sup>5</sup> Fee for Service is a rate established by the Contractor for a service or services rendered.

<sup>6</sup> Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

<sup>7</sup> Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:<sup>8</sup> Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.
4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.
5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.
6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.
7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

#### **D. Identifying Information and Privacy Notification:**

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

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<sup>8</sup> Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.



(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

#### **E. Refunds:**

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

**F. Outstanding Amounts Owed to the State:** Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

#### **G. Program and Fiscal Reporting Requirements:**

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
- (ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
- (iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
- (iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
- (v) *Consolidated Fiscal Report (CFR)*: The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

- (i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

#### **H. Notification of Significant Occurrences:**

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

### **IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

#### **A. Contractor as an Independent Contractor/Employees:**

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

**B. Subcontractors:**

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds \$100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

**C. Use Of Material, Equipment, Or Personnel:**

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

**D. Property:**

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
  - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
  - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
  - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
  - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
  - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
  - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

#### **E. Records and Audits:**

##### **1. General:**

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,

detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

## **2. Cost Allocation:**

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

## **3. Federal Funds:** For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

**F. Confidentiality:** The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**G. Publicity:**

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

**H. Web-Based Applications-Accessibility:** Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility



Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

**I. Non-Discrimination Requirements:** Pursuant to 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 and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

**J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises:** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;
3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**K. Omnibus Procurement Act of 1992:** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
  - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

**L. Workers' Compensation Benefits:**

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

**M. Unemployment Insurance Compliance:** The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

**N. Vendor Responsibility:**

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

- a) to require updates or clarifications to the Questionnaire upon written request;
- b) to inquire about information included in or required information omitted from the Questionnaire;
- c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
- d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
- e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

**O. Charities Registration:** If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

**P. Consultant Disclosure Law:**<sup>9</sup> If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**Q. Wage and Hours Provisions:** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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<sup>9</sup> Not applicable to not-for-profit entities.

## ATTACHMENT A-1 (AGENCY-SPECIFIC CLAUSES)

### A. MODIFICATIONS TO BUDGET AND PROGRAM GOALS AND OBJECTIVES

The parties agree that the STATE may modify the program budget set forth at ATTACHMENT B-1 (BUDGET) or the Program Goals and Objectives set forth at ATTACHMENT C (PROGRAM GOALS AND OBJECTIVES) for good cause as determined by the STATE or otherwise as required by the State Comptroller. The STATE shall provide to the CONTRACTOR written notice of any such modification(s) at least twenty calendar days prior to the effective date of the modification(s).

The parties agree that the CONTRACTOR shall not revise the program budget in ATTACHMENT B-1 (BUDGET) without prior approval of the STATE for any cost category during the period of the AGREEMENT. All revisions, including those under \$1,000, are subject to audit by the STATE.

### B. LAST DOLLAR FUNDING

The parties agree that the funding provided under this AGREEMENT shall be considered to be last dollar funding. All other sources of funding for the expenses of the CONTRACTOR in providing the services contemplated by this AGREEMENT, including but not limited to fees, insurance, and donations, shall first be applied to such expenses.

### C. SITE ACCESS

The CONTRACTOR shall permit the STATE's representatives to visit, with or without notice, all facilities or sites where services covered under this AGREEMENT may be provided. Upon request of the STATE, the CONTRACTOR shall make appropriate arrangements for the STATE's representatives to attend meetings of the CONTRACTOR's Board of Directors.

### D. CONTRACTOR STAFFING

The parties agree the CONTRACTOR shall provide all insurance and fringe benefits, and make all employer's payments, required by federal, state or local law, rule, regulation, or policy. At least one full-time employee of the CONTRACTOR shall be a duly qualified Notary Public or Commissioner of Deeds.

The parties agree that the CONTRACTOR shall not select, reject, promote, fail to promote, or otherwise impermissibly discriminate against any officer, employee, staff member, volunteer or other individual associated with or representing the CONTRACTOR on the basis of the individual's political belief(s) or affiliation(s).

The parties agree that if the CONTRACTOR is a not-for-profit corporation, the CONTRACTOR shall not employ, except as an unpaid volunteer, a current officer, director or incorporator of the corporation, or the parent, spouse, spousal equivalent, sibling or child of a current officer, director or incorporator of the corporation.

The parties agree that the CONTRACTOR shall not employ, except as an unpaid volunteer, a New York State legislator or legislative staffperson. The CONTRACTOR will immediately advise the Office in writing upon the employment, except as an unpaid volunteer, the parent, spouse, spousal equivalent, sibling or child of a New York State legislator or legislative staffperson. The written notice will provide the name of the individual, the position of employment, the legislator or legislative staffperson the employee is related to, and the nature of the relation. If the employee is already employed at the time that this contract becomes effective and no previous notice has been given by the CONTRACTOR, said written notice will be provided immediately upon the contract becoming effective.

The parties agree that the CONTRACTOR shall not employ, except as an unpaid volunteer, the parent, spouse, spousal equivalent, sibling or child of any employee of the CONTRACTOR who is a program administrator or who otherwise has influence or control over the administration of the program.

**E. UTILIZATION OF VOLUNTEERS**

The parties agree that the CONTRACTOR will utilize the services of unpaid volunteers. The STATE may, upon the written request of the CONTRACTOR, waive this requirement if the STATE finds that the utilization by the CONTRACTOR of unpaid volunteers is hindered or prohibited by statute, regulation or contract, or if the CONTRACTOR has otherwise been unable to procure volunteers after aggressive and sustained recruitment.

**F. CONFLICT OF INTEREST - CLIENT REFERRALS**

The parties agree that the CONTRACTOR shall not refer any program participant or any other person seeking or inquiring about crime victim services to any current officer, director or incorporator of the corporation, if the CONTRACTOR is a not-for-profit corporation. The parties agree that the CONTRACTOR shall not refer any program participant or any other person seeking or inquiring about crime victim services to any employee of the CONTRACTOR, or to any volunteer providing services to the CONTRACTOR, or to any New York State legislator or legislative staffperson, or to the parent, spouse, spousal equivalent, sibling or child of any aforementioned person, if any of the persons specified in this paragraph to whom such referral would be made would receive any financial benefit from such referral, except insofar as the persons specified in this paragraph provide services as part of the same agency to which the CONTRACTOR'S program belongs.

**G. CONFLICT OF INTEREST - PURCHASE OF SUPPLIES AND SERVICES**

The parties agree that no officer, director or employee of the CONTRACTOR shall solicit or accept gratuities, favors, or any thing or service having monetary value, from persons or entities furnishing supplies or services purchased with funds provided pursuant to this AGREEMENT.

The parties agree that no officer, director or employee of the CONTRACTOR shall participate in the selection, procurement or administration of supplies or services when any of the following persons has a financial or other substantive interest in the supplier, or when any of the following persons is employed by or has an arrangement concerning prospective employment with the supplier: a current officer, director, incorporator or employee of the CONTRACTOR; a parent, spouse, spousal equivalent, sibling or child of a current officer, director, incorporator or employee of the CONTRACTOR; or a business partner of a current officer, director, incorporator or employee of the CONTRACTOR.

**H. EQUAL ACCESS TO SERVICES**

The parties agree that the CONTRACTOR shall not hinder access to services contemplated by this AGREEMENT on the basis of race, color, national origin, sex, sexual orientation, religion, age, disability or marital status.

**I. CLAIMS AND LITIGATION**

The parties agree that the CONTRACTOR shall give prompt written notice to the STATE of any potential or actual claims, civil actions, judgments or liens against the CONTRACTOR arising from or pertaining to any service provided by the CONTRACTOR.

**J. BANK ACCOUNTS**

The parties agree that the CONTRACTOR shall deposit all funds received by the CONTRACTOR from the STATE pursuant to the terms of this AGREEMENT in a bank account within the State of New York. The CONTRACTOR shall direct and authorize any such bank to furnish to the STATE upon its request information or records pertaining to the account, and to transfer the balance of the funds received by the CONTRACTOR from the STATE pursuant to the terms of this AGREEMENT to the STATE upon its request. Any interest credited to the CONTRACTOR shall be reported by the CONTRACTOR to the STATE.

**K. LIMITATION ON USE OF FUNDS**

The parties agree that funds received by the CONTRACTOR from the STATE pursuant to the terms of this AGREEMENT shall not be used for the purchase of real property.

**L. COPYRIGHT**

The parties agree that the CONTRACTOR shall not copyright or attempt to copyright any written or other material produced by the CONTRACTOR wholly or partially with the funding contemplated by this AGREEMENT.

**M. REFUND REPAYMENT**

For refunds, a certified or bank check should be made out to: New York State Office of Victim Services.

**N. DESIGNATE REFUND ADDRESS**

Refunds checks should be addressed to:

Administrative Services Unit  
NYS Office of Victim Services  
AE Smith State Office Building  
80 S. Swan Street, 2<sup>nd</sup> Floor  
Albany, New York 12210

**O. PROGRAM OFFICE ADDRESS**

Notices to the State, as identified in Section I J of this Agreement, shall be addressed to:

Supervisor of Contracts  
NYS Office of Victim Services  
AE Smith State Office Building  
80 S. Swan Street, 2<sup>nd</sup> Floor  
Albany, New York 12210

Notices to the Contractor, as identified in Section I J of this Agreement, shall be addressed to the administrator identified by the Contractor and sent to the Contractor Primary Mailing Address listed on the face page of this Agreement

**P. PAYMENT AND REPORTING**

The amount of Scheduled Reimbursement described in Attachment D of this Agreement shall not exceed one-fourth (1/4) of the total contract amount designated in ATTACHMENT B-1 (BUDGET).

**Q. MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE DIRECTORY**

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

**R. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>



Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## ATTACHMENT A-2 FEDERALLY FUNDED GRANTS

### 1. Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by the Department of Justice (DOJ) in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this 2016 award from the Office of Justice Programs (OJP).

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this 2016 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded in 2014 or earlier years), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this 2016 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the Office of Justice Programs (OJP) website at <http://ojp.gov/funding/Part200UniformRequirements.htm>

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

### 2. Compliance with DOJ Grants Financial Guide

The recipient agrees to comply with the Department of Justice Grants Financial Guide as posted on the OJP website (currently, the "2015 DOJ Grants Financial Guide"), including any updated version that may be posted during the period of performance.

### 3. Required training for Point of Contact and all Financial Points of Contact

Both the Point of Contact (POC) and all Financial Points of Contact (FPOCs) for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

In the event that either the POC or an FPOC for this award changes during the period of performance, the new POC or FPOC must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after -- (1) the date of OJP's approval of the "Change Grantee Contact" GAN (in the case of a new POC), or (2) the date the POC enters information on the new FPOC in GMS (in the case of a new FPOC). Successful completion of such a training on or after January 1, 2015, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at <http://www.ojp.gov/training/fmts.htm>. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

#### 4. Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

#### 5. Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by DOJ awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.

6. Requirements related to System for Award Management and Unique Entity Identifiers

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <http://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <http://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

7. All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <http://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award Condition: Award Condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

8. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed

the Simplified Acquisition Threshold (currently, \$150,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000)), and are incorporated by reference here.

9. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

10. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "2015 DOJ

Grants Financial Guide").

11. Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

12. OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://ojp.gov/funding/ojptrainingguidingprinciples.htm>

13. Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

14. The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high risk" for purposes of the DOJ high-risk grantee list

15. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

16. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination

– 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38, specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries. Part 38 of 28 C.F.R., a DOJ regulation, was amended effective May 4, 2016.

Among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38 also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of the regulation, now entitled "Partnerships with Faith-Based and Other Neighborhood Organizations," is available via the Electronic Code of Federal Regulations (currently accessible at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

17. Restrictions on "lobbying"

Federal funds may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government

Should any question arise as to whether a particular use of Federal funds by a recipient (or subrecipient) would or might fall within the scope of this prohibition, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

18. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2016)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2016, are set out at <http://ojp.gov/funding/Explore/FY2016-AppropriationsLawRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

#### 19. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The recipient and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) e-mail to: [oig.hotline@usdoj.gov](mailto:oig.hotline@usdoj.gov); and/or (3) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.

#### 20. Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of



classified information.

1. In accepting this award, the recipient --

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both --

a. it represents that--

1. it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

2. it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation ; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

21. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the work force), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

22. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

23. The Grantee authorizes Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper or documents related to the VOCA grant. The State will further ensure that all VOCA subgrantees will authorize representatives of OVC and OCFO access to and the right to examine all records, books, paper or documents related to the VOCA grant.

24. The Grantee agrees to submit a Subgrant Award Report (SAR) to OVC for each subgrantee of the VOCA victim assistance funds, within ninety (90) days of awarding funds to subgrantees. States and territories are required to submit this information through the automated system.

25. VOCA Requirements

The recipient assures that the State and its subrecipients will comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections

1404(a)(2), and 1404(b)(1) and (2), 42 U.S.C. 10603(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the State certifies that funds under this award will:

- a. be awarded only to eligible victim assistance organizations, 42 U.S.C. 10603(a)(2);
- b. not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 42 U.S.C. 10603(a)(2); and
- c. be allocated in accordance with program guidelines or regulations implementing 42 U.S.C. 10603(a)(2)(A) and 42 U.S.C. 10603(a)(2)(B) to, at a minimum, assist victims in the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by the State.

26. Demographic Data

The recipient assures that its subrecipients will collect and maintain information on race, sex, national origin, age, and disability of victims receiving assistance, where such information is voluntarily furnished by the victim.

27. Discrimination Findings

The recipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the recipient will forward a copy of the findings to the Office for Civil Rights of OJP.

28. The recipient understands that all OJP awards are subject to the National Environmental Policy Act (NEPA, 42 U.S.C. section 4321 et seq.) and other related Federal laws (including the National Historic Preservation Act), if applicable. The recipient agrees to assist OJP in carrying out its responsibilities under NEPA and related laws, if the recipient plans to use VOCA funds (directly or through subaward or contract) to undertake any activity that triggers these requirements, such as renovation or construction. (See 28 C.F.R. Part 61, App. D.) The recipient also agrees to comply with all Federal, State, and local environmental laws and regulations applicable to the development and implementation of the activities to be funded under this award.

29. The recipient agrees to ensure that at least one key grantee official

attends the annual VOCA National Training Conference. Any recipient unable to attend must get prior approval by OVC in writing.

30. The recipient agrees to comply with applicable requirements to report first-tier subawards of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS). The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the Office of Justice Programs web site at <http://ojp.gov/funding/Explore/FFATA.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here. This condition, and its reporting requirement, does not apply to grant awards made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).
31. The recipient understands and agrees that it has a responsibility to monitor its subrecipients' compliance with applicable federal civil rights laws. The recipient agrees to submit written Methods of Administration (MOA) for ensuring subrecipients' compliance to the OJP's Office for Civil Rights at [CivilRightsMOA@usdoj.gov](mailto:CivilRightsMOA@usdoj.gov) within 90 days of receiving the grant award, and to make supporting documentation available for review upon request by OJP or any other authorized persons. The required elements of the MOA are set forth at [http://www.ojp.usdoj.gov/funding/other\\_requirements.htm](http://www.ojp.usdoj.gov/funding/other_requirements.htm), under the heading, "Civil Rights Compliance Specific to State Administering Agencies."
32. The recipient agrees to submit (and, as necessary, require sub-recipients to submit) quarterly performance reports on the performance metrics identified by OVC, and in the manner required by OVC. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.
33. Recipient integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this

OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIS").

The details of recipient obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIS") within SAM are posted on the OJP web site at <http://ojp.gov/funding/FAPIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIS), and are incorporated by reference here.

**ATTACHMENT B-1 EXPENDITURE BASED BUDGET**

*SUMMARY*

PROJECT NAME: Victim/Witness Coordinator Program

CONTRACTOR SFS PAYEE NAME: ONEIDA COUNTY OF

CONTRACT PERIOD: From: 10/01/2019  
To: 09/30/2020

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
<b>1. Personal Services</b>					
a) Salary	\$110,830.50	\$38,731.50	34 %	\$0.00	\$149,562.00
b) Fringe	\$72,799.80	\$23,125.00	31 %	\$0.00	\$95,924.80
Subtotal	\$183,630.30	\$61,856.50	33 %	\$0.00	\$245,486.80
<b>2. Non Personal Services</b>					
a) Contractual Services	\$0.00	\$0.00	0 %	\$0.00	\$0.00
b) Travel	\$10,500.00	\$3,500.00	33 %	\$0.00	\$14,000.00
c) Equipment	\$5,364.00	\$0.00	0 %	\$0.00	\$5,364.00
d) Space/Property & Utilities	\$0.00	\$0.00	0 %	\$0.00	\$0.00
e) Operating Expenses	\$0.00	\$0.00	0 %	\$0.00	\$0.00
f) Other	\$0.00	\$0.00	0 %	\$0.00	\$0.00
Subtotal	\$15,864.00	\$3,500.00	22 %	\$0.00	\$19,364.00
<b>TOTAL</b>	<b>\$199,494.30</b>	<b>\$65,356.50</b>	<b>32 %</b>	<b>\$0.00</b>	<b>\$264,850.80</b>

Contract Number: # OVS01-C11027GG-1080200

ATTACHMENT B-1 EXPENDITURE BASED BUDGET  
 PERSONAL SERVICES DETAIL

SALARY					
POSITION TITLE	ANNUALIZED SALARY PER POSITION	STANDARD WORK WEEK (HOURS)	PERCENT OF EFFORT FUNDED	NUMBER OF MONTHS FUNDED	TOTAL
Victim/Witness Coordinator 2	\$35,598.00	35	100	3	\$8,899.50
Victim/Witness Coordinator 3	\$35,598.00	35	100	3	\$8,899.50
Victim/Witness Coordinator 3	\$37,392.00	35	100	9	\$28,044.00
Victim/Witness Coordinator 4 (\$38,731.50)	\$43,346.50	35	0	12	\$38,731.50
Victim/Witness Coordinator 1	\$35,598.00	35	100	3	\$8,899.50
Victim/Witness Coordinator 1	\$37,392.00	35	100	9	\$28,044.00
Victim/Witness Coordinator 2	\$37,392.00	35	100	9	\$28,044.00
Subtotal					\$149,562.00
TOTAL FRINGE					
					\$95,924.80
PERSONAL SERVICES TOTAL					\$245,486.80

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET  
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
TOTAL	



ATTACHMENT B-1 - EXPENDITURE BASED BUDGET  
NON-PERSONAL SERVICES DETAIL

TRAVEL - TYPE/DESCRIPTION	TOTAL
Travel and training for Victim/Witness Coordinators (\$3,500)	\$14,000.00
TOTAL	\$14,000.00

EQUIPMENT - TYPE/DESCRIPTION	TOTAL
Computers, cellphones and cell service	\$5,364.00
TOTAL	\$5,364.00

SPACE/PROPERTY EXPENSES - RENT - TYPE/DESCRIPTION	TOTAL
TOTAL	

SPACE/PROPERTY EXPENSES: OWN - TYPE/DESCRIPTION	TOTAL
TOTAL	

TYPE/DESCRIPTION OF UTILITY EXPENSES	TOTAL
TOTAL	

OPERATING EXPENSES - TYPE/DESCRIPTION	TOTAL
TOTAL	

**ATTACHMENT C - WORK PLAN**  
**SUMMARY**

PROJECT NAME: Victim/Witness Coordinator Program

CONTRACTOR SFS PAYEE NAME: ONEIDA COUNTY OF

CONTRACT PERIOD: From: 10/01/2019  
To: 09/30/2020

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

**Project Summary:**

The Oneida County District Attorney's office currently serves a population of approximately 231,332 New Yorkers. In 2017, Oneida County experienced a rate of violent crime of approximately 300 incidents per 100,000 people, which is higher than many similarly sized counties. Oneida County saw a higher violent crime rate than Dutchess, Orange, Oswego, Rensselaer, Rockland, Saratoga and Ulster Counties in 2017, which all have similar populations and needs relative to Oneida County. Saratoga County, which has a population that is virtually identical to that of Oneida County, had a firearm crime rate nearly four times lower than that of Oneida County in 2017. Oneida County has an index crime rate at about 2,065 crimes per 100,000 people, ranking it 13th out of 62 total counties. Unfortunately, the vast majority of these crimes involve a victim or a witness, and the statistics noted above demonstrate a serious need for victim and witness assistance services in the County of Oneida.

Domestic violence and victims of domestic abuse were of particular concern in Oneida County in 2017. In 2017, Oneida County recorded 1,782 total victims of domestic violence for the year. This figure is higher than virtually all similarly sized counties in New York, including Saratoga County (759 domestic violence victims in 2017), Dutchess County (679 victims in 2017), Rockland County (743 victims in 2017), Niagara County (1,449 victims in 2017), Broome County (923 victims in 2017), Ulster County (758 victims in 2017), and Rensselaer County (1,089 domestic violence victims in 2017). The only similarly sized county that reported a higher number of domestic violence victims in 2017 was Albany County with 1,841 victims of domestic violence. These statistics underscore a desperate need for victim services in Oneida County.

Utica, New York is one of the nation's largest immigrant and refugee hubs. According to the Mohawk Valley Resource Center for Refugees, Utica has a foreign-born population of approximately 17.6%, which is the highest of any major city in the state outside of New York City. This means that victims and witnesses of crimes in Oneida County are frequently immigrants, refugees, or the children or families of those who arrived in the area as immigrants. Utica's foreign-born population is comprised primarily of people who arrived from Bosnia, Burma, Russian and the former Soviet Union, and Vietnam. Immigrants and refugees frequently have very distinct needs pertaining to language services and interpretation, transportation, and services coordination. The foreign-born population is sometimes uniquely vulnerable to certain crimes due to language barriers and their unfamiliarity with the United States' legal system, and unfortunately, they can also be the target of hate crimes due their perceived "other-ness" by their native-born neighbors. With assistance from the Victim and Witness Assistance Grant

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Program, the District Attorney's office seeks to ensure that it has the tools necessary to serve and protect vulnerable immigrant and refugee populations in Oneida County.

Due to the limited labor pool at the District Attorney's office, which includes only one Victim/Witness Coordinator, victims of crime in Oneida County are currently not being served as best as they could be over the course of the prosecutorial process. According to the Oneida County District Attorney's current staff model, the Victim/Witness Coordinator assists victims on an "as needed," or "as requested," basis, meaning that not every victim gets to meet with our Victim/Witness Coordinator. This typically results in a very limited amount of "face-time" between victims and the Victim/Witness Coordinator. This approach is, at its core, a "passive" form of assisting victims and witnesses. With the assistance of the Office of Victim Assistance and the VOCA Victim and Witness Assistance Grant Program, the Oneida County District Attorney's office would like to institute a more proactive approach to building relationships with victims and witnesses and ensuring that they have the information and resources that they need.

Currently, our sole Victim/Witness Coordinator joins victims while they meet with prosecuting attorneys and/or while appearing in court and assists them in arranging emergency housing when requested. This represents the bare minimum of services that a Victim/Witness Coordinator could potentially provide to victims and witnesses during the lifetime of a case. The Oneida County District Attorney's office is seeking to hire more Victim/Witness Coordinators so that the office can be more present in the lives of victims and witnesses, which will inevitably result in more effective prosecution of crime and the building of a more positive relationship between law enforcement and the community at large. It is not unusual for victim and witness to experience direct or indirect threats and intimidation in the form of phone call hang-ups, jail calls, house drive-bys, bribing, and threats on social media. In some instances, victims and witnesses will even perjure themselves in court in order to achieve a feeling of safety and to make it "all go away."

In many cases, victims and witnesses are reluctant or apprehensive about speaking with law enforcement, and any delay in making contact with those victims and witnesses can turn that reluctance into hostility. In cases such as these, time is of the essence. The Oneida County District Attorney's office hopes to reduce or eliminate the psychological toll these threats have on victims by attaining the staffing required to reach out to victims early and often. Establishing a positive relationship with victims and witnesses is a crucial component of prosecuting crime and benefits both the victims and witnesses themselves, as well as law enforcement. Unfortunately, the Oneida County District Attorney's office is falling behind the industry average pertaining to victim/witness services, and Victim and Witness Assistance Grant Program funds can go a long way in helping the office meet or exceed industry standards for victim services.

Having more dedicated victim/witness advocates will allow the Oneida County District Attorney's office to completely overhaul its case assignment process and enable immediate contact with victims and witnesses. During the few days that it takes a case to be transferred from lower court to county court, victims and witnesses may be subjected to the threats and intimidation outlined previously. Because of the significant responsibilities already placed on the Assistant District Attorneys, they are not able to adequately provide the services that are so desperately needed by victims and witnesses, resulting in those outside pressures being even more effective or persuasive. In order to build a productive relationship with victims and witnesses, a strong team of Victim/Witness Coordinators is a necessity.

The Oneida County District Attorney's office is respectfully asking for assistance in hiring three additional Victim/Witness Coordinators, which will allow the office to overhaul the way in which it assigns cases and assists victims. Under the D.A.'s current system, a prosecuting attorney is assigned to each new case as it is opened. If awarded funding, the office would also assign a Victim/Witness Coordinator to each case that has a victim or witness at the time the case is opened. Once the case has been opened and a Victim/Witness Coordinator has been assigned to it, the Victim/Witness Coordinator would then immediately get to work reaching out to, and building a relationship with, those individuals related to the case and describing the prosecutorial process in detail. This relationship is designed to be a mutually beneficial one, as it would ensure that victims and witnesses are properly supported throughout the legal process, as well as helping the Oneida



County District Attorney's office in its mission of bringing about justice.

An additional three Victim/Witness Coordinators are necessary for a number of reasons. Firstly, having a total of four Victim/Witness Coordinators would put us more in line with the industry average in New York State. Counties similar in size to Oneida County tend to have a team of three to five victim advocates. For example, Saratoga County has three victim advocates, Rensselaer County has five, and Schenectady County has a total of four. The Oneida County District Attorney's office also seeks to ensure that its Victim/Witness Coordinators are not spread too thin. Each Victim/Witness Coordinator should be available to essentially provide door-to-door service to victims if necessary, which can require a great deal of time and attention from a single Victim/Witness Coordinator. For example, Victim/Witness Coordinators should be available to arrange transportation, provide court preparation and moral support, and answer follow-up questions on days when a victim or witness is to appear in court. If our office only employs one or two Victim/Witness Coordinators, meeting that goal in every case becomes much more difficult.

In hiring three additional Victim/Witness Coordinators, the Oneida County District Attorney's office expects to incur a cost of \$35,598 per position. This results in an expected cost of approximately \$106,794 for the first year. Due to yearly step increases, the Victim/Witness Coordinators will each earn approximately \$36,840 during year two and \$38,274 during year three. This results in a total cost of \$332,136 over three years for all three positions. The Victim and Witness Assistance Grant Program would cover 100% of the cost of hiring the three new employees, and the Oneida County District Attorney's office will match by covering the cost of employing one Victim/Witness Coordinator. The Victim/Witness Coordinator currently employed by the Oneida County District Attorney's office will earn approximately \$43,041 in year one, \$44,434 in year two, and \$46,059 in year three, meaning a total match of \$133,534 over the course of three years.

The Victim/Witness Coordinator has various duties related to assisting victims and witnesses. These duties include notifying victims and witnesses of court appearance times, responding to questions regarding the legal process and courtroom proceedings, arranging transportation and temporary housing when needed, preparing subpoenas, preparing pay vouchers for victims and witnesses, notifying victims and witnesses of case status updates, serving as a liaison between victims, witnesses, investigators and prosecutors, and assisting victims with the return of stolen property. Victim/Witness Coordinators also perform general office work as needed and assigned. Victim/Witness Coordinators are required to have a Bachelor's Degree in police justice, criminal justice, social services, human services, pre-law or a closely related field from a regionally accredited college or university, OR an Associate's Degree in one of the fields listed above and two years of experience in law enforcement, OR a high school diploma and four years of experience in law enforcement.

In addition to personnel expenditures, the fringe benefits of the three new Victim/Witness Coordinators will also be covered by the Victim and Witness Assistance Grant Program. The fringe benefits in Oneida County are calculated as follows: 17.09% for retirement, 7.65% for social security, 2.8% for workers' compensation, 0.25% for unemployment insurance, and \$14,000 per position per year for health insurance. This results in an expected cost of \$23,894 per position during year one, or a total of \$71,682 for all three positions during year one. Oneida County will use the current Victim/Witness Coordinator's fringe benefits to match the Victim and Witness Assistance Grant Program funds, resulting in a match of \$25,961 during year one.

Training expenditures will also be covered under the grant. The Oneida County District Attorney's office is requesting \$2,000 per year per new employee for training purposes. This results in a yearly cost of \$6,000, or \$18,000 over a three year period. Oneida County will match the training costs of the current Victim/Witness Coordinator already employed by the Oneida County District Attorney's office, resulting in a match of \$2,000 per year or \$6,000 over the course of three years. Training may include travel, sustenance, tolls and attendance fees for victim services and other victim-related trainings for the Victim/Witness Coordinators. The Oneida County District Attorney's office plans to give preference to trainings that include cultural competence and cultural sensitivity subject matter which will enable our office to better serve Utica's large immigrant and refugee population.

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In addition to training, the Victim/Witness Coordinators will need computers and cellphones to assist in the delivery of victim services. The Oneida County District Attorney's office plans to spend approximately \$3,000 on three computers and \$204 on four cellphones and four cellphone cases in the first year. Additionally, \$2,160 will be required each year for cellphone service (\$45 per phone per month). This results in a total equipment expense of \$9,684 over the life of the grant.

In totality, these expenses will assist the Oneida County District Attorney's office take a more direct and proactive approach to serving victims and witnesses. The limited number of employees currently working at the Oneida County District Attorney's office has been a major roadblock to prioritizing the needs of victims and witnesses.

#### Organizational Capacity:

The Oneida County District Attorney's office is located at 235 Elizabeth Street in downtown Utica. Utica is located on the southeast side of Oneida County, which itself is located in the heart of Central New York.

The Oneida County District Attorney's office currently employs the District Attorney, two First Assistant District Attorneys, nineteen Assistant District Attorneys, one law associate, eight investigators, six support staff members, a court reporter, a special program director and five special patrol officers. The legal staff of the District Attorney's office has a combined 315 years of experience at prosecuting crime and seeking justice in Oneida County. Over the last decade, the Oneida County District Attorney's office has handled on average 713 indictments and superior court informations (SCI's) per year.

The Oneida County District Attorney's office is segmented into nine different units, each headed by a bureau chief. The office consists of a Felony Unit led by Assistant District Attorney Laurie Lisi, a Special Victims Unit led by First District Attorney Dawn Cateri Lupi, a DWI Unit led by Assistant District Attorney Stacy L. Scotti, a Narcotics Investigation Unit led by Assistant District Attorney Grant J. Garramone, an Appeals Unit led by Assistant District Attorney Steven G. Cox, a Grand Jury Unit led by Assistant District Attorney Joseph A. Saba, an Investigation Unit led by Chief Investigator Nicholas A. LoConte, a C.O.P.S Unit led by Assistant District Attorney Todd C. Carville, and a City Court Unit led by Assistant District Attorney Stacey Scotti.

The Special Victims Bureau deals primarily in the prosecution of cases related to domestic violence, sexual assault, and crimes against children. Three A.D.A.'s work within the Special Victims Bureau work closely with the Child Advocacy Center, child protective workers, community leaders and other victim advocates to bring to justice those who target the most vulnerable among us.

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Of special note for the purposes of the Victim and Witness Assistance Grant Program, the Oneida County District Attorney's office employs one Victim/Witness Coordinator as a member of the support staff team. The role of the Victim/Witness Coordinator is to provide direct support to victims and witnesses through every step of the prosecutorial process. The responsibilities of the Victim Witness Coordinator include but are not limited to accompany victims and witnesses to meetings and court dates, arranging emergency travel and housing, subpoenaing victims and witnesses and addressing questions related to subpoenas, and acting as an intermediary between victims and various service providers.

Oneida County District Attorney staff regularly attend staff development events, seminars, symposiums and trainings. These trainings cover a wide array of subjects, ranging from sexual harassment and grant writing, to prosecutorial best practices and technology conferences. Oneida County District Attorney Scott McNamara has demonstrated a sincere interest in helping his staff grow as both employees and as people. With assistance from the Office of Victim Services, the Oneida County District Attorney's office can seek out new training opportunities related to the delivery of services to victims and witnesses of crime.

**Objectives, Tasks and Performance Measures:**

The Oneida County District Attorney's office seeks to take a more proactive and thoughtful approach to serving the victims of crimes in Oneida County. In order to foster a stronger relationship with victims and witnesses, the Oneida County District Attorney's office will use OVS funds to achieve the following goals and objectives:

**Goals:**

Over the lifetime of the Victim and Witness Assistance Grant Program, the Oneida County District Attorney's office will attempt to:

1. Increase the amount of face-time between victims and Victim/Witness Coordinators
2. Reduce the amount of time between the opening of a case and first contact between victims/witness and the prosecution
3. Track any and all interactions with victims to establish a method of measuring success
4. Better deliver services, assistance and information to victims and witness in Oneida County

**Objectives:**

To meet the goals outlined above, the following objectives are proposed:

1. The addition of three Victim/Witness Coordinators
2. The assignment of a Victim/Witness Coordinator to each applicable case as it is opened
3. Ensure a more proactive approach to providing victim services

**Performance Measure and Evaluation Plan:**

The primary goal of the Oneida County District Attorney's office is to increase the amount of face-time between our Victim/Witness Coordinators and the victims and witnesses of crimes in Oneida County. Toward this end, the D.A.'s office will institute a policy that requires that a Victim/Witness Coordinator be assigned to

each case that has a victim or witness and that the Victim/Witness Coordinator set up an initial meeting with each willing victim or witness. These meetings should be approximately one hour long and be used to gauge the needs of the victims and witnesses of each case.

The time spent with victims and witnesses, including the initial interview, will be tracked by Victim/Witness Coordinators. Additionally, any time spent coordinating with service providers and businesses on behalf of victims, time spent in court or on the phone with victims, any time spent scheduling appointments or arranging transportation or housing, and time spent on other victim-related activities will also be tracked. This is create a record of how well victims and witnesses are being served and act as a barometer that can tell us if we are meeting the goals outlined in this proposal.

During the initial interview, victims and witnesses will be given a survey which will ask questions about their situation and inquire about their needs and wants. This will help the Victim/Witness Coordinator achieve a better understanding of the people they are working with and better inform the Victim/Witness Coordinator as to the kinds of services that are needed in each case. At the end of the life of each case, the victims and witnesses will also be provided with a satisfaction survey designed to demonstrate whether or not the Victim/Witness Coordinators had provided the services needed and made the prosecutorial process less painful and intimidating.

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#### Conclusion:

The Oneida County District Attorney's office is dedicated to providing support to victims and witnesses of crimes in Oneida County over the course of the legal process. District Attorney Scott McNamara recognizes the serious needs of victims and witnesses in Oneida County, whether they be logistical, emotional or otherwise. The rights of victims are an integral part of the prosecutorial process, and as such, must be preserved and protected to the best of our ability.

The Oneida County District Attorney's office, in partnership with the Office of Victim Services, hopes to foster a more welcoming and inclusive environment for victims and witnesses as they navigate the legal process. Unfortunately, dealing with law enforcement can be a daunting task, particularly when victims and witnesses are already experiencing threats and other forms of pressure by defendants and those acting on behalf of defendants. Assistance from the Office of Victim Services is essential in our vital efforts to supporting victims and witnesses of crimes.

#### Work Cited:

Mohawk Valley Recourse Center for Refugees. Retrieved on March 19, 2019 from <https://www.mvrcr.org/about/populations/demographics-and-trends/>

NYS Division of Criminal Justice Services. (2018, September). Retrieved March 4, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/2017-county-index-rates.pdf>

NYS Division of Criminal Justice Services. (2018, September). Retrieved March 4, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/2017-county-violent-rates.pdf>

NYS Division of Criminal Justice Services. (2018, April). Retrieved March 12, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2017/index.htm>

Contract Number: # OVS01-C11027GG-1080200

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ATTACHMENT C - WORK PLAN

*DETAIL*

Objective

1 Assistance with a victim compensation application -

Tasks

1.1 Providing assistance in completing a victim compensation application - Anticipated number of individuals to be assisted in completing the victim compensation application

Performance Measures

1.1.1 Anticipated number of individuals assisted in completing the application - In order to establish a track record pertaining to performance, we will record and track all time spent with victims/witness and generate needs and satisfaction surveys for victims. Please see the project narrative for a more thorough explanation - 25

**ATTACHMENT D**  
**PAYMENT AND REPORTING SCHEDULE**

**I. PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

**A. Advance Payment, Initial Payment and Recoupment Language (if applicable):**

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of 25 percent (25%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).
2. The State Agency will make an initial payment to the Contractor in the amount of \_\_\_ percent (\_\_\_%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than \_\_\_ days from the beginning of the budget period.
3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period	Amount	Due Date

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (25%) of subsequent claims and such claims will be reduced until the advance or initial payment is fully recovered within the contract period.

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**B. Interim and/or Final Claims for Reimbursement**

Claiming Frequency: Quarterly Reimbursement  
Number of Days/Claims: 30

For Quarterly, Monthly and Biannual Reimbursement Claim Frequency, the above field represents the number of days after the claim period that the claim is due to the State from the Grantee.

For Interim Reimbursement as Requested by Contractor the Number of Days/Claims is not applicable.

For all other selected Claim Frequency, the Number of Days/Claims represents the number of claims due under the contract and listed in the table below.

Expenditure Period Dates		Due Date
From	To	



## II. REPORTING PROVISIONS

### A. Expenditure-Based Reports (select the applicable report type):

Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than \_\_\_ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

Expenditure Report

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

Consolidated Fiscal Report (CFR)

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

1

The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Contract Number: # QVS01-C11027GG-1080200

## **B. Progress-Based Reports**

### 1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

### 2. Final Progress Report

Final scheduled payment will not be due until \_\_\_ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is \_\_\_\_. The agency shall complete its audit and notify vendor of the results no later than \_\_\_\_. The Contractor shall submit the report not later than \_\_\_ days from the end of the contract.

## **C. Other Reports**

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

**TABLE 1 - REPORTING SCHEDULE**

<b>PROGRESS REPORT #</b>	<b>PERIOD COVERED</b>		<b>Due Date</b>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

**III. SPECIAL PAYMENT AND REPORTING PROVISIONS**

Awarded grants will be eligible to receive one 25% advance payment at the start of each FFY, if requested, and all subsequent payments will be on a quarterly reimbursement basis. Municipalities are not eligible for this advance.

## Project Narrative

### Project Summary

The Oneida County District Attorney's office currently serves a population of approximately 231,332 New Yorkers. In 2017, Oneida County experienced a rate of violent crime of approximately 300 incidents per 100,000 people, which is higher than many similarly sized counties. Oneida County saw a higher violent crime rate than Dutchess, Orange, Oswego, Rensselaer, Rockland, Saratoga and Ulster Counties in 2017, which all have similar populations and needs relative to Oneida County. Saratoga County, which has a population that is virtually identical to that of Oneida County, had a firearm crime rate nearly four times lower than that of Oneida County in 2017. Oneida County has an index crime rate at about 2,065 crimes per 100,000 people, ranking it 13<sup>th</sup> out of 62 total counties. Unfortunately, the vast majority of these crimes involve a victim or a witness, and the statistics noted above demonstrate a serious need for victim and witness assistance services in the County of Oneida.

Domestic violence and victims of domestic abuse were of particular concern in Oneida County in 2017. In 2017, Oneida County recorded 1,782 total victims of domestic violence for the year. This figure is higher than virtually all similarly sized counties in New York, including Saratoga County (759 domestic violence victims in 2017), Dutchess County (679 victims in 2017), Rockland County (743 victims in 2017), Niagara County (1,449 victims in 2017), Broome County (923 victims in 2017), Ulster County (758 victims in 2017), and Rensselaer County (1,089 domestic violence victims in 2017). The only similarly sized county that reported a higher number of domestic violence victims in 2017 was Albany County with 1,841 victims of domestic violence. These statistics underscore a desperate need for victim services in Oneida County.

Utica, New York is one of the nation's largest immigrant and refugee hubs. According to the Mohawk Valley Resource Center for Refugees, Utica has a foreign-born population of approximately 17.6%, which is the highest of any major city in the state outside of New York City. This means that victims and witnesses of crimes in Oneida County are frequently immigrants, refugees, or the children or families of those who arrived in the area as immigrants. Utica's foreign-born population is comprised primarily of people who arrived from Bosnia, Burma, Russian and the former Soviet Union, and Vietnam. Immigrants and refugees frequently have very distinct needs pertaining to language services and interpretation, transportation, and services coordination. The foreign-born population is sometimes uniquely vulnerable to certain crimes due to language barriers and their unfamiliarity with the United States' legal system, and

unfortunately, they can also be the target of hate crimes due their perceived "other-ness" by their native-born neighbors. With assistance from the Victim and Witness Assistance Grant Program, the District Attorney's office seeks to ensure that it has the tools necessary to serve and protect vulnerable immigrant and refugee populations in Oneida County.

Due to the limited labor pool at the District Attorney's office, which includes only one Victim/Witness Coordinator, victims of crime in Oneida County are currently not being served as best as they could be over the course of the prosecutorial process. According to the Oneida County District Attorney's current staff model, the Victim/Witness Coordinator assists victims on an "as needed," or "as requested," basis, meaning that not every victim gets to meet with our Victim/Witness Coordinator. This typically results in a very limited amount of "face-time" between victims and the Victim/Witness Coordinator. This approach is, at its core, a "passive" form of assisting victims and witnesses. With the assistance of the Office of Victim Assistance and the VOCA Victim and Witness Assistance Grant Program, the Oneida County District Attorney's office would like to institute a more proactive approach to building relationships with victims and witnesses and ensuring that they have the information and resources that they need.

Currently, our sole Victim/Witness Coordinator joins victims while they meet with prosecuting attorneys and/or while appearing in court and assists them in arranging emergency housing when requested. This represents the bare minimum of services that a Victim/Witness Coordinator could potentially provide to victims and witnesses during the lifetime of a case. The Oneida County District Attorney's office is seeking to hire more Victim/Witness Coordinators so that the office can be more present in the lives of victims and witnesses, which will inevitably result in more effective prosecution of crime and the building of a more positive relationship between law enforcement and the community at large. It is not unusual for victim and witness to experience direct or indirect threats and intimidation in the form of phone call hang-ups, jail calls, house drive-bys, bribing, and threats on social media. In some instances, victims and witnesses will even perjure themselves in court in order to achieve a feeling of safety and to make it "all go away."

In many cases, victims and witnesses are reluctant or apprehensive about speaking with law enforcement, and any delay in making contact with those victims and witnesses can turn that reluctance into hostility. In cases such as these, time is of the essence. The Oneida County District Attorney's office hopes to reduce or eliminate the psychological toll these threats have on victims by attaining the staffing required to reach out to victims early and often. Establishing a positive relationship with victims and witnesses is a crucial component of prosecuting crime

and benefits both the victims and witnesses themselves, as well as law enforcement. Unfortunately, the Oneida County District Attorney's office is falling behind the industry average pertaining to victim/witness services, and Victim and Witness Assistance Grant Program funds can go a long way in helping the office meet or exceed industry standards for victim services.

Having more dedicated victim/witness advocates will allow the Oneida County District Attorney's office to completely overhaul its case assignment process and enable immediate contact with victims and witnesses. During the few days that it takes a case to be transferred from lower court to county court, victims and witnesses may be subjected to the threats and intimidation outlined previously. Because of the significant responsibilities already placed on the Assistant District Attorneys, they are not able to adequately provide the services that are so desperately needed by victims and witnesses, resulting in those outside pressures being even more effective or persuasive. In order to build a productive relationship with victims and witnesses, a strong team of Victim/Witnesses Coordinators is a necessity.

The Oneida County District Attorney's office is respectfully asking for assistance in hiring three additional Victim/Witness Coordinators, which will allow the office to overhaul the way in which it assigns cases and assists victims. Under the D.A.'s current system, a prosecuting attorney is assigned to each new case as it is opened. If awarded funding, the office would also assign a Victim/Witness Coordinator to each case that has a victim or witness at the time the case is opened. Once the case has been opened and a Victim/Witness Coordinator has been assigned to it, the Victim/Witness Coordinator would then immediately get to work reaching out to, and building a relationship with, those individuals related to the case and describing the prosecutorial process in detail. This relationship is designed to be a mutually beneficial one, as it would ensure that victims and witnesses are properly supported throughout the legal process, as well as helping the Oneida County District Attorney's office in its mission of bringing about justice.

An additional three Victim/Witness Coordinators are necessary for a number of reasons. Firstly, having a total of four Victim/Witness Coordinators would put us more in line with the industry average in New York State. Counties similar in size to Oneida County tend to have a team of three to five victim advocates. For example, Saratoga County has three victim advocates, Rensselaer County has five, and Schenectady County has a total of four. The Oneida County District Attorney's office also seeks to ensure that its Victim/Witness Coordinators are not spread too thin. Each Victim/Witness Coordinator should be available to essentially provide door-to-door service to victims if necessary, which can require a great deal of time and attention from a single Victim/Witness Coordinator. For example, Victim/Witness

Coordinators should be available to arrange transportation, provide court preparation and moral support, and answer follow-up questions on days when a victim or witness is to appear in court. If our office only employs one or two Victim/Witness Coordinators, meeting that goal in every case becomes much more difficult.

In hiring three additional Victim/Witness Coordinators, the Oneida County District Attorney's office expects to incur a cost of \$35,598 per position. This results in an expected cost of approximately \$106,794 for the first year. Due to yearly step increases, the Victim/Witness Coordinators will each earn approximately \$36,840 during year two and \$38,274 during year three. This results in a total cost of \$332,136 over three years for all three positions. The Victim and Witness Assistance Grant Program would cover 100% of the cost of hiring the three new employees, and the Oneida County District Attorney's office will match by covering the cost of employing one Victim/Witness Coordinator. The Victim/Witness Coordinator currently employed by the Oneida County District Attorney's office will earn approximately \$43,041 in year one, \$44,434 in year two, and \$46,059 in year three, meaning a total match of \$133,534 over the course of three years.

The Victim/Witness Coordinator has various duties related to assisting victims and witnesses. These duties include notifying victims and witnesses of court appearance times, responding to questions regarding the legal process and courtroom proceedings, arranging transportation and temporary housing when needed, preparing subpoenas, preparing pay vouchers for victims and witnesses, notifying victims and witnesses of case status updates, serving as a liaison between victims, witnesses, investigators and prosecutors, and assisting victims with the return of stolen property. Victim/Witness Coordinators also perform general office work as needed and assigned. Victim/Witness Coordinators are required to have a Bachelor's Degree in police justice, criminal justice, social services, human services, pre-law or a closely related field from a regionally accredited college or university, OR an Associate's Degree in one of the fields listed above and two years of experience in law enforcement, OR a high school diploma and four years of experience in law enforcement.

In addition to personnel expenditures, the fringe benefits of the three new Victim/Witness Coordinators will also be covered by the Victim and Witness Assistance Grant Program. The fringe benefits in Oneida County are calculated as follows: 17.09% for retirement, 7.65% for social security, 2.8% for workers' compensation, 0.25% for unemployment insurance, and \$14,000 per position per year for health insurance. This results in an expected cost of \$23,894 per position during year one, or a total of \$71,682 for all three positions during year one. Oneida

County will use the current Victim/Witness Coordinator's fringe benefits to match the Victim and Witness Assistance Grant Program funds, resulting in a match of \$25,961 during year one.

Training expenditures will also be covered under the grant. The Oneida County District Attorney's office is requesting \$2,000 per year per new employee for training purposes. This results in a yearly cost of \$6,000, or \$18,000 over a three year period. Oneida County will match the training costs of the current Victim/Witness Coordinator already employed by the Oneida County District Attorney's office, resulting in a match of \$2,000 per year or \$6,000 over the course of three years. Training may include travel, sustenance, tolls and attendance fees for victim services and other victim-related trainings for the Victim/Witness Coordinators. The Oneida County District Attorney's office plans to give preference to trainings that include cultural competence and cultural sensitivity subject matter which will enable our office to better serve Utica's large immigrant and refugee population.

In addition to training, the Victim/Witness Coordinators will need computers and cellphones to assist in the delivery of victim services. The Oneida County District Attorney's office plans to spend approximately \$3,000 on three computers and \$204 on four cellphones and four cellphone cases in the first year. Additionally, \$2,160 will be required each year for cellphone service (\$45 per phone per month). This results in a total equipment expense of \$9,684 over the life of the grant.

In totality, these expenses will assist the Oneida County District Attorney's office take a more direct and proactive approach to serving victims and witnesses. The limited number of employees currently working at the Oneida County District Attorney's office has been a major roadblock to prioritizing the needs of victims and witnesses.

### **Organizational Capacity**

The Oneida County District Attorney's office is located at 235 Elizabeth Street in downtown Utica. Utica is located on the southeast side of Oneida County, which itself is located in the heart of Central New York.

The Oneida County District Attorney's office currently employs the District Attorney, two First Assistant District Attorneys, nineteen Assistant District Attorneys, one law associate, eight investigators, six support staff members, a court reporter, a special program director and five special patrol officers. The legal staff of the District Attorney's office has a combined 315 years of experience at prosecuting crime and seeking justice in Oneida County. Over the last decade,



the Oneida County District Attorney's office has handled on average 713 indictments and superior court informations (SCI's) per year.

The Oneida County District Attorney's office is segmented into nine different units, each headed by a bureau chief. The office consists of a Felony Unit led by Assistant District Attorney Laurie Lisi, a Special Victims Unit led by First District Attorney Dawn Cateri Lupi, a DWI Unit led by Assistant District Attorney Stacy L. Scotti, a Narcotics Investigation Unit led by Assistant District Attorney Grant J. Garramone, an Appeals Unit led by Assistant District Attorney Steven G. Cox, a Grand Jury Unit led by Assistant District Attorney Joseph A. Saba, an Investigation Unit led by Chief Investigator Nicholas A. LoConte, a C.O.P.S Unit led by Assistant District Attorney Todd C. Carville, and a City Court Unit led by Assistant District Attorney Stacey Scotti.

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#### **Goals:**

Over the lifetime of the Victim and Witness Assistance Grant Program, the Oneida County District Attorney's office will attempt to:

1. Increase the amount of face-time between victims and Victim/Witness Coordinators
2. Reduce the amount of time between the opening of a case and first contact between victims/witness and the prosecution
3. Track any and all interactions with victims to establish a method of measuring success

4. Better deliver services, assistance and information to victims and witness in Oneida County

Objectives:

To meet the goals outlined above, the following objectives are proposed:

1. The addition of three Victim/Witness Coordinators
2. The assignment of a Victim/Witness Coordinator to each applicable case as it is opened
3. Ensure a more proactive approach to providing victim services

Performance Measure and Evaluation Plan:

The primary goal of the Oneida County District Attorney's office is to increase the amount of face-time between our Victim/Witness Coordinators and the victims and witnesses of crimes in Oneida County. Toward this end, the D.A.'s office will institute a policy that requires that a Victim/Witness Coordinator be assigned to each case that has a victim or witness and that the Victim/Witness Coordinator set up an initial meeting with each willing victim or witness. These meetings should be approximately one hour long and be used to gauge the needs of the victims and witnesses of each case.

The time spent with victims and witnesses, including the initial interview, will be tracked by Victim/Witness Coordinators. Additionally, any time spent coordinating with service providers and businesses on behalf of victims, time spent in court or on the phone with victims, any time spent scheduling appointments or arranging transportation or housing, and time spent on other victim-related activities will also be tracked. This is create a record of how well victims and witnesses are being served and act as a barometer that can tell us if we are meeting the goals outlined in this proposal.

During the initial interview, victims and witnesses will be given a survey which will ask questions about their situation and inquire about their needs and wants. This will help the Victim/Witness Coordinator achieve a better understanding of the people they are working with and better inform the Victim/Witness Coordinator as to the kinds of services that are needed in each case. At the end of the life of each case, the victims and witnesses will also be provided with a satisfaction survey designed to demonstrate whether or not the Victim/Witness Coordinators had provided the services needed and made the prosecutorial process less painful and intimidating.

The Oneida County District Attorney's office would also like to develop a set of guidelines that can be applied to each type of case. For example, domestic abuse and sexual assault victims have very specific needs that are quite different from the needs of victims in robbery or financial crimes cases; these needs can include assistance in relocation or securing an order of protection, receiving counseling and medical treatment, and receiving information regarding petitioning for custody or termination of parental right. Conversely, a victim in a robbery case may not need counseling, but they may require assistance in completing claim applications and retrieving lost property and/or restitution. By establishing a set of guidelines or rules for each type of case, Victim/Witness Coordinators will have a head-start in knowing the types of services that each victim and witness will need.

### **Conclusion**

The Oneida County District Attorney's office is dedicated to providing support to victims and witnesses of crimes in Oneida County over the course of the legal process. District Attorney Scott McNamara recognizes the serious needs of victims and witnesses in Oneida County, whether they be logistical, emotional or otherwise. The rights of victims are an integral part of the prosecutorial process, and as such, must be preserved and protected to the best of our ability.

The Oneida County District Attorney's office, in partnership with the Office of Victim Services, hopes to foster a more welcoming and inclusive environment for victims and witnesses as they navigate the legal process. Unfortunately, dealing with law enforcement can be a daunting task, particularly when victims and witnesses are already experiencing threats and other forms of pressure by defendants and those acting on behalf of defendants. Assistance from the Office of Victim Services is essential in our vital efforts to supporting victims and witnesses of crimes.

### **Work Cited**

Mohawk Valley Recourse Center for Refugees. Retrieved on March 19, 2019 from <https://www.mvrccr.org/about/populations/demographics-and-trends/>

NYS Division of Criminal Justice Services. (2018, September). Retrieved March 4, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/2017-county-index-rates.pdf>

NYS Division of Criminal Justice Services. (2018, September). Retrieved March 4, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/2017-county-violent-rates.pdf>

NYS Division of Criminal Justice Services. (2018, April). Retrieved March 12, 2019 from <https://www.criminaljustice.ny.gov/crimnet/ojsa/domesticviolence2017/index.htm>



**Oneida County**  
**Department of Information Technology**  
 Oneida County Office Building ♦ 800 Park Avenue ♦ Utica, New York 13501

ANTHONY J. PICENTE, JR.  
 County Executive

ANNEMARIE AMBROSE  
 Director

July 19, 2019  
 The Honorable Anthony J. Picente  
 Oneida County Executive  
 800 Park Avenue  
 Utica NY 13501

EN 20 19-262  
**GOVERNMENT OPERATIONS**  
**WAYS & MEANS**

Subject: RFP 2019-268 Professional Services for Onsite Scanning vendor recommendation

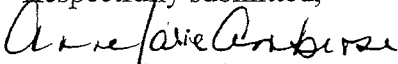
Dear Mr. Picente,

Oneida County's Information Technology department has been working with Integrated Strategic System's Inc. for the past year on overall scanning initiatives as well as the Opioid lawsuit document scanning. We are pleased with the relationship that we have built with Integrated Strategic Systems, Inc. and respectfully request the continuation of this partnership.

Information Technology is planning to assist all of the Oneida County departments in reducing or eliminating the generation of paper and further assist all departments in becoming paperless. These efforts have magnified over the past year with the additional requirement of the Opioid scanning project. Information Technology conducted an RFP for continued scanning services and one vendor responded. That vendor is the same one currently providing these services, Integrated Strategic Systems, Inc.

The term of this contract is for three (3) years with two (2) additional one (1) year renewal options. The dollar amount of this contract is not to exceed the amount to be requested in 2020 of \$300,000 for scanning services. The annual amount of the contract will vary somewhat thereafter, as it is tied to the capital fund appropriation and availability for this project.

Based on the fully responsive proposal, affordable rate, excellent customer service and the excellent relationship Information Technology has with this vendor, I respectfully request your approval for the enclosed contract with Integrated Strategic Services Inc. If the enclosed contract does indeed meet with your approval, would you please be so kind as to forward it to the Board of Legislators for consideration at their next meeting.

Respectfully submitted,  
  
 AnneMarie Ambrose  
 Director of Information Technology

Encl.



Reviewed and Approved for submittal to the  
 Oneida County Board of Legislators by

  
 Anthony J. Picente, Jr.  
 County Executive

Date 8-8-19

Oneida Co. Department:  
Information and Technology

Competing Proposal – YES  
Only Respondent – YES  
Sole Source - N/A

**Oneida County Board of Legislators**

**Name & Address of Vendor:** Integrated Strategic Systems, Inc.  
PO Box 1008  
Port Jefferson, NY 11776-1008

**Title of Activity or Service:** Oneida County Scanning Services

**Proposed Dates of Operation:** August 1, 2019 – July 31, 2022

**Client Population/Number to be Served:** County Records Management (Enterprise Content Management)

**Summary Statements:**

- 1. Narrative Description of Proposed Services:** This agreement will provide records scanning services to enter documents into Laserfiche for permanent storage.
- 2. Program/Service Objectives and Outcomes:** Reduction in the number of paper documents stored in the Westmoreland Records Center.
- 3. Program Design and Staffing:** ISSYS will draw on the skillsets of all company resources to provide effective support.

**Total Funding Requested:** \$300,000                      **Account #:** H-472  
for the first year.                      Enterprise Content Management

**Oneida County Dept. Funding Recommendation:** \$300,000 for the first year.

**Proposed Funding Sources (Federal \$/State \$/County \$):** County

**Cost per Client Served:** N/A

**Past Performance Data:** ISSYS has provided excellent support for a variety of projects in Oneida County since 2012.

**O.C. Departmental Staff Comments:** This contract will assist the County Clerk in the reduction of paper records storage and will increase the digitalization of records for the County.

## INFORMATION TECHNOLOGY MASTER SERVICES AGREEMENT

This Information Technology Master Services Agreement (the "Agreement") is by and between **INTEGRATED STRATEGIC SYSTEMS, INC.**, a domestic business corporation organized and existing under the laws of the State of New York, whose principal place of business is 6925 Todd Way, Liverpool, New York 13088, hereinafter called the "Vendor," and **ONEIDA COUNTY**, a municipal corporation existing and organized under the laws of the State of New York, whose principal place of business is 800 Park Avenue, Utica, New York 13501, hereinafter called the "County." This Agreement includes any current or future statement(s) of work (the "SOW") on the form attached hereto as Exhibit "A," and executed by each party, and all such documents are incorporated by this reference.

The Vendor provides information technology Professional Services, as hereinafter defined, related to the **Oneida County Onsite Scanning #2019-268**, hereto attached as Exhibit "B." The parties have agreed that the Vendor will provide such Professional Services as the parties may agree, now and pursuant to future SOWs. Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

### 1. PROFESSIONAL SERVICES.

1.1. Professional Services. The Vendor shall provide to the County the following services, as requested, and as provided for in the Vendor's Proposal, a copy of which is attached hereto as Exhibit "C." Any and all of these services shall hereinafter be referred to, collectively, as the "Professional Services."

(a) *Service Categories.* The services constituting Professional Services within the meaning of this Agreement shall include, but not be limited to, assessments, design, hardware and software (and provisioning of appropriate licensing), implementation, support, maintenance, providing complete documentation, including implementation of plans, testing and training in the categories of:

- (i) Scanning Services;
- (ii) Document Preparation;
- (iii) Document Organization;
- (iv) Document/Box Organization;
- (v) Supervisory element of other document preppers;
- (vi) Any other needed services.

(b) *Multiple Vendors.* The County reserves the right to utilize as many different vendors as it, in its sole discretion, determines to be necessary for the performance of any individual Professional Service. The Vendor hereby acknowledges that it is aware of this, and it understands and acknowledges that the County is not guaranteeing any minimum number of hours the Vendor will be utilized, nor is the County making any promises as to the exclusivity of the assignment of the Vendor to any Professional Service.

1.2. Provision of Professional Services. The Vendor will provide the services as set forth in each



SOW, and the County will provide any assistance and cooperation necessary or convenient to facilitate the Professional Services called for in any SOW. The process for submission and approval of an SOW is as follows:

- (a) *Negotiation.* The Vendor and the County shall negotiate the Professional Services to be completed by the Vendor, based upon the needs of the County.
- (b) *Quote & Proposed SOW.* Once the negotiations have been completed, the Vendor shall submit a detailed quote and proposed SOW to the County. The form of the proposed SOW shall conform to that of the aforementioned Exhibit "A," attached hereto. A sample quote has been attached to this Agreement as Exhibit "D." The quote and/or the proposed SOW shall include a detailed description of the materials to be used, the nature of the labor to be provided (along with the rates thereof), and a statement declaring what subcontractors the Vendor intends to utilize in the performance of the work covered by the proposed SOW. If the quote and proposed SOW are unacceptable to the County, for any reason, further negotiations may be conducted.
- (c) *Signed SOW & Purchase Order.* If the quote and proposed SOW are acceptable to the County, the County shall execute the SOW, and shall return a signed copy of the SOW to the Vendor along with a purchase order.
- (d) *Performance of Work.* Once the signed SOW and purchase order have been received, the Vendor shall begin to perform the Professional Services covered by the SOW. Under no circumstances is any work to be undertaken without a signed SOW. The Vendor agrees and hereby acknowledges that any expenditures or costs incurred by the Vendor prior to their receipt of a signed SOW are undertaken entirely at their sole risk and expense.
- (e) *Certificate of Completion.* At the completion of all the Professional Services called for in a signed SOW, the Vendor shall provide the County with a certificate of completion, signed by a representative of the Vendor. A sample of this certificate of completion is attached hereto as Exhibit "E." Once the County has ensured that the work covered by the SOW has been completed to its satisfaction, the County shall also sign the certificate of completion, returning a fully executed copy to the Vendor.

### 1.3. Deliverables.

- (a) *Acceptance & Rejection.* Any software or other deliverable created pursuant to any Professional Services (the "Deliverables") will be considered accepted (the "Acceptance") (a) when the County provides Vendor written notice of acceptance or (b) thirty (30) days after delivery, if the County has not first provided the Vendor with written notice of rejection. The County may reject a Deliverable only in the event that it materially deviates from its specifications and requirements listed in the applicable SOW and only via written notice setting forth the nature of such deviation. In the event of such rejection, the Vendor will correct the deviation and redeliver the Deliverable within twenty (20) days. After redelivery pursuant to the previous sentence, the parties will again follow the acceptance procedures set forth in this Subsection 1.3(a).

- (b) *License to Deliverables*. Effective upon Acceptance of each Deliverable, the Vendor grants the County a nonexclusive, fully paid, royalty-free license to reproduce, modify, and use such Deliverable as necessary for the County's internal business purposes, provided the County complies with the restrictions set forth below in Subsection 1.3(c).
- (c) *Restrictions on Deliverables Rights*. The County will not distribute, publicly display, publicly perform, or sublicense any Deliverables (including without limitation any derivative work thereof). The Vendor retains ownership of all Deliverables, and the County receives no right, title, or interest in or to Deliverables except as specifically set forth in Subsection 1.3(b) above.

## **2. FEES & REIMBURSEMENT.**

- 2.1. Payment. The County will pay Vendor the fees as set forth in each SOW, and shall reimburse such expenses as Vendor reasonably incurs in provision of the Professional Services.
- 2.2. Vouchers. Such payment shall be made by the County after receipt of vouchers presented by the Vendor on forms prescribed by the County and after audit and approval by the County's Department of Audit and Control and the County's Comptroller.

**3. CONFIDENTIAL INFORMATION.** "Confidential Information" refers to the following items that one party to this Agreement (the "Discloser") discloses to the other (the "Recipient"): (a) any document the Discloser marks "Confidential;" (b) any information the Discloser orally designates as "Confidential" at the time of disclosure, provided the Discloser confirms such designation in writing within ten (10) business days; and (c) any other nonpublic, sensitive information the Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Recipient's possession at the time of disclosure; (ii) is independently developed by the Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Recipient's improper action or inaction; or (iv) is approved for release in writing by the Discloser. The Recipient is on notice that the Confidential Information may include the Discloser's valuable trade secrets.

- 3.1. Nondisclosure. The Recipient will not use Confidential Information for any purpose other than to facilitate the Professional Services (the "Purpose"). The Recipient: (a) will not disclose Confidential Information to any employee or contractor of the Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with the Recipient with terms no less restrictive than those of this Article 2.1; and (b) will not disclose Confidential Information to any other third party without the Discloser's prior written consent. Without limiting the generality of the foregoing, the Recipient will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The Recipient will promptly notify the Discloser of any misuse or misappropriation of Confidential Information that comes to the Recipient's attention. Notwithstanding the foregoing, the Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Recipient will give the Discloser prompt notice of any such legal or governmental demand and reasonably

cooperate with the Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at the Discloser's expense.

- 3.2. Injunction. The Recipient agrees that breach of this Article 2.1 would cause the Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 3.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 3.1 above (*Nondisclosure*) will terminate ten (10) years after the date of disclosure of the Confidential Information to the Recipient. Upon termination of this Agreement, the Recipient will return all copies of Confidential Information to the Discloser or certify, in writing, the destruction thereof.
- 3.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Discloser will retain all right, title, and interest in and to all Confidential Information.
- 3.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), the Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
  - (a) *Immunity*. An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
  - (b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

#### **4. REPRESENTATIONS & WARRANTIES.**

- 4.1. From Vendor. The Vendor represents and warrants: (a) that all Professional Services will be performed in a professional and workmanlike manner; and (b) that all Deliverables will conform to their specifications set forth in the applicable SOW for a period of three (3) years following Acceptance (as defined in Subsection 1.3(a) above). In the event of a breach of either warranty in this Section 4.1, the Vendor, at its own expense, will promptly re-perform the Professional Services or repair and redeliver the Deliverable in question.
- 4.2. From Each Party. Each party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its

ability to perform as required by this Agreement.

- 4.3. Warranty Disclaimers. Except as set forth above in this Article 4, the Vendor PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL BE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

## 5. INDEMNIFICATION.

- 5.1. From Vendor. The Vendor will defend and indemnify the County and the County's Associates (as defined below in Section 5.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) direct infringement of any patent, copyright, trade secret, or other intellectual property right by any Deliverable; or (b) injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of the Vendor or of any of its agents, subcontractors, or employees. The Vendor's obligations set forth in Subsection 5.1(a) above do not apply to the extent that an Indemnified Claim arises out of: (i) the County's breach of this Agreement; (ii) revisions to the Deliverable made without the Vendor's written consent; (iii) the County's failure to incorporate updates or upgrades that would have avoided the alleged infringement, provided Vendor offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (iv) the Vendor's design or modification of the Deliverable in compliance with specifications provided by the County; or (v) use of the Deliverable in combination with hardware or software not provided by the Vendor, unless (A) the SOW, or other documentation provided by the Vendor or agreed between the parties, (collectively, the "Documentation") refers to a combination with such hardware or software, without directing the user not to perform such a combination, or (B) such combination achieves functionality described in the Documentation (and the Documentation does not direct the user not to perform such combination). The Vendor's obligations set forth in Subsection 5.1(b) above do not apply to the extent that an Indemnified Claim arises out of the County's breach of this Agreement.
- 5.2. From County. The County will indemnify and defend the Vendor and the Vendor's Associates (as defined below in Section 5.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of the County or of any of its agents, subcontractors, or employees. Indemnified Claims listed in Subsection 5.2 above include, without limitation: (i) claims by any of the County's employees, contractors, or other users (collectively, "Users"); and (ii) claims related to unauthorized disclosure or exposure of personally identifiable information

or other private information. Indemnified Claims listed above in Section 5.2 do not include any claim that would constitute an Indemnified Claim pursuant to Section 5.1(a) above.

- 5.3. Litigation & Additional Terms. The obligations of the indemnifying party (the "Indemnitor") pursuant to Section 5.1 or 5.2 above: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Indemnitor's expense and payment of judgments; and (b) will be excused to the extent that the other contracting party's ("Indemnified Party's") or any of such Indemnified Party's Associates' failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof, provided Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (A party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

## 6. INSURANCE

- 6.1. The Vendor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
- (a) Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.
- (i) CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
- (ii) The County and any other parties required by the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured(s).
- (b) Workers' Compensation and Employer's Liability: Statutory limits apply.
- (c) Professional Liability ("PL") coverage, including errors and omissions, with limits of insurance of not less than \$2,000,000 each occurrence and \$2,000,000 annual aggregate. (An umbrella or excess liability policy may be utilized to attain these PL limits).
- (i) The County and any other parties required by the County shall be included as additional insureds. PL coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or

provided to the additional insured(s).

- 6.2. Waiver of Subrogation: the Vendor waives all rights against the County and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, PL or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.
- 6.3. Certificates of Insurance: Prior to the start of any work, the Vendor shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of each of the Vendor's policies. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the County.

## **7. LIMITATION OF LIABILITY.**

- 7.1. Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 7.2. Exclusions. This Article 6.3 do not apply to: (a) claims pursuant to Article 3 (*Confidential Information*) or Article 5 (*Indemnification*) of this Agreement; or (b) claims for attorneys' fees or other litigation costs the County becomes entitled to recover as a prevailing party in any action.

## **8. TERM & TERMINATION.**

- 8.1. Term. The term of this Agreement will commence on the date it is executed by both parties (the "Effective Date") and continue for an initial term of three (3) years. Up to two (2) renewal terms of one (1) year each will be considered upon the mutual written agreement of the parties.
- 8.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice. Such notice will specify in detail the nature of the breach and will be effective in 30 days, or more if specified in the notice, unless the other party first cures the breach.
- 8.3. Termination for Convenience. The County may terminate this Agreement for convenience upon 30 days' advance written notice. On the date of such termination, County will pay Vendor for those services provided up to the date of such written termination.
- 8.4. Survival. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of County to pay fees incurred before termination; (b) Articles and Sections 1.3(c) (*Restrictions on Deliverables Rights*), 3 (*Confidential Information*), 4.3 (*Warranty Disclaimers*), 5 (*Indemnification*), 6.3 (*Limitation of Liability*), and 10.1 (*Feedback*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

## **9. INDEPENDENT CONTRACTORS**

- 9.1. It is expressly agreed that the relationship of the Vendor to the County shall be that of an independent contractor. None of the Vendor's officers, agents, directors or employees shall be considered employees of the County for any purpose, including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Vendor, in accordance with the Vendor's status as an independent contractor, covenants and agrees that none of the Vendor's officers, agents, directors and employees will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the County by reason thereof, and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- 9.2. The Vendor warrants and represents it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Vendor and the County agree that the Vendor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
- 9.3. None of the Vendor's officers, agents, directors or employees shall be eligible for compensation from the County due to illness, absence due to normal vacation, absence due to attendance at school or special training, or a professional convention or meeting.
- 9.4. The Vendor acknowledges and agrees that none of its officers, agents, directors or employees shall be eligible for any County employee benefits, including retirement membership credits.
- 9.5. The Vendor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Vendor under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Vendor's form of business organization. With respect to the Vendor's officers, agents, directors and employees, this responsibility shall include payroll deductions, workers' compensation insurance, and provision of health insurance, where required. The County shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Vendor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
- 9.6. The Vendor will indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- 9.7. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Vendor's independent contractor status, it is agreed that both the County and the Vendor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- 9.8. The Vendor agrees to comply with federal and state laws, as supplemented, with the United States Department of Labor regulations, and any other regulations of any federal and state entities relating to such employment and civil rights requirements.

## 10. MISCELLANEOUS.

- 10.1. Feedback. The Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that the County or any user provides to the Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict the Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting the County or the User in question. Notwithstanding the provisions of Article 3 above, Feedback will not be considered Confidential Information, provided that information that the County transmits with Feedback, or is related to Feedback, may be considered Confidential Information. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)
- 10.2. Notices. Notices pursuant to this Agreement will be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.
- (a) *For the Vendor:* Integrated Strategic Systems, Inc., P.O. Box 1008, Port Jefferson, NY 11776-1008
- (b) *For the County:* Oneida County Information Technology, 800 Park Avenue, Utica, NY 13501 *and*  
Oneida County Attorney, 800 Park Avenue, Utica, NY 13501
- 10.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 10.4. Subcontractors. The Vendor shall not subcontract any work to be performed under this Agreement without the prior written consent of the County, and any permitted subcontractor shall agree, in writing, to be bound by the terms of this Agreement as if it were the Vendor under this Agreement. The Vendor shall be responsible to the County for any failure by any subcontractor to comply with the terms of this Agreement.
- 10.5. Assignment & Successors. The Vendor may not assign this Agreement or any of its rights or obligations hereunder without the County's express written consent. Except to the extent forbidden in this Section 10.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 10.6. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.



- 10.7. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 10.8. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of New York, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Oneida County, New York. This Section 10.8 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 10.9. Conflicts. In the event of any conflict among any of the Exhibits to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; and (2) any SOW, with more recent SOW's taking precedence over later ones.
- 10.10. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 10.11. Entire Agreement. The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Addendum I (Standard Oneida County Conditions). No waiver, alterations or modifications of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.
- 10.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 10.13. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.
- 10.14. Severability. In the event that a portion of this Agreement is found illegal, invalid, contrary to public policy, or unenforceable by a court of competent jurisdiction, then the surviving remainder of the Agreement shall continue in full force and effect.
- 10.15. Advice of Counsel. Each party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read

and understood all of the terms and provisions of this Agreement.

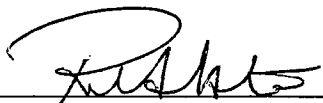
10.16. Assignment. No party may assign this Agreement, or any part hereof, or any rights hereunder, without the written advance consent of all parties.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

**COUNTY OF ONEIDA**

**INTEGRATED STRATEGIC SYSTEMS,  
INC.**

By: \_\_\_\_\_  
(signature)

By:  \_\_\_\_\_  
(signature)

Name: **Anthony J. Picente, Jr.**

Name: **Robert Nasto**

Title: **Oneida County Executive**

Title: **President**

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

Date: 7-30-2019

Approved

\_\_\_\_\_  
Robert E. Pronteau  
Assistant County Attorney

**EXHIBIT A**

**STATEMENT OF WORK NUMBER \_\_\_\_\_**

**Project Title:** \_\_\_\_\_

This Statement of Work Number \_\_\_\_\_ (this "SOW") is entered into pursuant to the \_\_\_\_\_ [date] Information Technology Master Services Agreement (the "Agreement") by and between \_\_\_\_\_ ("Vendor") and \_\_\_\_\_ ("County").

This SOW is incorporated into the Agreement. In the event of any conflict with this SOW, the main body of the Agreement will govern. The provisions of this SOW govern only the subject matter hereof and not any other subject matter covered by the Agreement. Capitalized terms not otherwise defined in this SOW will have the meanings given in the main body of the Agreement.

I. Professional Services & Deliverables. Vendor will provide the following services: [Insert description of professional services. Include technical specifications for any Deliverables, materials to be used, types of labor to be employed (with the rates therefore), and any subcontractors to be utilized, or include reference to specifications attached to this SOW.]

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II. County Cooperation. County will reasonably cooperate with Vendor in the provision of services and will provide the following assistance to Vendor: [Insert description of County responsibilities, or insert "N/A" if not applicable.]

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III. Payment. County will pay Vendor as follows: [Insert payment schedule. Insert any payment/invoicing terms not already covered in main body of Agreement.]

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IV. Additional Provisions. In addition, the parties agree as follows: [Insert additional terms or "N/A" if not applicable.]

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This SOW is effective as of the latest date of execution set forth below.

\_\_\_\_\_  
**CUSTOMER**

\_\_\_\_\_  
**VENDOR**

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

(signature)

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

(signature)

Name:

\_\_\_\_\_

(print)

Name:

\_\_\_\_\_

(print)

Title:

\_\_\_\_\_

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

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

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

**ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS**

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;



- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
  - i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
  - ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;



request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

## 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

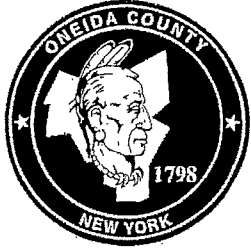
- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida;  
and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



**ONEIDA COUNTY BOARD OF ELECTIONS**

Union Station ♦ 321 Main St. ♦ 3<sup>rd</sup> Floor  
Utica, New York 13501  
Fax: (315) 798-6412

Anthony J. Picente Jr.  
County Executive

Carolann N. Cardone  
Democratic Commissioner  
(315) 798-5762

Rose M. Grimaldi  
Republican Commissioner  
(315) 798-5763

July 19, 2019

FN 20 19-263

Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building, 10<sup>th</sup> Floor  
800 Park Avenue  
Utica, New York 13501

GOVERNMENT OPERATIONS

**WAYS & MEANS**

Dear County Executive Picente:

Attached please find a poll site agreement for the Town of New Hartford for Early Voting for the 2019 General Election. This agreement provides for the Board of Elections to use the Town of New Hartford Office Building daily from October 26, 2019 through November 3, 2019, in order to provide a location for voters to take advantage of the Early Voting measures just enacted into law this spring. The Town Building will be open for voting from 8:30 AM until 4:30 PM Monday through Friday, and from 9:00 AM until 2:00 PM on the weekends. We will pay the Town of New Hartford the sum of \$75.00/day for each of the nine days of Early Voting, or a total of six hundred and seventy-five dollars (\$675.00).

This will be one of the three Early Voting locations across the County, along with the Westmoreland Volunteer Fire House and Union Station in Utica. If this agreement meets with your approval, please indicate so by endorsing this letter and forwarding this agreement to the Board of Legislators for consideration at their next scheduled meeting.

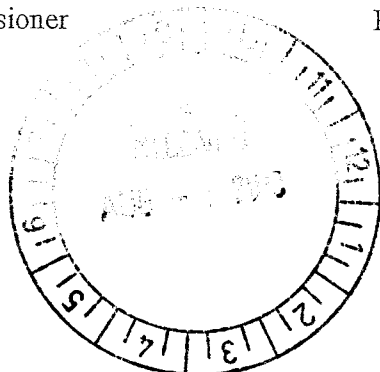
Should you have any questions, please feel free to contact us at our office.

Thank you for your assistance in this matter.

Respectfully,

Carolann N. Cardone  
Democratic Commissioner

Rose Marie Grimaldi  
Republican Commissioner



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 7-30-19

**Oneida Co. Department:** Board of Elections

<b>Competing Proposal</b>	_____
<b>Only Respondent</b>	_____
<b>Sole Source RFP</b>	_____
<b>Other</b>	<u>  X  </u>

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** Town of New Hartford  
8635 Clinton Street  
New Hartford, New York 13413

**Title of Activity or Service:** 2019 Early Voting Poll Site Agreement

**Proposed Dates of Operation:** September 1, 2019 – December 31, 2019

**Client Population/Number to be Served:** N/A

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Poll site agreement for use of premises by the Oneida County Board of Elections daily from October 26, 2019 through November 3, 2019 for Early Voting.
- 2) **Program/Service Objectives and Outcomes:** N/A
- 3) **Program Design and Staffing:** N/A

**Total Funding Requested:** \$675.00                      **Account:** A1450.4951

**Oneida County Dept. Funding Recommendation:** \$675.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** 100% County

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:**

## POLL SITE AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the 1<sup>st</sup> day of September, 2019, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 800 Park Avenue, Utica, New York, by and through its Board of Elections, hereinafter referred to collectively as the "County," and the Town of New Hartford, a municipal corporation organized and existing under the laws of the State of New York, with its principal office located at 8635 Clinton Street, New Hartford, New York, hereinafter referred to as the "Owner," each a "Party," and collectively, the "Parties."

### WITNESSETH

**WHEREAS**, New York State has enacted changes to the New York Election Law that provide for early voting to be implemented beginning with the general election in 2019 (the "Early Voting"); and

**WHEREAS**, the County is responsible for holding all primary and general elections (the "Elections") throughout Oneida County, including Early Voting; and

**WHEREAS**, the Owner has a facility that the Parties have agreed would be suitable for use as a Poll Site (the "Poll Site") for the Early Voting to be held in; and

**WHEREAS**, the County and the Owner desire to enter into a Poll Site Agreement to clearly state the terms and conditions whereby the Owner shall allow the County to use its premises for the purposes of holding its Early Voting; and

**WHEREAS**, the Oneida County Board of Legislators has approved this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises, terms and obligations hereafter made, the Parties mutually agree and obligate themselves as follows:

#### 1. POLL SITE INFORMATION

- 1.1. The Poll Site's name is the Town of New Hartford Municipal Building;
- 1.2. The Poll Site's address is 8635 Clinton Street, New Hartford, New York 13413;
- 1.3. Except for the extra security being provided by the County during the Early Voting period, as provided in Sections 3.4 and 6.7, below, the Owner does not request the County to provide security services at the Poll Site during the Early Voting period.

1.4. The Early Voting at the Owner's Poll Site shall include multiple election districts within the County.

1.5. The contact information for the Owner's contact person during the Owner's normal business hours for the Poll Site is:

Name & Title: Paul Miscione;  
Address: 8635 Clinton Street, New Hartford 13413;  
Telephone number: 315.733.7500;

1.6. The contact information for the Owner's contact person during non-business hours for the Poll Site is:

Name & Title: Paul Miscione;  
Telephone number: 315.733.7500 or 315.868.2996.

## **2. TERM**

2.1. The term of this Agreement shall be from September 1, 2019 through December 31, 2019, and shall include the entire period of Early Voting in 2019.

2.2. In 2019, the dates for the Early Voting are as follows:

2.2.1. Beginning on Saturday, October 26, 2019, and ending on Sunday, November 3, 2019;

2.3. For Monday, October 28, 2019, Wednesday, October 30, 2019, and Friday, November 1, 2019, the County shall have uninterrupted use and possession of the Poll Site from 7:00 a.m. until 6:00 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

2.3.1. The Polls will be open for Early Voting on these days from 8:30 a.m. until 4:30 p.m. each day.

2.4. For Tuesday, October 29, 2019 and Thursday, October 31, 2019, the County shall have uninterrupted use and possession of the Poll Site from 7:00 a.m. until 9:30 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

- 2.4.1. The Polls will be open for Early Voting on these days from 8:30 a.m. until 8:00 p.m. each day.
- 2.5. For all weekend days, namely October 26, and 27 and November 2 and 3, 2019, the County shall have uninterrupted use and possession of the Poll Site from 7:30 a.m. until 3:30 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.
- 2.6. The Owner shall immediately notify the County should any conflict arise with the availability of the Poll Site. The Owner may contact the County using the following phone number: (315) 798-5765.

### **3. DELIVERY AND SECURITY OF MACHINES**

- 3.1. The Owner hereby agrees to make the Poll Site available for delivery and pickup of the voting machines(s) and all necessary voting equipment for one (1) week prior to the Elections and one (1) week after the Elections. The County shall deliver said machines to the Poll Site, possibly including the purple-colored Election Day Bags (the "Election Day Bags");
- 3.2. Upon receipt of the voting machine(s), the Owner or the Owner's representative shall sign off on a "Voting System Transportation Manifest" (the "Manifest"), confirming that the machines were delivered and received by the Poll Site. The Parties acknowledge and agree that the Owner or their representative's signature on the Manifest is essential to the chain of custody. The Owner or the Owner's representative's signature is also required for the receipt of the Election Day Bags, if delivered.
- 3.3. The Owner shall keep the voting machines and all necessary voting equipment locked and sealed. The Owner hereby agrees to indemnify, save and hold harmless the County for any damage to the voting machine(s) and/or voting equipment while in the sole custody of the Owner.
- 3.4. The County shall provide for security of the voting machines and any other necessary voting equipment and voting materials during all times when the polls are closed during the Early Voting period. This security shall be provided by a Oneida County Sheriff's Deputy or an Oneida County Special Patrol Officer, who shall arrive at the close of the polls each day during the Early Voting period, and shall remain until the opening of the polls on the following day.



**4. OWNER'S OBLIGATIONS:** The Owner hereby promises, covenants and agrees as follows:

- 4.1. To use reasonable or ordinary care in keeping the Poll Site in a reasonably safe condition. This duty of care shall apply equally to all parking lots or other parking areas adjacent to the Poll Site facility;
- 4.2. To warn all voters and other visitors, in a clear and conspicuous manner, of any latent or concealed perils that are known or should be known to the Owner or occupant, of which the voters and other visitors are unaware and cannot discover through the exercise of reasonable care;
- 4.3. To furnish necessary electricity, light and heat to the Poll Site;
- 4.4. To provide access to electrical outlets, as needed;
- 4.5. To provide a telephone for official use only by County poll workers and inspectors. The phone shall be available at all times and must be in or near the poll worker areas to enable them to make and receive calls from the County;
- 4.6. To provide for up to maximum of twelve (12) chairs and three (3) tables no less than forty-eight (48) inches in length per election district;
- 4.7. To ensure that the Poll Site is accessible to the public during the times specified herein, and that the doors are opened;
- 4.8. To ensure that there is a functional restroom facility available for use by the County poll workers and inspectors;
- 4.9. To ensure that the Poll Site is not located on premises owned or leased by a person holding office or who is a candidate for public office at a primary or general election, and to notify the County immediately if the Owner should become aware that this has occurred or is occurring;
- 4.10. To ensure that the Poll Site is situated in a room or location within the building suitable for registration and voting, and which is as close as possible to a convenient entrance to such building that provides access, by ramp or otherwise, to physically disabled voters;

- 4.11. To ensure that the Poll Site is otherwise accessible to citizens with disabilities and complies with the accessibility guidelines of the Americans with Disabilities Act (the “ADA”);
- 4.12. To ensure that the Poll Site is opened at the designated time to allow inspectors sufficient time to set up the voting system as well as arrange the Poll Site;
- 4.13. To make available access to a refrigerator and/or kitchen for use by the County poll workers and inspectors;
- 4.14. To have the Poll Site clear of extra furnishings prior to the arrival of the County poll workers and inspectors, in order to ensure that there is adequate space to accommodate the voting machine(s) as well as the voting booths;
- 4.15. To consent to the County’s placement of temporary cones, signs and other devices in and around the Poll Site to notify voters of the voting area;
- 4.16. To acknowledge that all items placed at the Poll Site by County poll workers and inspectors shall remain the sole property of the County; and
- 4.17. To acknowledge that in the event any of the Early Voting dates are delayed or continued to another date as a result of a common disaster, the Owner agrees to make the Poll Site(s) available to the County on a subsequently scheduled election date.
- 4.18. To allow for and accommodate the continuous and uninterrupted presence of the Oneida County Sheriff’s Deputy or Special Patrol Officer during all hours during the Early Voting period when the polls are closed.

## **5. OWNER’S INSURANCE REQUIREMENTS**

- 5.1. As part of its’ obligation to indemnify, defend and hold harmless the County as set forth herein, the Owner agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.
- 5.2. Commercial General Liability Insurance (CGL): The Owner shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate.

5.3. Excess/Umbrella Liability Insurance: The Owner shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella and/or excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence.

**6. COUNTY'S OBLIGATIONS:** The County hereby promises, covenants, agrees and acknowledges as follows:

6.1. Not to use the Poll Site or any part thereof for any purpose other than the official voter registration and election functions;

6.2. Not to sub-license or assign any rights under this Agreement over said Poll Site or any part thereof to another without the prior written consent of the Owner;

6.3. To punctually pay rent, if any, as the same accrues. The rent for this Agreement shall be seventy-five dollars (\$75.00) per day of the Early Voting period, for a total of six hundred and seventy-five dollars (\$675.00);

6.4. To use reasonable care to ensure that no damage happens to the building or any improvements or fixtures therein;

6.5. To provide security services if so requested in paragraph 1 of this Agreement; and

6.6. To hold the Owner harmless for any damage caused to the Poll Site(s) by placement of voting machines, booths, or other items in the Poll Site(s).

6.7. To provide for an Oneida County Sheriff's Deputy or Special Patrol Officer to provide security over the voting machines and voting equipment and materials at the Poll Site at all times during the Early Voting period where the polls are closed.

**7. COUNTY'S INSURANCE REQUIREMENTS:** As part of its obligation to indemnify, defend and hold harmless the Owner as set forth herein, the County agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.

7.1. Commercial General Liability ("CGL") Insurance:

7.1.1. The County shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability

and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;

7.1.2. CGL coverage shall be written on ISO Occurrence Form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury;

7.1.3. The Owner, and any other parties required by the Owner, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

## 7.2. Auto Liability:

7.2.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of business auto liability insurance in an amount equal to or greater than one million dollars (\$1,000,000).

## 7.3. Excess/Umbrella Liability Insurance:

7.3.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella/excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;

7.3.2. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL;

7.3.3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

## 7.4. Workers' Compensation and Employer's Liability Insurance:

7.4.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of insurance or self-insurance which will insure against all claims

under New York State Workers' Compensation Law at statutory New York State limits.

- 7.5. Certificates of Insurance: Prior to the start of any work, the County shall provide certificates of insurance to the Owner. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of each of the County's policies. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.

## 8. INDEMNIFICATION

- 8.1. The obligations of the Parties under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage;
- 8.2. To the fullest extent permitted by applicable law, the Owner (the "Indemnifying Party") shall indemnify and hold harmless, and at the County's option, defend, the County, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the Owner's authorized personnel) arising out of or in connection with the exercise by the Owner or any of the Owner's authorized personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party;
- 8.3. To the fullest extent permitted by applicable law, the County (the "Indemnifying Party") shall indemnify and hold harmless, and at the Owner's option, defend, the Owner, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any

nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the County's authorized personnel) arising out of or in connection with the exercise by the County or any of the County's authorized personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party.

**9. TERMINATION OF AGREEMENT:**

9.1. This Agreement may be terminated by the County, for any reason, upon thirty (30) days written notice to the Owner;

9.2. This Agreement may be terminated by the Owner, for any reason, upon ninety (90) days written notice to the County.

**10. CHOICE OF LAW/FORUM:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, exclusive of its choice of laws, rules and principles. The Parties agree that any legal action shall be filed in a court of competent jurisdiction in Oneida County, New York.

**11. SEVERABILITY:** If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the Parties hereby agree that this Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the Parties hereby agree that all other provisions shall remain valid and enforceable.

**12. ADVICE OF COUNSEL:** Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

**13. ENTIRE AGREEMENT:** The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the Parties, and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the Parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached

hereto, including, but not limited to, Addendum I (Standard Oneida County Conditions). No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the Party sought to be bound.

IN WITNESS WHEREOF, each of the Parties hereto have affixed their hands and seals the day and year mentioned above.

COUNTY OF ONEIDA

BY: \_\_\_\_\_  
**ANTHONY J. PICENTE, JR.**  
**Oneida County Executive**

ONEIDA COUNTY BOARD OF ELECTIONS

By: \_\_\_\_\_  
**CAROLANN N. CARDONE**  
**Democratic Commissioner of Elections**

ONEIDA COUNTY BOARD OF ELECTIONS

By: \_\_\_\_\_  
**ROSE MARIE GRIMALDI**  
**Republican Commissioner of Elections**

TOWN OF NEW HARTFORD

By: \_\_\_\_\_  
**PAUL A. MISCIONE**  
**Supervisor**

**Approved**

\_\_\_\_\_  
Robert E Pronteau

Assistant Oneida County Attorney



ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
  - i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  - ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  - iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  - iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  - v. Make available protected health information in accordance with 45 CFR §164.524;
  - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
  - vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
  - viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.



6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

## 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

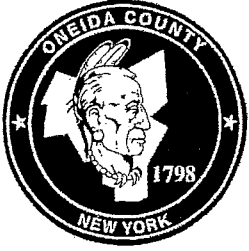
i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



**ONEIDA COUNTY BOARD OF ELECTIONS**

Union Station ♦ 321 Main St. ♦ 3<sup>rd</sup> Floor  
Utica, New York 13501  
Fax: (315) 798-6412

Anthony J. Picente Jr.  
County Executive

Carolann N. Cardone  
Democratic Commissioner  
(315) 798-5762

Rose M. Grimaldi  
Republican Commissioner  
(315) 798-5763

FN 20 19-264

July 19, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building, 10<sup>th</sup> Floor  
800 Park Avenue  
Utica, New York 13501

GOVERNMENT OPERATIONS

**WAYS & MEANS**

Dear County Executive Picente:

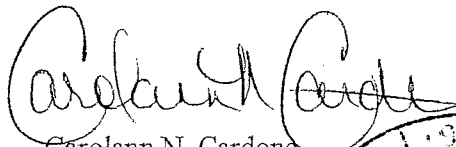
Attached please find a poll site agreement for the Westmoreland Volunteer Fire Department, Inc. for Early Voting for the 2019 General Election. This agreement provides for the Board of Elections to use the Westmoreland Fire House daily from October 26, 2019 through November 3, 2019, in order to provide a location for voters to take advantage of the Early Voting measures just enacted into law this spring. The Fire House will be open for voting from 8:30 AM until 4:30 PM Monday through Friday, and from 9:00 AM until 2:00 PM on the weekends. We will pay the Westmoreland Volunteer Fire Department the sum of \$75.00/day for each of the nine days of Early Voting, or a total of six hundred and seventy-five dollars (\$675.00).

This will be one of the three Early Voting locations across the County, along with the New Hartford Town Office Building and Union Station in Utica. If this agreement meets with your approval, please indicate so by endorsing this letter and forwarding this agreement to the Board of Legislators for consideration at their next scheduled meeting.

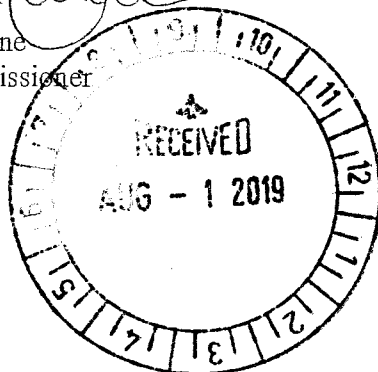
Should you have any questions, please feel free to contact us at our office.

Thank you for your assistance in this matter.

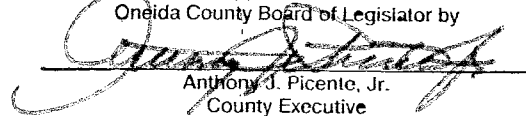
Respectfully,

  
Carolann N. Cardone  
Democratic Commissioner

  
Rose Marie Grimaldi  
Republican Commissioner



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

  
Anthony J. Picente, Jr.  
County Executive

Date 7-30-19



**Oneida Co. Department:** Board of Elections

**Competing Proposal** \_\_\_\_\_  
**Only Respondent** \_\_\_\_\_  
**Sole Source RFP** \_\_\_\_\_  
**Other**     X    

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** Westmoreland Volunteer Fire Department, Inc.  
101 Station Road  
Westmoreland, New York 13490

**Title of Activity or Service:** 2019 Early Voting Poll Site Agreement

**Proposed Dates of Operation:** September 1, 2019 – December 31, 2019

**Client Population/Number to be Served:** N/A

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Poll site agreement for use of premises by the Oneida County Board of Elections daily from October 26, 2019 through November 3, 2019 for Early Voting.
- 2) **Program/Service Objectives and Outcomes:** N/A
- 3) **Program Design and Staffing:** N/A

**Total Funding Requested:** \$675.00                      **Account:** A1450.4951

**Oneida County Dept. Funding Recommendation:** \$675.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** 100% County

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:**

## POLL SITE AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of the 1<sup>st</sup> day of September, 2019, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 800 Park Avenue, Utica, New York, by and through its Board of Elections, hereinafter referred to collectively as the "County," and Westmoreland Volunteer Fire Department, Inc., a domestic not-for-profit corporation organized and existing under the laws of the State of New York, with its principal office located at 101 Station Road, Westmoreland, New York, hereinafter referred to as the "Owner," each a "Party," and collectively, the "Parties."

### WITNESSETH

**WHEREAS**, New York State has enacted changes to the New York Election Law that provide for early voting to be implemented beginning with the general election in 2019 (the "Early Voting"); and

**WHEREAS**, the County is responsible for holding all primary and general elections (the "Elections") throughout Oneida County, including Early Voting; and

**WHEREAS**, the Owner has a facility that the Parties have agreed would be suitable for use as a Poll Site (the "Poll Site") for the Early Voting to be held in; and

**WHEREAS**, the County and the Owner desire to enter into a Poll Site Agreement to clearly state the terms and conditions whereby the Owner shall allow the County to use its premises for the purposes of holding its Early Voting; and

**WHEREAS**, the Oneida County Board of Legislators has approved this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises, terms and obligations hereafter made, the Parties mutually agree and obligate themselves as follows:

### 1. POLL SITE INFORMATION

- 1.1. The Poll Site's name is Westmoreland Volunteer Fire Department;
- 1.2. The Poll Site's address is 101 Station Road, Westmoreland, New York 13490;
- 1.3. Except for the extra security being provided by the County during the Early Voting period, as provided in Sections 3.4 and 6.7, below, the Owner does not request the County to provide security services at the Poll Site during the Early Voting period.

1.4. The Early Voting at the Owner's Poll Site shall include multiple election districts within the County.

1.5. The contact information for the Owner's contact person during the Owner's normal business hours for the Poll Site is:

Name & Title: Bill Peek;

Address: 101 Station Road, P.O. Box 478, Westmoreland, New York 13490;

Telephone number: 315.316.6005;

1.6. The contact information for the Owner's contact person during non-business hours for the Poll Site is:

Name & Title: Charles Miller;

Telephone number: 315.525.6929 or 315.853.6884.

## **2. TERM**

2.1. The term of this Agreement shall be from September 1, 2019 through December 31, 2019, and shall include the entire period of Early Voting in 2019.

2.2. In 2019, the dates for the Early Voting are as follows:

2.2.1. Beginning on Saturday, October 26, 2019, and ending on Sunday, November 3, 2019;

2.3. For all week days, namely October 28, 29, 30, 31 and November 1, 2019, the County shall have uninterrupted use and possession of the Poll Site from 7:00 a.m. until 6:00 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

2.3.1. The Polls will be open for Early Voting on these days from 8:30 a.m. until 4:30 p.m. each day.

2.4. For all weekend days, namely October 26 and 27 and November 2 and 3, 2019, the County shall have uninterrupted use and possession of the Poll Site from 7:30 a.m. until 3:30 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

2.5. The Owner shall immediately notify the County should any conflict arise with the availability of the Poll Site. The Owner may contact the County using the following phone number: (315) 798-5765.

### **3. DELIVERY AND SECURITY OF MACHINES**

3.1. The Owner hereby agrees to make the Poll Site available for delivery and pickup of the voting machines(s) and all necessary voting equipment for one (1) week prior to the Elections and one (1) week after the Elections. The County shall deliver said machines to the Poll Site, possibly including the purple-colored Election Day Bags (the "Election Day Bags");

3.2. Upon receipt of the voting machine(s), the Owner or the Owner's representative shall sign off on a "Voting System Transportation Manifest" (the "Manifest"), confirming that the machines were delivered and received by the Poll Site. The Parties acknowledge and agree that the Owner or their representative's signature on the Manifest is essential to the chain of custody. The Owner or the Owner's representative's signature is also required for the receipt of the Election Day Bags, if delivered.

3.3. The Owner shall keep the voting machines and all necessary voting equipment locked and sealed. The Owner hereby agrees to indemnify, save and hold harmless the County for any damage to the voting machine(s) and/or voting equipment while in the sole custody of the Owner.

3.4. The County shall provide for security of the voting machines and any other necessary voting equipment and voting materials during all times when the polls are closed during the Early Voting period. This security shall be provided by a Oneida County Sheriff's Deputy or an Oneida County Special Patrol Officer, who shall arrive at the close of the polls each day during the Early Voting period, and shall remain until the opening of the polls on the following day.

### **4. OWNER'S OBLIGATIONS:** The Owner hereby promises, covenants and agrees as follows:

4.1. To use reasonable or ordinary care in keeping the Poll Site in a reasonably safe condition. This duty of care shall apply equally to all parking lots or other parking areas adjacent to the Poll Site facility;

4.2. To warn all voters and other visitors, in a clear and conspicuous manner, of any latent or concealed perils that are known or should be known to the Owner or occupant, of which

the voters and other visitors are unaware and cannot discover through the exercise of reasonable care;

- 4.3. To furnish necessary electricity, light and heat to the Poll Site;
- 4.4. To provide access to electrical outlets, as needed;
- 4.5. To provide a telephone for official use only by County poll workers and inspectors. The phone shall be available at all times and must be in or near the poll worker areas to enable them to make and receive calls from the County;
- 4.6. To provide for up to maximum of twelve (12) chairs and three (3) tables no less than forty-eight (48) inches in length per election district;
- 4.7. To ensure that the Poll Site is accessible to the public during the times specified herein, and that the doors are opened;
- 4.8. To ensure that there is a functional restroom facility available for use by the County poll workers and inspectors;
- 4.9. To ensure that the Poll Site is not located on premises owned or leased by a person holding office or who is a candidate for public office at a primary or general election, and to notify the County immediately if the Owner should become aware that this has occurred or is occurring;
- 4.10. To ensure that the Poll Site is situated in a room or location within the building suitable for registration and voting, and which is as close as possible to a convenient entrance to such building that provides access, by ramp or otherwise, to physically disabled voters;
- 4.11. To ensure that the Poll Site is otherwise accessible to citizens with disabilities and complies with the accessibility guidelines of the Americans with Disabilities Act (the "ADA");
- 4.12. To ensure that the Poll Site is opened at the designated time to allow inspectors sufficient time to set up the voting system as well as arrange the Poll Site;
- 4.13. To make available access to a refrigerator and/or kitchen for use by the County poll workers and inspectors;

- 4.14. To have the Poll Site clear of extra furnishings prior to the arrival of the County poll workers and inspectors, in order to ensure that there is adequate space to accommodate the voting machine(s) as well as the voting booths;
- 4.15. To consent to the County's placement of temporary cones, signs and other devices in and around the Poll Site to notify voters of the voting area;
- 4.16. To acknowledge that all items placed at the Poll Site by County poll workers and inspectors shall remain the sole property of the County; and
- 4.17. To acknowledge that in the event any of the Early Voting dates are delayed or continued to another date as a result of a common disaster, the Owner agrees to make the Poll Site(s) available to the County on a subsequently scheduled election date.
- 4.18. To allow for and accommodate the continuous and uninterrupted presence of the Oneida County Sheriff's Deputy or Special Patrol Officer during all hours throughout the Early Voting period when the polls are closed.

## **5. OWNER'S INSURANCE REQUIREMENTS**

- 5.1. As part of its' obligation to indemnify, defend and hold harmless the County as set forth herein, the Owner agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.
- 5.2. Commercial General Liability Insurance (CGL): The Owner shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate.
- 5.3. Excess/Umbrella Liability Insurance: The Owner shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella and/or excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence.

## **6. COUNTY'S OBLIGATIONS:** The County hereby promises, covenants, agrees and acknowledges as follows:

- 6.1. Not to use the Poll Site or any part thereof for any purpose other than the official voter registration and election functions;

- 6.2. Not to sub-license or assign any rights under this Agreement over said Poll Site or any part thereof to another without the prior written consent of the Owner;
- 6.3. To punctually pay rent, if any, as the same accrues. The rent for this Agreement shall be seventy-five dollars (\$75.00) per day of the Early Voting period, for a total of six hundred and seventy-five dollars (\$675.00);
- 6.4. To use reasonable care to ensure that no damage happens to the building or any improvements or fixtures therein;
- 6.5. To provide security services if so requested in paragraph 1 of this Agreement; and
- 6.6. To hold the Owner harmless for any damage caused to the Poll Site(s) by placement of voting machines, booths, or other items in the Poll Site(s).
- 6.7. To provide for an Oneida County Sheriff's Deputy or Special Patrol Officer to provide security over the voting machines and voting equipment and materials at the Poll Site at all times during the Early Voting period where the polls are closed.

**7. COUNTY'S INSURANCE REQUIREMENTS:** As part of its obligation to indemnify, defend and hold harmless the Owner as set forth herein, the County agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.

7.1. Commercial General Liability ("CGL") Insurance:

7.1.1. The County shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;

7.1.2. CGL coverage shall be written on ISO Occurrence Form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury;

7.1.3. The Owner, and any other parties required by the Owner, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

7.2. Auto Liability:

7.2.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of business auto liability insurance in an amount equal to or greater than one million dollars (\$1,000,000).

7.3. Excess/Umbrella Liability Insurance:

7.3.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella/excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;

7.3.2. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL;

7.3.3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

7.4. Workers' Compensation and Employer's Liability Insurance:

7.4.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of insurance or self-insurance which will insure against all claims under New York State Workers' Compensation Law at statutory New York State limits.

7.5. Certificates of Insurance: Prior to the start of any work, the County shall provide certificates of insurance to the Owner. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of each of the County's policies. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.



## 8. INDEMNIFICATION

- 8.1. The obligations of the Parties under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage;
- 8.2. To the fullest extent permitted by applicable law, the Owner (the "Indemnifying Party") shall indemnify and hold harmless, and at the County's option, defend, the County, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the Owner's authorized personnel) arising out of or in connection with the exercise by the Owner or any of the Owner's authorized personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party;
- 8.3. To the fullest extent permitted by applicable law, the County (the "Indemnifying Party") shall indemnify and hold harmless, and at the Owner's option, defend, the Owner, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the County's authorized personnel) arising out of or in connection with the exercise by the County or any of the County's authorized personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party.

**9. TERMINATION OF AGREEMENT:**

9.1. This Agreement may be terminated by the County, for any reason, upon thirty (30) days written notice to the Owner;

9.2. This Agreement may be terminated by the Owner, for any reason, upon ninety (90) days written notice to the County.

**10. CHOICE OF LAW/FORUM:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, exclusive of its choice of laws, rules and principles. The Parties agree that any legal action shall be filed in a court of competent jurisdiction in Oneida County, New York.

**11. SEVERABILITY:** If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the Parties hereby agree that this Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the Parties hereby agree that all other provisions shall remain valid and enforceable.

**12. ADVICE OF COUNSEL:** Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

**13. ENTIRE AGREEMENT:** The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the Parties, and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the Parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Addendum I (Standard Oneida County Conditions). No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the Party sought to be bound.

IN WITNESS WHEREOF, each of the Parties hereto have affixed their hands and seals the day and year mentioned above.

COUNTY OF ONEIDA

BY: \_\_\_\_\_  
**ANTHONY J. PICENTE, JR.**  
**Oneida County Executive**

ONEIDA COUNTY BOARD OF ELECTIONS

By: \_\_\_\_\_  
**CAROLANN N. CARDONE**  
**Democratic Commissioner of Elections**

ONEIDA COUNTY BOARD OF ELECTIONS

By: \_\_\_\_\_  
**ROSE MARIE GRIMALDI**  
**Republican Commissioner of Elections**

WESTMORELAND VOLUNTEER FIRE DEPARTMENT, INC.

By: \_\_\_\_\_  
**CHARLES MILLER**  
**President**

**Approved**

\_\_\_\_\_  
Robert E. Pronteau  
Assistant Oneida County Attorney

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
  - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
  - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
- D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
- 1) Abide by the terms of the statement; and
  - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:
- Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the



Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services



(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR  
County Executive

CHAD LAWRENCE  
Commissioner

July 22, 2019

Anthony J. Picente, Jr  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

FN 20 19-265

**AIRPORT**

Re: NYS DOT Grant PIN2905.75  
Nose Dock 782 Construction

**WAYS & MEANS**

Dear County Executive Picente:

Please consider acceptance of a consultant agreement with C&S Engineers in the amount of \$447,413.05. The agreement is for the design and construction administration & observation to convert 28,000 square feet of hangar space located at Nose Dock 782 to classroom and training space for MVCC's Airframe & Power Plant (A&P) school. The total cost of the agreement is \$447,413.05.

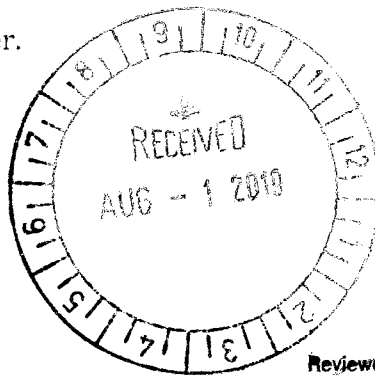
The project generally includes the reconstruction of approximately 28,000 square feet of hangar space to classroom and training space.

We have received a New York State Department of Transportation grant to complete this work. The Capital Account # is H-580.

If you concur, please forward to the Board of Legislators for consideration at their next meeting.

Thank you for your assistance in this matter.

Chad Lawrence  
Commissioner of Aviation



dmm/cl

Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 7-30-19

Competing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u>  X  </u>

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:**

C&S Engineers, Inc.  
499 Col. Eileen Collins Blvd  
Syracuse, NY 13212

**Title of Activity or Service:**

Consultant Agreement for Nose Dock  
782 Rehabilitation in the amount of  
\$447,413.05

**Proposed Dates of Operation:**

**Client Population/Number to be Served:**                      N/A

**Summary Statements**

1) Narrative Description of Proposed Services:

**This is a Design & Construction Administration & Observation agreement for the purpose of converting 28,000 square feet of hangar space into classroom and training space for MVCC's A&P school at Griffiss International Airport. The agreement is in the amount of \$447,413.05.**

2) Program/Service Objectives and Outcomes:

**Accomplishment of the classroom and training space for MVCC's A&P school.**

3) Program Design and Staffing: N/A

**Total Funding Requested: \$447,413.05                      Account #: H-580**

**Oneida County Dept. Funding Recommendation: \$447,413.054**

**Proposed Funding Sources : State \$ /MVCC \$/County \$**

**O.C. Department Staff Comments: The cost of this agreement is funded by a grant from the New York State Department of Transportation.**

**LUMP SUM  
CONSULTANT AGREEMENT  
FOR  
DESIGN AND CONSTRUCTION ADMINISTRATION AND  
OBSERVATION  
OF  
HANGAR 782 MVCC A&P SCHOOL PROJECT  
AT  
GRIFFISS INTERNATIONAL AIRPORT  
ROME, NEW YORK**

**ONEIDA COUNTY CONTRACT NO. \_\_\_\_\_**

**NYSDOT NO. \_\_\_\_\_**

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**LUMP SUM CONSULTANT AGREEMENT**  
**FOR**  
**DESIGN AND CONSTRUCTION**  
**ADMINISTRATION AND OBSERVATION**

**PROJECT: Hangar 782 MVCC A&P School  
Griffiss International Airport**

This Agreement, made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2019, is by and between the County of Oneida, a New York municipal corporation, having an address at 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the "SPONSOR"), and C & S Engineers, Inc., a New York business corporation having its principal offices at 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212 (hereinafter referred to as the "CONSULTANT").

**WITNESSETH:** That the SPONSOR and the CONSULTANT, for and in consideration of the mutual obligations set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

**ARTICLE 1—DESCRIPTION OF SERVICES TO BE PERFORMED**

The SPONSOR hereby retains the CONSULTANT because of its ability and reputation, and the CONSULTANT accepts such retention, to perform for the SPONSOR the services of the Project more particularly described in Schedule(s) "A", which is attached hereto and made a part hereof (the "Basic Services"). The SPONSOR's resolution or other authorization for retaining the CONSULTANT is attached hereto and made a part hereof as Schedule "E". The SPONSOR has completed or will complete a "Certification for Selection of Consultant" in connection with the execution of this Agreement, a copy of which is attached hereto and made a part hereof as Schedule "D".

**ARTICLE 2—PROVISION FOR PAYMENT – TIME FOR PERFORMANCE**

The SPONSOR shall pay to the CONSULTANT, and the CONSULTANT shall accept, as full compensation for the performance by the CONSULTANT of the Basic Services a lump sum fee of **\$447,413.05**, which covers salaries of employees assigned to the Project, all indirect costs, all direct expenses, and profit. The maximum fee under this Agreement cannot be exceeded for any reason, unless Additional Services are authorized and performed in accordance with the provisions of Article 11 of this Agreement. The method of computation of the CONSULTANT's lump sum fee is prescribed in Schedule(s) "B", which is attached hereto and made a part hereof.

Partial payments of the lump sum fee shall be made monthly on account. The portion of the fee billed for the CONSULTANT's Basic Services will be based upon the CONSULTANT's estimate of the proportion of the total Basic Services actually completed and expenses actually incurred at the time of billing. Payment of the final invoice will be made upon the substantial completion of the Basic Services covered by the lump sum fee.

If the SPONSOR fails to make any payment due the CONSULTANT for services and expenses within forty-five (45) days after receipt of the CONSULTANT's invoice therefor, then the CONSULTANT may, after giving seven (7) days' notice to the SPONSOR, suspend services under this Agreement until the invoice is paid. Upon payment in full by the SPONSOR, the CONSULTANT shall resume performance or furnishing of services under this Agreement, and the time schedule and compensation set forth in Schedule(s) "B" hereto shall be equitably adjusted to compensate for the period of suspension.

Execution of this Agreement by the SPONSOR and the CONSULTANT constitutes the SPONSOR's written authorization to the CONSULTANT to proceed as of the above-written date with the performance of Basic Services as set forth in Schedule(s) "A". The time for completion of the Basic Services under this Agreement, subject to the provisions of Articles 11, 12, and 22 hereof, shall be as recorded in Schedule(s) "A".

### **ARTICLE 3—STANDARD OF CARE, STANDARD PRACTICES, AND REQUIREMENTS**

The standard of care for all engineering and related services performed or furnished by the CONSULTANT under this Agreement shall be the care and skill ordinarily used by members of the CONSULTANT's profession practicing under similar conditions at the same time and in the same locality. Before beginning to perform or furnish any service hereunder, the CONSULTANT shall ascertain the standard practices of the SPONSOR, the NYSDOT, and the FAA, if any, for projects of a type similar to this Project. Where the CONSULTANT deems it practicable to do so, the services to be provided or furnished under this Agreement shall be performed in accordance with these standard practices as long as they are consistent with the standard of care. If any of these standard practices are inconsistent with the CONSULTANT's standard of care or are in conflict with one another, or if strict adherence to the same is impossible, then the CONSULTANT shall advise the SPONSOR of such conflict or impossibility. The CONSULTANT and the SPONSOR shall then meet to resolve such conflict or address such impossibility. In the event that such conflict cannot be resolved in consonance with the CONSULTANT's standard of care or such impossibility cannot be addressed in consonance with the CONSULTANT's standard of care, then the CONSULTANT and the SPONSOR shall terminate this Agreement and enter into a reformed Agreement with adjustments to the services to be performed and the compensation to be paid or terminate this Agreement pursuant to the terms and conditions set forth in Article 11 hereinafter.

### **ARTICLE 4—ENTIRE AGREEMENT**

This Agreement, with its accompanying Schedule or Schedules and Addendum, constitutes the entire agreement between the SPONSOR and the CONSULTANT with respect to its subject matter, and supersedes any prior agreement, whether written or verbal, with respect to that subject matter. This Agreement may be amended or modified only by written instrument signed by the SPONSOR and the CONSULTANT.

### **ARTICLE 5—TAXES, ROYALTIES, AND EXPENSES**

The CONSULTANT shall pay all taxes, royalties, and expenses incurred by the CONSULTANT in connection with performing its services under this Agreement, unless otherwise provided in Article 2.



## ARTICLE 6—INDEMNIFICATION AND INSURANCE

- 6.1. Indemnification. The CONSULTANT agrees that it shall defend, indemnify and hold harmless the COUNTY from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the CONSULTANT and its subconsultants, agents, servants, or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the CONSULTANT and its subconsultants or failure on the part of the CONSULTANT and its subconsultants to comply with any of the covenants, terms or conditions of this agreement.
- 6.2. Insurance Requirements. CONSULTANT shall procure and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by COUNTY. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence work in until such insurance has been approved by COUNTY. The certificates shall be on forms approved by COUNTY. Acceptance of the certificates shall not relieve CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. COUNTY reserves the right to require CONSULTANT to provide insurance policies for review by COUNTY. CONSULTANT grants COUNTY a limited power of attorney to communicate with CONSULTANT's insurance provider and/or agent for the express purpose of confirming the coverages required hereunder.
- 6.3. Commercial General Liability Insurance. The CONSULTANT agrees that it will, at its own expense, at all times during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than One Million Dollars (\$1,000,000.00). The CONSULTANT agrees to have the COUNTY added to said insurance policies as a named additional insured, on a primary, non-contributory basis, as its interests may appear, and to provide the COUNTY with a certificate from said insurance company, or companies, showing coverage as herein before required, such certificate to show the COUNTY as an additional insured and to provide that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.4. Professional Liability Insurance. The CONSULTANT shall maintain a professional liability policy, including errors and omissions, and will provide the COUNTY with proof of coverage in the amount of One Million Dollars (\$1,000,000.00) per incident and One Million Dollars (\$1,000,000.00) aggregate. The CONSULTANT agrees that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.5. CONSULTANT shall maintain Auto Liability insurance in an amount equal to or greater than \$1,000,000.00 for the duration of this Agreement. The CONSULTANT agrees to have the COUNTY added to said insurance policies as a named additional insured, on a primary, non-contributory basis, as its interests may appear, and to provide the COUNTY with a certificate from said insurance company, or companies, showing coverage as herein before required, such certificate to show the COUNTY as an additional insured and to provide that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.6. Workman's Compensation insurance shall be procured and maintained by CONSULTANT in accordance with New York State Law.

6.7. CONSULTANT shall require any subconsultant to procure and maintain insurance coverage of the same type and in the same amounts with the same endorsements required of the CONSULTANT in paragraphs 6.3, 6.4, 6.5, and 6.6 above.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the SPONSOR beyond such as may legally exist irrespective of this Article or this Agreement.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the SPONSOR nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the SPONSOR and the CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

The provisions of this Article 6 shall survive termination or expiration of this Agreement.

#### **ARTICLE 7—LABOR LAW REQUIREMENTS**

The CONSULTANT, and any subconsultant or subcontractor retained by it in connection with the performance or furnishing of services under this Agreement, shall comply with the requirements of state or federal statutes, regulations, or orders applicable to the employment of employees, as set forth in Schedules "H", "I" and "J", which are attached hereto and made a part hereof.

#### **ARTICLE 8—NONDISCRIMINATION PROVISIONS**

During the performance of its services under this Agreement, the CONSULTANT, and any subconsultant, subcontractor, or vendor retained by it, shall comply with the nondiscrimination requirements set forth in Schedules "H" and "I" hereto, as applicable to this Project.

The CONSULTANT will include the provisions of Schedules "H", "I" and "J" in every subconsultant agreement, subcontract, or purchase order in such a manner that such provisions will be binding upon each subconsultant, subcontractor, or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing such provisions of such subconsultant agreement, subcontract, or purchase order as the SPONSOR may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation by a subconsultant, subcontractor, or vendor as a result of such direction by the SPONSOR, the CONSULTANT shall promptly so notify the SPONSOR's legal counsel, requesting such counsel to intervene and protect the interests of the SPONSOR.

#### **ARTICLE 9—ASSIGNMENT REQUIREMENTS**

The CONSULTANT specifically agrees that:

- A. It is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement or of its right, title, or interest herein, or its power to execute this Agreement, to any other person, company, or corporation without the previous consent in writing of the SPONSOR, and the Commissioner of the NYSDOT.
- B. If this provision of the Agreement is violated, the SPONSOR may terminate this Agreement for cause in

accordance with the provisions of Article 12. Furthermore, the SPONSOR shall be relieved from any liability and obligation hereunder to the person, company, or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement in violation of the foregoing paragraph (A), and such transferee shall forfeit and lose all monies assigned to it under this Agreement, except so much as may be required to pay its employees.

#### ARTICLE 10—ADDITIONAL SERVICES

If authorized in writing by the SPONSOR through a Supplemental Agreement, the CONSULTANT shall furnish or obtain from others any service that is beyond the scope of Schedule(s) "A" ("Additional Services"). The scope, and time for performance, and payment from the SPONSOR to the CONSULTANT for, any Additional Services (which shall be on the basis set forth in Schedule(s) "B") shall be set forth in such Supplemental Agreement.

#### ARTICLE 11—ABANDONMENT OR AMENDMENT OF PROJECT AND TERMINATION

A. ABANDONMENT OR AMENDMENT OF THE PROJECT—The SPONSOR shall have the absolute right to abandon or to amend its Project or to change the general basis of performance at any time, and such action on its part shall in no event be deemed a breach of this Agreement. If the SPONSOR amends its Project or changes the general basis thereof, and the CONSULTANT is of the opinion that Additional Services are made necessary thereby, then the provisions of Article 10 of this Agreement with respect to Additional Services shall apply. If the SPONSOR abandons the Project, then the provisions of paragraph B(1)(b) below shall govern payment to the CONSULTANT.

B. TERMINATION

The obligation to provide further services under this Agreement may be terminated:

1. For Cause:

- a. By either party upon thirty (30) days' prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as the result of such substantial failure if the party receiving notice begins, within seven (7) days after receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within thirty (30) days of such receipt; provided that, if and to the extent that such substantial failure cannot reasonably be cured within such thirty (30)-day period, and if the party has diligently attempted to cure the failure and thereafter continues diligently to cure the problem, then the cure period may, in the discretion of the terminating party, be extended to sixty (60) days after the receipt of notice.
- b. By the CONSULTANT upon seven (7) days' written notice if (a) the CONSULTANT believes that it is being requested by the SPONSOR to perform or furnish services contrary to or in conflict with the CONSULTANT's responsibilities as a licensed design professional or the standard of care set forth in Article 3 hereof; or (b) the CONSULTANT's services are delayed or suspended for more than ninety (90) days, consecutively or in the aggregate, for reasons beyond the CONSULTANT's control; or (c) the SPONSOR has abandoned, or is considered to have abandoned, the Project.

2. **For convenience** by the SPONSOR, effective upon the receipt of notice by the CONSULTANT.

C. PAYMENTS UPON TERMINATION

1. **For Cause:**

- a. By the SPONSOR: If the SPONSOR terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT and its subconsultants, subcontractors, and vendors through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for cause during any phase of Basic Services, the CONSULTANT will also be paid for such services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". The CONSULTANT will also be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services to the extent that such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses.
- b. By the CONSULTANT: If the CONSULTANT terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed or furnished by the CONSULTANT and its subconsultants, subcontractors, or vendors through the completion of such phase shall constitute total payment for such services. The CONSULTANT shall also be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" hereto measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

2. **For convenience**

If the SPONSOR terminates this Agreement for convenience upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for convenience during any phase of Basic Services, the CONSULTANT will also be paid for such services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". Additionally, the CONSULTANT will be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services through the effective date of termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

**ARTICLE 12—SUSPENSION OF SERVICES**

If the CONSULTANT's services hereunder are delayed or suspended, in whole or in part, by the SPONSOR for more than ninety (90) calendar days, consecutively or in the aggregate, through no fault of the CONSULTANT, then the CONSULTANT may consider the Project to have been abandoned by the SPONSOR and may terminate

this Agreement for cause.

Upon the SPONSOR's resumption of its Project, and if the CONSULTANT has not terminated this Agreement for cause, the CONSULTANT shall resume its services under this Agreement until the services are completed and accepted, subject to any adjustment in the rates set forth in Schedule(s) "B" because of the passage of time.

#### **ARTICLE 13—INTERCHANGE OF DATA**

During the performance of this Agreement, all technical data in regard to the Project whether (a) existing in the office of the SPONSOR or (b) existing in the office of the CONSULTANT, shall be made available to the other party to this Agreement without expense to such other party.

#### **ARTICLE 14—DISPOSITION OF PROJECT DOCUMENTS**

At the time of completion of its services and upon payment in full therefor, the CONSULTANT shall make available to the SPONSOR copies of documents prepared as the result of this Agreement. These documents shall then become the property of the SPONSOR and the maintenance of the data therein shall be the sole responsibility of the SPONSOR. Any reuse of the documents by the SPONSOR or others on extensions of the Project, or on any other project, without written verification or adaptation by the CONSULTANT and its subconsultants, subcontractors, or vendors, as appropriate, for the specific purpose intended will be at the SPONSOR's sole risk and expense and without liability or legal exposure to the CONSULTANT or its subconsultants, subcontractors, or vendors. The SPONSOR shall indemnify the CONSULTANT, its subconsultants, subcontractors, and vendors against, and hold them harmless from, all claims, damages, losses, and expenses (including reasonable expert and attorneys' fees) arising out of or resulting from such reuse.

In the event that this Agreement is terminated for any reason, then within ten (10) days after such termination, the CONSULTANT shall make available to the SPONSOR all data and material prepared under this Agreement, including cover sheets, in accordance with and subject to the terms of the above paragraphs.

#### **ARTICLE 15—CODE OF ETHICS**

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any service under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, as amended, and Schedule "G", which is attached hereto and made a part hereof.

#### **ARTICLE 16—INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with its status as an independent contractor, shall conduct itself consistent with such status; shall neither hold itself out as nor claim to be an officer or employee of the SPONSOR by reason hereof; and shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the SPONSOR, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

#### **ARTICLE 17—PATENT RIGHTS AND COPYRIGHTS**

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-

how, data, and findings, shall be made available without cost to the State of New York or its licensees and the FAA for public use. No material prepared in connection with this Project shall be subject to copyright. The State and the FAA shall have the right to publish, distribute, disclose, or otherwise use any material prepared under this Project, subject to the provisions of Article 14 hereof.

#### **ARTICLE 18—NEW YORK STATE PARTICIPATION**

The services to be performed in this Agreement are included in a NYSDOT Project, which is being undertaken and accomplished by the SPONSOR and the State of New York and pursuant to which the State of New York has agreed to pay a certain percentage of the allowable Project costs. The State of New York is not a party to this Agreement and no reference in this Agreement to the Commissioner of Transportation or any representative thereof, or to any rights granted to the Commissioner of Transportation or any representative thereof or the State of New York by the Agreement, makes the State of New York a party to this Agreement.

The CONSULTANT and the SPONSOR agree that properly authorized officials of the State of New York may from time to time inspect all Project documents for the purpose of insuring compliance with New York State laws and protecting the interests of the State of New York.

#### **ARTICLE 19—FEDERAL PARTICIPATION**

The CONSULTANT and the SPONSOR agree that properly authorized officials of the FAA may from time to time inspect all Project documents for the purpose of insuring compliance with Federal laws and protecting the interests of the FAA.

#### **ARTICLE 20—MISCELLANEOUS**

- A. The CONSULTANT shall require all persons employed to perform services hereunder, including its subconsultants or subcontractors, vendors, agents, officers, and employees, to comply with applicable laws in the jurisdiction in which the Project is located.
- B. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- C. By execution of this Agreement, the CONSULTANT represents that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining any approval of this Agreement.
- D. Any notice required under this Agreement shall be in writing, addressed to the appropriate party at the address set forth above, and shall be given personally; by registered or certified first-class mail, postage prepaid and return receipt requested; by facsimile transmission, with confirmation of receipt; or by a nationally-recognized overnight courier service, with proof of receipt. Notice shall be effective upon the date of receipt. For purposes of this Agreement, failure or refusal to accept receipt shall constitute receipt nonetheless. Either party may change its address for notice by giving notice to the other in accordance with the terms of this paragraph.
- E. This Agreement, and the interpretation and enforcement of the provisions hereof, is governed by the laws of the State of New York.
- F. SPONSOR acknowledges that:

- CONSULTANT is not recommending any action to SPONSOR or other obligated person hereunder that would cause CONSULTANT to be considered a municipal advisor for purposes of the Securities and Exchange Commission Registration of Municipal Advisors Rule, 78 Fed. Reg. 67468 (2013);
- CONSULTANT does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) to SPONSOR or other obligated person with respect to the information and material contained in this Agreement or any Project deliverable; and
- SPONSOR or other obligated person should discuss any information and material contained in this Agreement or Project deliverable with any and all internal or external advisors and experts that SPONSOR or other obligated person deems appropriate before acting on this information or material.

G. As the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Project Contractor's method of determining prices, or over competitive bidding or market conditions, the Consultant's opinions of probable Project Costs and Construction Costs, if required as part of the Scope of Services for the Project, are to be made on the basis of experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Consultant cannot and does not guarantee that proposals, bids, or actual Project Costs or Construction Costs will not vary from opinions of probable cost prepared by the Consultant.

#### **ARTICLE 21— SUBCONSULTANTS/SUBCONTRACTORS AND VENDORS**

All subconsultants and subcontractors performing services for or work on this Project shall be bound by the same required provisions of this Agreement as is the CONSULTANT. As set forth above, all agreements between the CONSULTANT and a subconsultant, subcontractor, or vendor shall include all standard required contract provisions, and such agreements shall be subject to review by the NYSDOT and the FAA.

#### **ARTICLE 22 — FORCE MAJEURE**

Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including, but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; loss of utility services; blizzard; flood; fire; labor unrest; strikes; war; riot; or any cause the party is unable to prevent with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay. Additionally, if the delay resulting from any of the foregoing increases the cost of or time required by CONSULTANT to perform its services hereunder in an orderly and efficient manner, then CONSULTANT shall be entitled to an equitable adjustment in schedule and/or compensation.

#### **ARTICLE 23 — DISPUTE RESOLUTION**

A. The SPONSOR and the CONSULTANT agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them prior to exercising their right under Section 24B below. The thirty-day period may be extended upon mutual agreement of the parties.

- B. If any dispute cannot be resolved pursuant to paragraph (A) above, and only if mutually agreed by SPONSOR and CONSULTANT, said dispute and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or the breach of any provision hereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to a party initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding. The cost of mediation shall be shared equally between the parties.
- C. Any dispute that cannot be resolved pursuant to paragraphs A and B above shall be adjudicated by a court of competent jurisdiction in Oneida County, New York.

IN WITNESS WHEREOF, this Agreement has been executed by the SPONSOR, acting by and through the County Executive, who has caused the seal of his or her office to be affixed hereto, and by the CONSULTANT, acting by and through a duly-authorized officer, effective the day and year first above-written, subject to the approval of the Commissioner of the NYSDOT, the State Comptroller, and the FAA.

**SPONSOR**  
**ONEIDA COUNTY, NEW YORK**

**CONSULTANT**  
**C&S ENGINEERS, INC.**

By: \_\_\_\_\_  
 Hon. Anthony J. Picente, Jr.

By: \_\_\_\_\_  
 Jeffrey D. Palin, P.E.

Title: County Executive

Title: Service Group Manager, Facilities

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

Date: 6/28/19

Approved as to Form only



Oneida County Attorney



**SCHEDULE A**

**SCHEDULE A**  
**SCOPE OF WORK**

**PROJECT TITLE:** HANGAR 782 MVCC A&P SCHOOL  
**AIRPORT NAME:** GRIFFISS INTERNATIONAL AIRPORT  
**SERVICES PROVIDED:** DESIGN AND CONSTRUCTION OBSERVATION

**PROJECT DESCRIPTION:**

The CONSULTANT shall provide required professional services to design and observe the construction of the renovations to Hangar 782 MVCC A&P School (the "Project").

Convert the 28,000 sf of Hangar Building 782 to A&P classroom and training space. This project will include all of the necessary space to expand the existing FAA approved A&P program.

Professional services to be provided by the CONSULTANT shall include civil, electrical, structural, mechanical, plumbing services, and fire protection services as applicable, required to accomplish the following items ("Basic Services"):

The project schedule is anticipated to be as follows:

	<u>Anticipated Completion Date</u>
Contract Execution	January 9, 2019
Notice to Proceed Design (NTP)	January 9, 2019
Preliminary Design (50%)	February 15, 2019
Final Design	March 1, 2019
Advertise	March 15, 2019
Receive Bids	April 1, 2019
Contracts to County for execution/County legal	May 15, 2019
Receive contracts back from County	June 15, 2019
NTP	June 15, 2019
Substantial completion	November 15, 2019 (100 working days)

**PRELIMINARY DESIGN PHASE**

The Preliminary Design Phase is intended to identify and evaluate alternatives to provide cost-effective and practical solutions for the work items identified. The CONSULTANT will evaluate alternatives through contacts with local authorities, review of the preapplication, field investigations, and a practical design approach. The Project's design will take advantage of local knowledge and experience and will utilize expertise from recent construction projects in an effort to design a cost-effective Project. The specific services to be provided or furnished for this Phase of the project are the following:

1. Schedule and conduct a pre-design meeting with the COUNTY to review the Scope of Services and become familiar with the Project requirements and operational concerns during the Project's

construction.

2. Acquire and review record documents (such as plans, specifications, reports, and studies) to become familiar with data that is available for the project.
3. Perform a preliminary Project site inspection to further familiarize the design team with building and major components.
4. Perform a preliminary environmental review, including the collection and review of available documents such as environmental studies, asbestos, and lead paint survey to identify potential impacts the Project may have on the environment.
5. Perform Code review in accordance with New York State current building code.
6. Preliminary design of interior hangar space. Specific items include the following:
  - Demolition Plan
  - Design toilet rooms
  - Repair Hangar floor and epoxy coat as necessary
  - Egress doors to be removed and replaced as necessary
  - Design of new office areas
  - Design of HVAC system
  - Design of plumbing system
  - Design of electrical and lighting system upgrades
  - Design of Fire Alarm and fire Suppression Systems
7. Schedule and conduct a meeting with the SPONSOR to review the preliminary design.
8. Prepare preliminary opinion of probable construction costs for each major element of the Project.

## **FINAL DESIGN PHASE**

The services included under this Phase shall generally consist of services required to furnish the COUNTY with a complete set of Contract Documents for the Project, including Final Plans, Specifications, and opinion of probable construction costs. Services to be performed or furnished during this Phase may include revising the preliminary submittal information to comply with COUNTY comments and then completion of the final design. Plans and Specifications will be completed; final design will be coordinated with the COUNTY; and a complete set of bid documents will be furnished to the COUNTY. A final opinion of probable construction cost will also be prepared and submitted. A final Construction Phasing and Operations Plan will be included as part of the specifications.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Final design of interior hangar space, including mezzanines (if included), office space, and bathrooms
2. Final design of HVAC.
3. Final design of plumbing system.

4. Final design of electrical and lighting system upgrades.
5. Final design of communication/security system.
6. Fire alarm and fire suppression systems.
7. Finalize General Specifications and prepare written Technical Specifications for all construction materials and installations. Finalize construction phasing and operations plan and include in Specifications.
8. Prepare final opinion of probable construction costs based upon the actual bid items and quantity takeoffs.
9. Submit draft final documents to COUNTY for final review and comment. Schedule and conduct draft final review meeting with COUNTY to discuss and resolve final comments.
10. Reproduce and submit sufficient copies of bid documents to COUNTY for bidding purposes. Bid documents shall consist of the Contract Drawings and Specifications.

#### **BID PHASE**

The Bid Phase is that time frame between completion of the design process and beginning of actual construction when the COUNTY publicly advertises and receives bids, awards contracts to the lowest responsible bidder, and executes a construction contract to perform the work with the successful contractor(s). The CONSULTANT shall assist the COUNTY during this Phase as required.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Assist COUNTY in the advertisement of the Project and issuance of bid documents.
2. Receive and respond as required to questions from potential bidders regarding the Contract Documents.
3. Schedule and conduct pre-bid conference(s) as requested by COUNTY and advise COUNTY on matters relating to design. Prepare meeting minutes of the pre-bid conference(s).
4. Prepare addenda to the bid documents after advertisement and prior to bidding as required upon the COUNTY'S approval.
5. Attend bid opening. Upon receipt of bids, perform bid reviews. The bid review shall include items such as a check of the contractor's bid extensions, bid security, execution of bid, non-collusive bidding certificate, EEO certification, statement of surety's intent, addenda receipt, eligibility certification, corporate bidder's certification, non-discrimination statement and nonsegregated facilities certificate. Request evidence of competency and evidence of financial responsibility from the contractor. Review contractor's list of personnel, list of equipment, and financial statement. Formal contact of the contractor's references shall be made upon COUNTY's request or if the contractor has no past working relationship with CONSULTANT and COUNTY.
6. Prepare a final bid tabulation, recommendation / rejection of award to the COUNTY, and a sample award letter.

7. Upon award of contract, prepare conformed copies of contracts; coordinate contractor's execution of contract; review contractor's bonds, insurance certificates; review contractor's submission with COUNTY and coordinate COUNTY'S execution of the contract.
8. Coordinate Notice to Proceed (NTP) for construction.

#### **CONSTRUCTION CONTRACT ADMINISTRATION PHASE**

The Construction Contract Administration Phase shall consist of observation of the construction to become generally familiar with the progress and quality of the Contractor's work to determine if the work is proceeding in general conformity with the Contract Documents. In addition, the CONSULTANT shall aid the SPONSOR by acting as its liaison and Project coordinator with the NYSDOT during the construction of the Project. Construction Contract Administration includes the following services:

1. Provide consultation and advice to the SPONSOR during construction, including the holding of a pre-construction conference, bi-weekly construction coordination meetings, and other meetings required during the course of construction. Prepare and distribute minutes of all meetings.
2. Review, approve, or take other appropriate action on all Contractor-required submittals, such as construction schedules and phasing programs, shop drawings, product data, catalog cuts, and samples.
3. Review alternative construction methods proposed by the Contractor and advise the SPONSOR of the impact of these methods on the schedule and quality of the Project.
4. Prepare supplemental drawings and change orders necessary to execute the work properly within the intended scope. Assist the SPONSOR in resolving contractor claims and disputes.
5. Provide interpretation of the Contract Document requirements and advise the Contractor of these on behalf of the SPONSOR when necessary.
6. Furnish the SPONSOR one reproducible set of the record drawings for the completed Project taken from the annotated record drawings prepared by the resident inspector based upon Contractor-provided information.
7. Prepare reimbursement request packages; coordinate their execution by the SPONSOR; and submit to the funding agencies.
8. Conduct pre-final and final inspections of the completed Project with the SPONSOR's airport personnel, the FAA, and the Contractor.
9. Issue certificates of construction completion to the SPONSOR, and the NYSDOT.
10. Perform an orderly closeout of the Project as required by the SPONSOR, and the NYSDOT.
11. Provide assistance to the SPONSOR as a witness in any litigation that may arise from the development or construction of the Project. Payment for this service will be as stated in Article 2(A), Item V, of the CONSULTANT Agreement for the Project, of which this Schedule forms a part.

## CONSTRUCTION OBSERVATION PHASE

The construction observation phase shall consist of construction observation by a full-time resident engineer or inspector and supporting staff who will also:

1. Maintain a Project record.
2. Review documents and submissions by Contractor(s) pertaining to scheduling and advise the SPONSOR as to their acceptability.
3. Observe the Work to determine general conformity with the Contract Documents and to ascertain the need for correction or rejection of the Work. Neither the activities of the resident engineer or inspector and/or supporting staff nor the presence of any of them at a construction/Project site shall relieve Contractor nor make Consultant responsible for, Contractor's obligations, duties, and responsibilities, including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating the Work in accordance with the Contract Documents and any health or safety precautions or measures required by regulatory agencies.
4. Attend and conduct pre-construction, pre-installation conferences; weekly progress meetings; and final inspection of the completed Project.
5. Observe testing and inspection. Arrange for, conduct, or witness field, laboratory, or shop tests of construction materials as required by the plans and specifications for the Project; monitor the suitability of materials on the Project site or brought to the Project site to be used in construction; interpret the contract plans and specifications and check the construction activities for general compliance with the design intent; measure, compute, or check quantities of Work performed and quantities of materials in-place for partial and final payments to the Contractor.
6. Prepare and submit inspection reports of construction activity and problems encountered as required by the SPONSOR and the NYSDOT.
7. Prepare, review, and approve monthly and final payments to Contractor(s).

The CONSULTANT agrees to perform the services in the Construction Observation Phase of this Project during the construction contract period, estimated to be as follows:

**Pre-Construction:** Senior Construction Supervisor = 8 hours  
Senior Technical Administrator = 4 hours

**Construction:** Senior Construction Supervisor 26 weeks @ 7 hours/week = 182 Hours  
Chief Inspector 26 weeks @ 40 hours/week = 1040 Hours  
Senior Technical Administrator 26 weeks @ 6 hours/week = 156 hours

**Post Construction:** Senior Construction Supervisor = 10 hours

Senior Technical Administrator = 40 hours

**END OF SCHEDULE A-1**

## SCHEDULE "C"

### C&S ENGINEERS, INC AGREED OVERHEAD

Indirect Labor	12,500,000	79%
P/R Taxes & Benefits	5,100,000	32%
Legal & Accounting	150,000	1%
Rent & Maintenance	1,800,000	11%
Utilities	170,000	1%
Office Supplies	840,000	5%
Telephone	400,000	3%
Professional Activity	1,100,000	7%
Business Development	750,000	5%
Auto & Truck Expenses	275,000	2%
Insurance	675,000	4%
Office Equipment Rent / Maintenance	1,300,000	8%
Library & Reference Data	40,000	0%
Internet / Intranet Services	260,000	2%
Depreciation	625,000	4%
<b>TOTAL INDIRECT EXPENSES</b>	<b>25,985,000</b>	<b>163%</b>
<b>TOTAL DIRECT LABOR</b>	<b>15,900,000</b>	





# ARCHITECTURAL/ENGINEERING COST SUMMARY SCHEDULE "B" DESIGN PHASE

PROJECT NAME: Hangar 782 MVCC A&P School project  
 PROJ DESCRIPTION Covert Hangar 782 to an MVCC A&P school

DATE: 19-Jun-19  
 A/E: C & S ENGINEERS, INC.  
 PROJECT NO: 146  
 C&S CONTACT: Dave Chambers

CLIENT: Oneida County  
 CLIENT MANAGER: Michael Lawrence Jr. Commissioner of Aviation

**I. ESTIMATE OF DIRECT SALARY COSTS:**

TITLE	MAXIMUM RATE OF PAY (\$/HR)	AVERAGE RATE OF PAY (\$/HR)	@	ESTIMATED HOURS	ESTIMATED COST
A. SERVICE GROUP/ASSOCIATE MANAGER	\$86.50	\$82.20	X	52	\$4,274.00
B. DEPARTMENT MANAGER	\$71.40	\$64.80	X	20	\$1,296.00
C. MANAGING ENGINEER	\$63.90	\$56.10	X	380	\$21,318.00
D. CHIEF/PRINCIPAL ENGINEER	\$60.60	\$56.50	X	4	\$226.00
E. SENIOR PROJECT ENGINEER	\$54.60	\$47.30	X	116	\$5,487.00
F. PROJECT ENGINEER / ENV SCIENTIST	\$44.40	\$39.80	X	0	\$0.00
G. ENGINEER	\$40.40	\$33.30	X	132	\$4,396.00
H. STAFF ENGINEER	\$31.90	\$27.90	X	156	\$4,352.00
I. SENIOR DESIGNER	\$42.70	\$39.40	X	168	\$6,619.00
J. DESIGNER	\$32.40	\$27.60	X	152	\$4,195.00
K. CADD OPERATOR/DESIGN TECHNICIAN	\$31.40	\$28.40	X	574	\$16,302.00
L. ADMINISTRATIVE ASSISTANT	\$28.20	\$24.50	X	220	\$5,390.00
M. INTERN	\$19.50	\$16.30	X	0	\$0.00
N. GRANTS ADMINISTRATOR	\$34.40	\$32.80	X	40	\$1,312.00
O. ASSISTANT GRANTS ADMINISTRATOR	\$27.80	\$26.50	X	64	\$1,696.00
P. MANAGING PLANNER	\$58.70	\$55.90	X	72	\$4,025.00
Q. SENIOR PROJECT PLANNER	\$50.60	\$48.20	X	0	\$0.00
R. PLANNER	\$33.60	\$31.10	X	64	\$1,990.00
S. STAFF PLANNER	\$30.60	\$28.40	X	0	\$0.00
T. SENIOR/MANAGING ARCHITECT	\$55.50	\$54.50	X	112	\$6,104.00
U. SENIOR GIS ANALYST	\$35.20	\$33.60	X	0	\$0.00
V. GEOLOGIST	\$34.60	\$33.00	X	0	\$0.00
W. ENVIRONMENTAL SCIENTIST	\$32.40	\$30.30	X	0	\$0.00
X. SENIOR CONSTRUCTION SUPERVISOR	\$77.90	\$69.20	X	48	\$3,322.00
Y. CONSTRUCTION SUPERVISOR	\$44.40	\$42.20	X	0	\$0.00
Z. RESIDENT ENGINEER	\$50.90	\$45.60	X	0	\$0.00
AA. CHIEF INSPECTOR	\$45.00	\$38.70	X	120	\$4,644.00
BB. SENIOR INSPECTOR	\$41.60	\$34.50	X	0	\$0.00
CC. INSPECTOR	\$33.00	\$31.40	X	0	\$0.00
DD. JUNIOR INSPECTOR	\$21.60	\$20.60	X	0	\$0.00
EE. SENIOR TECHNICAL ADMINISTRATOR	\$35.70	\$32.10	X	0	\$0.00
FF. SENIOR PROJECT LANDSCAPE ARCHITECT	\$44.40	\$42.20	X	0	\$0.00
GG. PROJECT LANDSCAPE ARCHITECT	\$42.00	\$40.10	X	0	\$0.00

TOTAL ESTIMATED DIRECT SALARY COST: \$66,948.00

**II. OVERHEAD EXPENSES & PAYROLL BURDEN PER SCHEDULE "C" -**

(AGREED OVERHEAD EXPRESSED AS A PERCENTAGE OF DIRECT SALARY COST):

163.00% \$158,025.00

**III. SUBTOTAL OF ITEMS I & II:**

\$254,973.00

IV. ESTIMATE OF DIRECT EXPENSES:

A.	TRAVEL, BY AUTO:	40 TRIPS @	110 MILES/TRIP @	\$0.545	=	\$2,398.00
B.	TRAVEL, BY AIR:	0 TRIPS @	0 PERSONS @	\$0.00	=	\$0.00
C.	PER DIEM:	0 DAYS @	0 PERSONS @	\$144.00	=	\$0.00
D.	MISCELLANEOUS:				=	<u>\$296.10</u>

TOTAL ESTIMATE OF DIRECT EXPENSES: \$2,694.10

V. FIXED FEE (PROFIT, LUMP SUM):

A.	LABOR PLUS OVERHEAD:	15%	(OF III.)	\$38,245.95
B.	DIRECT EXPENSES:	0%	(OF IV.)	<u>\$12,000.00</u>

TOTAL FIXED FEE: \$50,245.95

VI. SUBCONTRACTS:

A. ESTIMATE OF SERVICES: \$138,500.00

B. ESTIMATE OF SUBSURFACE INVESTIGATION & TESTS:

1	MOBILIZATION/DEMobilIZATION:	LUMP SUM	=	\$1,000.00
2	PAVEMENT CORES:	0 EACH @	\$50.00	= \$0.00
3	CONTINUOUS SAMPLING:	0 L.F. @	\$18.00	= \$0.00
4	OBSERVATION WELL:	0 L.F. @	\$15.00	= \$0.00
5	TEST PITS:	0 EACH @	\$250.00	= \$0.00
6	FIELD CBR:	0 EACH @	\$250.00	= \$0.00
7	FIELD DENSITY TESTS:	0 EACH @	\$35.00	= \$0.00
8	MECHANICAL ANALYSIS:	0 EACH @	\$35.00	= \$0.00
9	LABORATORY PROCTORS:	0 EACH @	\$100.00	= \$0.00
10	SOAKED LAB CBR (ASTM D1883, PAR 8.1.1):	0 EACH @	\$150.00	= \$0.00
11	SOAKED LAB CBR (ASTM D1883, PAR 8.1.2):	0 EACH @	\$250.00	= \$0.00
12	SOAKED LAB CBR (ASTM D1883, PAR 8.2):	0 EACH @	\$350.00	= \$0.00
13	ATTERBERG LIMITS:	0 EACH @	\$55.00	= \$0.00
14	NATURAL MOISTURE CONTENT:	0 EACH @	\$6.00	= \$0.00
15	HYDROMETER ANALYSIS:	0 EACH @	\$60.00	= \$0.00

TOTAL ESTIMATED SUBSURFACE INVESTIGATION & TESTS: \$1,000.00

VII. TOTALS:

A. MAXIMUM TOTAL COST FOR DESIGN SERVICES, AGREEMENT TOTAL & FAA ELIGIBLE: \$447,413.05

## SCHEDULE "D"

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
AIRPORT IMPROVEMENT PROGRAM  
SPONSOR CERTIFICATION**

**SELECTION OF CONSULTANTS**

Oneida County

Griffiss Int'l Airport

XXXXXX

*Renovations to Hangar Bldg#782 for the relocation of Mohawk Valley community college AP School.  
Renovations consist of building up fits such as office, class room 's etc.as well as hvac/elect/plumbing and fire protection upgrades.*

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General standards for selection of consultant services within Federal grant programs are described in Title 49, Code of Federal Regulations (CFR), Part 18.36. Sponsors may use other qualifications-based procedures provided they are equivalent to specific standards in 49 CFR 18 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standard.

	Yes	No	N/A
1. Solicitations were (will be) made to ensure fair and open competition from a wide area of interest.	<input type="checkbox"/>	<input type="checkbox"/>	x
2. For contracts over \$100,000, consultants were (will be) selected using competitive procedures based on qualifications, experience, and disadvantaged enterprise requirements with the fees determined through negotiations.	<input type="checkbox"/>	<input type="checkbox"/>	x
3. A record of negotiations has been (will be) prepared reflecting considerations involved in the establishment of fees, which are not significantly above the sponsor's independent cost estimate.	<input type="checkbox"/>	<input type="checkbox"/>	x
4. If engineering or other services are to be performed by sponsor force account personnel, prior approval was (will be) obtained from the FAA.	<input type="checkbox"/>	<input type="checkbox"/>	x
5. The consultant services contracts clearly establish (will establish) the scope of work and delineate the division of responsibilities between all parties engaged in carrying out elements of the project.	x	<input type="checkbox"/>	<input type="checkbox"/>
6. Costs associated with work ineligible for AIP funding are (will be) clearly identified and separated from eligible items in solicitations, contracts, and related project documents.	<input type="checkbox"/>	<input type="checkbox"/>	x

	Yes	No	N/A
7. Mandatory contract provisions for grant-assisted contracts have been (will be) included in consultant services contracts.	X	<input type="checkbox"/>	<input type="checkbox"/>
8. The cost-plus-percentage-of-cost methods of contracting prohibited under Federal standards were not (will not be) used.	X	<input type="checkbox"/>	<input type="checkbox"/>
9. If the services being procured cover more than the single grant project referenced in this certification, the scope of work was (will be) specifically described in the advertisement, and future work will not be initiated beyond five years.	X	<input type="checkbox"/>	<input type="checkbox"/>

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have prepared documentation attached hereto for any item marked "no" that is correct and complete.

Oneida County Dept. of Aviation

*(Name of Sponsor)*

*(Signature)*

Mr. Michael Lawrence

*(Typed Name of Sponsor's Designated Official Representative)*

Commissioner of Aviation

*(Typed Title of Sponsor's Designated Official Representative)*

*(Date)*

END OF SCHEDULE

**SCHEDULE E**

**(RESOLUTION TO BE INSERTED)**

SCHEDULE H  
AIRPORT AID PROGRAM

**A/E SERVICES REQUIRED FEDERAL CONTRACT PROVISIONS**

For purposes of this schedule the term "Contractor" or "Consultant" shall refer to "Consultant" as that term is defined in the Agreement to which this schedule is attached.

**ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. Sponsor will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Sponsor reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Sponsor elects to terminate the contract. The Sponsor's notice will identify a specific date by which the Contractor must correct the breach. Sponsor may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Sponsor's notice. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**GENERAL CIVIL RIGHTS PROVISIONS**

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

**CIVIL RIGHTS – TITLE VI ASSURANCES.**

**Title VI Solicitation Notice:**

The Sponsor in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**Compliance with Nondiscrimination Requirements**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts, and authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income

populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Sponsor immediately upon discovery. The Sponsor assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceed \$150,000.

## CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

### 1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) above.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) above.

### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.



3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

### DISADVANTAGED BUSINESS ENTERPRISES

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within {specify the same number as above} days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Sponsor to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. Sponsor encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

### TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, Sponsor encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

### ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq).

### EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance

with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

### **CERTIFICATION REGARDING LOBBYING**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

### **SEISMIC SAFETY**

In the performance of design services, the Contractor agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the

design services, the Contractor agrees to furnish the Sponsor a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

## TERMINATION OF CONTRACT

**Termination for Convenience**-The Sponsor may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Contractor. Upon receipt of the notice of termination, except as explicitly directed by the Sponsor, the Contractor must immediately discontinue all services affected. Upon termination of the Agreement, the Contractor must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Contractor under this contract, whether complete or partially complete. Sponsor agrees to make just and equitable compensation to the Contractor for satisfactory work completed up through the date the Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services. Sponsor further agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

**Termination for Default**-Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Sponsor:** The Sponsor may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Sponsor approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project;
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Sponsor further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Sponsor determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Sponsor issued the termination for the convenience of the Sponsor.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Sponsor:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Sponsor agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Sponsor and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Sponsor's breach of the contract.

In the event of termination due to Sponsor breach, the Engineer is entitled to invoice Sponsor and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Sponsor agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

END OF SCHEDULE

## SCHEDULE I

### NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

A. Standard Clauses For All New York State Contracts (Appendix A).

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee, or any other party):

1. **Executory Clause.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Comptroller's Approval.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$5,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective, or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **Worker's Compensation Benefits.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **Non-Discrimination Requirements.** 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **Non-Collusive Bidding Requirement.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. International Boycott Prohibition. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 240,1 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment, or modification thereto shall be rendered forfeit and void. The contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination, or disposition of appeal (2 NYCRR 105.4).
  
9. Set-Off Rights. The State shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
  
10. Records. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
  
11. Identifying Information and Privacy Notification:
  - (a) Federal Employer Identification Number and/or Federal Social Security Number. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, (i.e., the seller's or lessor's identification number). The number is either the payee's Federal employee identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.
  
  - (b) Privacy Notification.
    - (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
  
    - (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.
  
12. Equal Employment Opportunities For Minorities And Women. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a

contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

Contractor will include the provisions of "a", "b", and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. **Conflicting Terms.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. **Governing Law.** This contract shall be governed by the laws of the State of New York except where the federal supremacy clause requires otherwise.
15. **Late Payment.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.
16. **No Arbitration.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. **Service of Process.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), contractor hereby consents to service of process upon it be registered or certified mail, return receipt request. Service hereunder shall be complete upon contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **Prohibition on Purchase of Tropical Hardwoods.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility

of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. Macbride Fair Employment Principles. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (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 Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
20. Omnibus Procurement Act of 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St --7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development Division of Minority and Women's Business Development 30 South Pearl St --2nd Floor Albany, New York 12245 Telephone: 518-292-5250 Fax: 518-292-5803 <http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million: a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. Reciprocity And Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
22. Compliance with New York State Information Security Breach and Notification Act. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
23. Compliance with Consultant Disclosure Law. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.
24. Procurement Lobbying. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made



in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. Certification of Registration To Collect Sales And Compensating Use Tax By Certain State Contractors, Affiliates And Subcontractors. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

END OF SCHEDULE

**ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS**

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. **EXECUTORY OR NON-APPROPRIATION CLAUSE.**

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. **ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.**

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. **CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.**

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

- ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and
  - D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;
- ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.
- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
- i. The Contractor will or will continue to provide a drug-free workplace by:
    - A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
    - B. Establishing an ongoing drug-free awareness program to inform employees about:
      - 1) The dangers of drug abuse in the workplace;
      - 2) The Contractor's policy of maintaining a drug-free workplace;
      - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
      - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

1) Abide by the terms of the statement; and

2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction.

Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health

information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:

- i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  - ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;

- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  - iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  - v. Make available protected health information in accordance with 45 CFR §164.524;
  - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
  - vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
  - viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
  - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:



- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work

under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

#### 8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

#### 9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

#### 10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements,

examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by

the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or

a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify, at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on

Oneida County property, as follows:

- a. For the purposes of this provision, the “use of tobacco” shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, “on Oneida County property” shall be defined as:

- i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.  
County Executive

CHAD LAWRENCE  
Commissioner

July 22, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

FN 20 19-266

AIRPORT

Re: Design Grant, Building 100 Phase II, NYSDOT 2905.76

## WAYS & MEANS

Dear County Executive Picente:

Please consider acceptance of a grant offer from the New York State Department of Transportation (NYSDOT) in the amount of \$1,500,000 for Building 100, Phase II design and construction.

The project generally includes the completion of modifications to Building 100 Phase II.

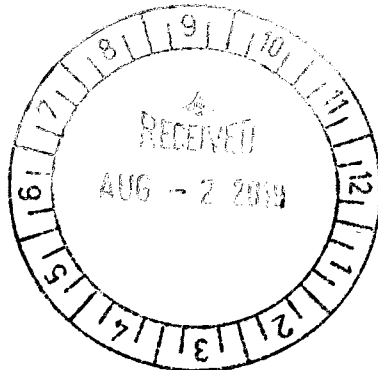
We have received a NYSDOT grant to complete this work. The Capital Account number is H-589. The NYSDOT number is 2905.76.

If you concur, please forward to the Board of Legislators for consideration at their next meeting.

Thank you for your assistance in this matter.

Chad Lawrence  
Commissioner of Aviation

dmn/cl



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 8-2-19



Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

## ONEIDA COUNTY BOARD OF LEGISLATORS

**Name & Address of Vendor:**

NYSDOT Aviation Bureau  
50 Wolf Road P.O.D. 5-4  
Albany, NY 12232

**Title of Activity or Service:**

Grant Agreement for Building 100  
Improvements Phase II in the amount of  
\$1,500,000

**Proposed Dates of Operation:** N/A

**Client Population/Number to be Served:** N/A

**Summary Statements**

1) Narrative Description of Proposed Services:

**This is a Grant Agreement from the NYSDOT to complete the design & construction of Building 100 Phase II at Griffiss International Airport. The Grant is in the amount of \$1,500,000.00**

2) Program/Service Objectives and Outcomes:

**Accomplishment of Building 100 improvements for tenant occupancy.**

3) Program Design and Staffing: N/A

**Total Funding Requested: \$1,500,000      Account #: H-589**

**Oneida County Dept. Funding Recommendation:**

**Proposed Funding Sources : State \$1,500,000**

**O.C. Department Staff Comments:**

**AVIATION PROJECT FUNDING AGREEMENT**

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and

the County of Oneida (the "Municipality/Sponsor") with its office at Rome, NY

**This Agreement covers eligible costs incurred after January 1, 2019**

This agreement identifies the party responsible for administration, establishes the method and provision for funding and implementation of an aviation project pursuant to appropriation as such project is more fully described by Schedule A-1 annexed to this agreement or one or more duly executed and approved Supplemental Schedules to this agreement. The project shall be identified for the purposes of this agreement as Modifications to Building 100 at Griffiss International Airport (as more specifically described in Schedule A-1, or supplemental Schedule A's, the "Project").

W I T N E S S E T H:

WHEREAS, Section 14-I of the Transportation Law authorizes the NYSDOT Commissioner to implement the Airport Improvement and Revitalization Program; and

WHEREAS, pursuant to authorizations and appropriations therefore, NYSDOT and the Sponsor are desirous of progressing the Project; and

WHEREAS, the Sponsor attests that the Project has a useful service life as stated on the Schedule A-1 included herein; and

WHEREAS, the Sponsor will administer the Project and submit to NYSDOT for funding of eligible Project costs pursuant to this Agreement; and

WHEREAS, the Legislative or governing Body of the Sponsor by Resolution No. \_\_\_\_\_ adopted at meeting held on \_\_\_\_\_ approved the Project and the terms and provisions of this Agreement and has further authorized the \_\_\_\_\_ of the Sponsor to execute this Agreement on behalf of this Sponsor (copy of such Resolution is attached to and made a part of this Agreement); and

WHEREAS, the Sponsor is not a sectarian institution,

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The agreement consists of the following:
  - Agreement: This document titled "Aviation Project Funding Agreement";
  - Schedule A-1: Description of Project and Funding;
  - Schedule B: Phases, Sub-phase/Tasks, and Allocation of Responsibility;
  - Appendix A: Standard Clauses for New York State Contracts;
  - Appendix A-1: Supplemental Title VI Provisions (Civil Rights Act);

- Appendix B: Participation By Minority And Women Owned Business Enterprises: Requirements and Procedures;
- Appendix C: Goals for Equal Employment Opportunity (EEO) Participation; and
- Resolution(s) – duly adopted municipal or, as applicable, corporate resolution(s) authorizing the appropriate official of the Sponsor to execute this Agreement on behalf of the Sponsor and appropriating the funding required therefore.

2. *General Description of Work.* The Sponsor shall procure and provide all services, materials and equipment necessary to complete the Project as more particularly described in Schedule A-1 and Scope of Work described in Schedule B.

3. *Maintenance.* Upon completion and acceptance of the Project Facilities by Sponsor, Sponsor shall certify in writing to the NYSDOT Commissioner that the Project Facilities have been completed. Upon its completion, Sponsor will operate and maintain the Project facilities as well as ancillary facilities useful or necessary to the function of said facilities, at its own expense in accordance with the requirements of the NYSDOT Commissioner for the period of time corresponding to the period of useful life for such project as determined by Section 61 of the State Finance Law. If the Sponsor intends to have the project facilities maintained by another party, any necessary maintenance contract shall be executed and submitted to NYSDOT before construction commences.

4. *Disposition of Project Facilities.* Sponsor agrees, that during the period of time during which Title to the Project Facilities paid for by the State is held by the State or in any event if funding of the State's share is from the proceeds of bonds or other obligations issued by the State or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, discontinued or disposed of by Sponsor without the express written consent of the NYSDOT Commissioner having first been obtained. In the event of such approved disposition Sponsor shall either cause the purchaser or transferee to assume Sponsor's continuing obligations under this Agreement, or shall reimburse NYSDOT for the pro-rata share of the grant over the remaining useful life of the Project.

5. *Method of Performance of Work.* Sponsor agrees to undertake or cause to be undertaken and to proceed expeditiously with and complete the project as approved by the NYSDOT Commissioner and as described in the Scope of Work, and to complete or cause to be completed said work within the time limits specified in said Scope of Work. The work shall be performed by Sponsor's own forces or by contract or contracts entered into by the Sponsor in accordance with applicable law and the requirements of this Agreement. Sponsor agrees to obtain or cause to be obtained all approvals, permits and licenses necessary to progress the work, and also agrees to comply or cause to be complied with all applicable Federal, State and Local Laws which in any way impact work to be accomplished by the project.

6. *Funding of Project Costs.* State financial assistance hereunder shall be in the form of a grant as more specifically described in Schedule A-1. Sponsor shall provide its share of the cost of the Project, if any. Sponsor shall make reasonable efforts to secure federal assistance, if any, for the project.

In the event that federal assistance which was not included in the calculation of the state financial assistance becomes available to the Sponsor, the amount of the state financial assistance shall be recalculated by reducing the amount of the state financial assistance by the amount of such federal assistance, and the Sponsor shall pay to the state the amount by which the state payment actually made exceeds the state financial assistance determined by the recalculation, if any.

6.1 *Limits of Funding.* Subject to the terms of the appropriation, NYSDOT agrees to make available funds up to the amount identified as State Aid in Schedule A-1 for eligible Project costs incurred by the Sponsor in the performance of the Project, as the Project and the funding therefore is more fully described in Schedules A-1 and B. Project Costs in excess of State funds available for the work shall be the responsibility of Sponsor. Prior to start of construction, Sponsor shall certify the source and availability of funds for Project Costs which are in excess of State funds being made available under this Agreement. If the Sponsor loses funding eligibility, the State shall not be liable for any Project Costs whatsoever.

6.2 *Eligible Project Costs.* NYSDOT will fund eligible Project costs incurred by the Sponsor in connection with the work covered by this Agreement. Eligible costs shall include, but not be limited to, costs of acquisition, construction, repair, reconstruction, renovation and such other costs associated with the Project as are approved by NYSDOT as reasonable and necessary in the performance of the Project. Eligible costs shall also include salaries and wages to employees of the Sponsor who are engaged in carrying out the Project, fees to consultants and professionals retained by the Sponsor for planning and performing the Project.

6.3 In no event shall the State be obligated to fund or reimburse any costs exceeding the lesser of:

- (a) the amount stated in Schedule A-1 for the State share of Project Costs; or
- (b) amounts described in the preceding paragraph (a), less any duplicative funding of the same Project costs from other State sources.

6.4 *Debt Financing by Sponsor.* Grant monies shall not be used to pay for interest, issuance costs or reserves in connection with the issuance of debt by Sponsor to fund the Project, but may repay principal indebtedness incurred to fund eligible Project costs.

7. *Payments to Sponsor.* For work performed by or through the Sponsor, NYSDOT will fund or reimburse eligible Project costs either during the progress of construction or following completion of construction in accordance with NYSDOT policy and procedures.

7.1 *Progress Payments.* Sponsor may be reimbursed in progress payments, for eligible Project costs incurred by Sponsor in conformity with Schedule A-1, upon submission of a voucher by Sponsor in a form acceptable to NYSDOT.

7.2 *Final Payment.* Final payment to sponsor shall be made upon the application of Sponsor to NYSDOT, on a basis of work accomplished, upon submission of vouchers to the State, the submission of a Project Completion Report (hereinafter defined) together with such data as NYSDOT deems necessary to assure compliance with this Agreement evidencing that the work of the Project is completed.

Upon the completion of all said work by Sponsor pursuant to this Agreement, a final statement of costs shall be submitted to the State within one hundred eighty (180) days. Upon receipt of the final statement of costs by the NYSDOT Commissioner, the NYSDOT Commissioner will conduct an audit of the Sponsor project account records within one hundred eighty (180) days to determine the resources applied or used by Sponsor in fulfilling the terms of this Agreement.

7.3 *Payment Certification.* Each payment request will contain a certification by Sponsor that payment requests do not duplicate reimbursement of Project costs being funded from other sources.

In the event that any payments are made by the State to the Sponsor for costs incurred by Sponsor, which are subsequently determined to be ineligible for reimbursement under this Agreement, State may retain an amount equal to any such excess payments from any monies then or which may become due and owing to Sponsor under the Agreement, or Sponsor shall repay such amounts to State within forty-five (45) days from the date Sponsor receives notice of such determination of ineligibility.

All costs submitted by Sponsor shall be in conformity with accounting procedures acceptable to NYSDOT and shall be subject to approval by NYSDOT Commissioner, and to audit by the NYSDOT Commissioner and the State Comptroller. All requests for reimbursement shall be accompanied by appropriate supporting documentation including, but not limited, to the following: Inspector's Reports with associated invoices and receipts, Engineer's Diary, and the Engineer's recommendation(s) for payment to the Contractor.

All costs charged to the project shall be properly supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and propriety of the charges.

8. *Compliance.* The Sponsor understands that funding is contingent upon the Sponsor's compliance with the applicable requirements of the "Procedures for Locally Administered Federal Aid Projects" manual (available both in hard copy and through NYSDOT's web site at: <https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>), in particular the Appendices to Chapter 4 entitled Work Requirements, Record Keeping Guidelines and Consultant Selection Procedures, as such may be amended from time to time.

9. *Supplemental Agreement or Supplemental Schedule A-1.* Supplemental Agreements or Supplemental Schedules A-1 may be entered by the parties, and must be approved in the manner required for a State contract. In the event Project cost estimates increase over the amounts provided for in Schedule A-1 or one or more supplemental Schedules A-1 as may hereafter be developed by the parties hereto or Eligible Project Costs in the Comprehensive List are increased by the legislature, no additional reimbursement shall be due to the Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A-1 for reimbursement or additional Eligible Project Costs.

10. *Project Completion Report.* Sponsor shall 6 months from Project completion or final reimbursement by NYSDOT, whichever is earlier, submit a Project Completion Report to NYSDOT describing the sources and uses of all Project-related funds, including non-State funds, and the programmatic accomplishments of the Project.

11. *Records and Accounts.* Sponsor shall maintain accurate records and accounts of all financial transactions which show in detail all income and all expenditures, including but not limited to, payments for eligible Project costs. Said records shall include the amount of payment by the State, the amount of federal assistance if any received by the municipality for the project and all monies expended by the municipality for the project. Such records and accounts shall include, without limitation, property, personnel and financial records, cash receipts and disbursements journal and general subsidiary ledgers. All records and accounts shall be maintained in accordance with generally accepted accounting standards. All expenditures of the grant reimbursed monies shall be supported by invoices and/or other documentation sufficient to establish that such monies have been used in accordance with the terms of this Agreement. The NYSDOT Commissioner, Comptroller of the State of New York and any other authorized representatives of the State of New York shall have the right to examine all records and accounts relating to Sponsor's financial transactions, including the expenditure of the grant and all other funds secured and services rendered for the benefit of Sponsor in connection with the Project. Sponsor shall maintain records relating to this Agreement for not less than thirty-six (36) years after the date of completion.

12. *Ethics.* No member of Sponsor's governing body, or any member of the Board of Directors or staff, nor any member of their families shall benefit financially either directly or indirectly from the grant unless such action is necessary for the accomplishment of the Project. In such event, Sponsor shall disclose such relationship to NYSDOT and shall obtain prior written approval therefore from NYSDOT.

13. *NYSDOT Review.* NYSDOT may review the Sponsor's performance of this agreement in such manner and at such times as the Commissioner shall determine, and such review may include field visits by NYSDOT representatives to the Project and/or the offices of Sponsor. Sponsor shall at all times make available its employees, records and facilities to authorized NYSDOT representatives in connection with any such review. Such review shall be for the purpose, among other things, of ascertaining the quality and quantity of Sponsor's performance of the Project, its use and operation.

14. *Failure to Diligently Progress Project or Loss of State or Federal Participation.* If NYSDOT determines that the Sponsor has failed to diligently progress the project, or in the event the Sponsor withdraws its approval of the project, or the Sponsor suspends or delays work on the Project such that it cannot be reasonably completed, or takes other action that results in the loss of state participation and/or federal participation, including the loss of State administration of Federal aid to the Sponsor, for the costs incurred pursuant to this agreement, the Sponsor shall refund to the State all reimbursements received from or through the State. The State may offset any other State aid due to the Sponsor by such amount and apply such offset to such repayment obligation of the Sponsor.

15. *Inspection and Audit.* Sponsor shall permit the authorized representative of NYSDOT and/or the State Comptroller to inspect and audit all books, records and accounts of Sponsor pertaining to the Project under this Agreement. Sponsor shall notify NYSDOT of any audit by any governmental agency of any projects, operations or reports of Sponsor within five (5) days of receiving information relating thereto.

16. *Term of Agreement.* As to the Project and phase(s) described in Schedule(s) A-1 executed herewith, this agreement takes effect as of the date this agreement is approved by the State Comptroller. This agreement takes effect as to the Project and phase(s) established in any duly executed and approved supplemental Schedule(s) A-1 as of the date of the approval by the State Comptroller. This agreement shall remain in effect for the longer of (a) so long as State aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities; or, (b) the duration of any loan repayment obligation until such debt is retired.

However, for the purposes of calculating the period described in the preceding subdivision (a), if such funding authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary appropriations or other funding authorizations therefore are eventually enacted.

17. *Contract Executory.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose hereof.

18. *Sponsor Liability; Indemnification.*

18.1 The Sponsor shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

18.2 To the fullest extent permitted by law, the Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Sponsor its officers, agents, servants, employees contractors, subcontractors or others under this Agreement. Negligent performance of service within the meaning of this Article shall include, in addition to negligence founded upon tort, negligence based upon the Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

19. *Independent Contractor.* The officers and employees of the Sponsor, in accordance with the status of the Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

20. *Insurance.* Sponsor agrees to procure and maintain without direct cost to the State except as noted during the pendency of this Agreement, insurance of the kinds and in amounts hereinafter provided by insurance companies authorized to do business in the State of New York or, if Sponsor is a municipality that self-insures, an endorsement for such self-insurance covering all operations under this Agreement whether performed by it or sub-contractors. Before commencing the work, Sponsor shall furnish to NYSDOT a certificate or certificates, in a form satisfactory to NYSDOT, showing compliance with this Article, which certificate or certificates, shall provide that such insurance shall not be changed or canceled until thirty (30) days written notice has been given to NYSDOT Said insurance policies shall name the People of the State of New York, New York State, its officers, agents and employees as additional insureds thereunder. Upon written request by the State, the Sponsor shall furnish to the State a letter certifying that the State of New York, and other required insureds, have been named as additional insureds to such policy. The kinds and amounts of insurance required are as follows:

20.1 *Worker's Compensation and Disability Benefits.* Policy covering the obligations of Sponsor in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Worker's Compensation Law, and also by the provisions of Article 9 of the Worker's Compensation Law known as the Disability Benefits Law, and this Agreement shall be void and of no effect unless Sponsor procures such policy and maintains it until final acceptance of all work described herein;

20.2 *For construction and operating support projects,* Comprehensive General Liability Insurance insuring Sponsor and, as additional insureds, NYSDOT and its employees with respect to all operations under this Agreement by Sponsor, including such coverage any omissions and supervisory acts of the State and its employees. Policies of personal injury liability insurance of the types hereinafter specified, each with a combined single limit of \$1 million per occurrence/\$2 million aggregate for all damages arising out of personal injury, including death at any time resulting therefrom, sustained by one person in any one accident and, subject to that limit for each person, all damage arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident, damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident, for all damages arising out of injury to or destruction during the policy period.

20.3 *Automobile Liability and Property Damage Insurance.* Subject to the same required level of coverage set forth in §20.2 above, a policy covering the use in connection with the work covered by the Agreement of all owned, not owned and hired vehicles bearing or, under the circumstances under which they are being used required by New York State law to bear, license plates.

20.4 *Public Liability Insurance.* With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

20.5 *Protective Public Liability Insurance.* With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000 Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

21. *Assignment or Other Disposition of Agreement.* The Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

22. *Procurement Standards.* Sponsor will award contracts funded pursuant to this Agreement in accordance with procurement laws applicable to Sponsor and otherwise in accordance with the requirements of this Agreement.

23. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are specified set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Sponsor assert, make, or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this contract.

24. *E-Mail Provision Notice.*

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - (a) via certified or registered United States mail, return receipt requested;
  - (b) by facsimile transmission;
  - (c) by personal delivery;
  - (d) by expedited delivery service; or
  - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**State of New York Department of Transportation**

**Name:** Jackie Van Heusen  
**Title:** Assistant Aviation Grants Coordinator  
**Address:** NYSDOT Aviation Bureau  
50 Wolf Road P.O.D. 5-4  
Albany, NY 12232  
**Telephone Number:** 518-485-7691  
**Facsimile Number:** 518-457-9779  
**E-Mail Address:** jackie.vanheusen@dot.ny.gov

**[Contractor Name]**

**Name:** Chad Lawrence  
**Title:** Commissioner of Aviation  
**Address:** Griffiss Int'l Airport, 660 Hangar Road, Suite 223, Rome, New York 13441  
**Telephone Number:** 315-736-4171  
**Facsimile Number:** 315-736-0568  
**E-Mail Address:** clawrence@ocgov.net

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

25. *Contract Payments.* Contractor shall provide complete and accurate billing invoices to the Agency in order to receive payment. Billing invoices submitted to the Agency must contain all information and supporting documentation required by the Contract, the Agency and the State Comptroller. Payment for invoices submitted by the Contractor shall only be

rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at <http://www.osc.state.ny.us/epay/index.htm>, by e-mail at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us) or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

26. *Proposed Increase Clause.* Any change in this contract term, or change in scope of work not previously approved by OSC requires a contract amendment, and may require either a Contract Reporter Exemption, or a new procurement. The agency must submit a proposed amendment to OSC immediately for any such proposed change to this agreement. Scope changes requested of OSC after the fact may be denied.

27. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

27.1 New York State Executive Law Article 15-A, Participation by Minority Group members and Women with Respect to State Contracts, including requirements relating to equal employment opportunity, and utilization goals and contracting opportunities for minority and women-owned business enterprises, without additional cost to NYSDOT.

27.1.1 *EEO Policy Statement.* Pursuant to 5 NYCRR § 142.8, a Municipality/Sponsor shall adopt an EEO policy if one is not previously adopted, as provided in Appendix B, and submit a signed copy of Appendix B to NYSDOT.

27.1.2 *M/WBE Goals.* Municipality/Sponsor must comply with all M/WBE requirements and goals stated within the provisions of Appendix B, titled "Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement."

27.1.3 *M/WBE Guidance.* Refer to the New York State Department of Transportation website and Appendix B for guidance related to M/WBE goals at:

<https://www.dot.ny.gov/main/business-center/civil-rights/>

Assigned M/WBE goals must be included in the Sponsor's proposed subcontract documents when submitted for NYSDOT approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at that time so that the correct goals are included in the project advertisement. Sponsors should refer to NYSDOT's Standard Specifications Section 102-12, "D/M/WBE Utilization" for contract requirements. NYSDOT's Standard Specifications are available online at:

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

27.1.4 *Good Faith Efforts.* If a Municipality/Sponsor fails to meet the M/WBE requirements set forth in Appendix B, they must demonstrate Good Faith Efforts pursuant to 5 NYCRR § 142.8. Such documentation shall include, but is not necessarily limited to: (1) Evidence of a Municipality/Sponsor's outreach to M/WBEs, and such M/WBEs' responses, (2) Copies of advertisements in appropriate general circulation, trade, and minority or women-oriented publications for participation by M/WBEs, (3) Dates of any meetings with M/WBEs, (4) Documentation of strategic, overt acts undertaken by the Municipality/Sponsor to reasonably structure the Contract scope to maximize opportunities for M/WBE participation.

27.1.5 *M/WBE Compliance Reports.* The Municipality/Sponsor shall submit electronic, monthly M/WBE compliance reports via NYSDOT's Standard Civil Rights Reporting Software (EBO), on or before the 10<sup>th</sup> day of the immediately preceding month. The Municipality/Sponsor must apply for access to EBO at the following website: <https://www.dot.ny.gov/dotapp/ebo>.

27.1.6 *Failure to Comply.* If the Municipality/Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with State requirements, the Municipality/Sponsor will not be reimbursed for ineligible activities within the affected contracts. The Municipality/Sponsor must ensure that any contract it awards under this Agreement has a Minority and Women-owned Business Enterprise (M/WBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Municipality/Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the M/WBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement, or (2) assess liquidated



damages in an amount of up to 20% of the portion of the Municipality/Sponsor's contracts and subcontracts funded in whole or in part by this agreement, to which contract goals are established by NYSDOT.

28. *Equal Employment Opportunity (EEO) Requirements.* EEO goals and specifications must be included in the contract documents and project advertisement. Sponsors should refer to NYSDOT's Standard Specifications Section 102-11 Equal Opportunity Requirements for these contract requirements.

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

29. *Monitoring and Reporting.* EEO participation shall be monitored by the Sponsor as the project progresses. EEO compliance shall be reported through NYSDOT's civil rights reporting software, EBO.

30. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Aviation Capital Grant Program Guidelines and in accordance with current Federal and State laws, rules, and regulations or as requested by NYSDOT. Reporting forms and schedules will be provided by NYSDOT as reporting requirements are identified.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, NYSDOT has caused this Agreement to be signed by its authorized representative and Sponsor has caused this instrument to be signed by its duly authorized officer, to be effective on the date first written above.

Sponsor

NYS DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
for the Commissioner of Transportation

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_  
Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

DATE: \_\_\_\_\_

**Sponsor ACKNOWLEDGEMENT**

STATE OF NEW YORK )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day \_\_\_\_\_, 201\_\_, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_;

That he/she is the \_\_\_\_\_ of the Sponsor described in and which executed the above instrument; that he/she was authorized to execute the document on behalf of said Sponsor pursuant to a resolution which was duly adopted on \_\_\_\_\_ and to which a certified copy is attached and made a part hereof.

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

APPROVED:

APPROVED AS TO FORM:

BY: \_\_\_\_\_

BY: \_\_\_\_\_

For the NYS Comptroller pursuant to Section 112, State Finance Law

NYS Attorney General

APPROVED  
ONEIDA COUNTY ATTORNEY

BY: *Manda [Signature]*  
ASST ONEIDA COUNTY ATTORNEY

Aviation Project Funding Agreement - Schedule A-1

OSC Contract # K007421

Project Commencement Date 1/1/19

Project Completion Date: 12/31/23

**AGREEMENT PURPOSE**     MAIN Agreement     SUPPLEMENTAL Agreement or Schedule

**AGREEMENT COVERS** (as shown in tables below):

Grant Agreement

**PROJECT TYPE:**

Capital Improvement

**PROJECT IDENTIFICATION NUMBER:** 2905.76

Modifications to Building 100 including 3 story vertical circulation corridor serving UAV research and development offices. Facade improvements to air-side and landside elevations as well as renovation of approx. 30,000 plus sq. ft. of office space. Improvements to HVAC systems. The Existing 3 story central office area between the east and west hangars are to have interior and exterior rehabilitations performed. The exterior 3 story facade on the public and air side of the offices will be modernized and renovated. This will include a 3 story elevator with stops on all 3 floors. The interior renovations will include extensive office and toilet room upgrades. Natural gas will be routed into the building and become the fuel supply for the HVAC equipment in the center offices, replacing the office steam heating system. The existing steam supply to the east bay will be re-routed clear of the office area. The project also includes replacement of the HVAC controls on the (12) AHU's in the east and west hangars with DDC controls.

The sponsor attests that the above Project has a useful service life of 20 years.

Estimated Expenditure Activities (Planning, Design, etc) as per original submitted application

Location: Griffiss International Airport

Owner/Operating and Maintenance Responsibility: Oneida County

Type of Airport Organization:

Municipality     Public Authority     Not-for-Profit Corporation     Public Benefit Corporation

Business Corporation     Partnership     Proprietorship     \_\_\_\_\_

B. SUMMARY OF ELIGIBLE		PROGRAM COSTS	
AIR'99 FUNDING		OTHER NECESSARY FUNDING	TOTAL
GRANT	LOCAL SHARE		
\$1,500,000	\$4,100,000		\$7,000,000

Project is: (check which applies)     part of an approved airport layout plan, OR  
 consistent with an approved airport layout plan

## SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

**Instructions:** Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

### A1. Preliminary Engineering ("PE") Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Smart Growth Attestation (NYSDOT ONLY).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**STATE ENVIRONMENTAL QUALITY REVIEW**

In accordance with the rules, regulations and procedures adopted by

**County of Oneida**

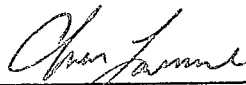
(or 6NYCRR Part 617 where the Municipal Corporation has not adopted such rules, regulations and procedures) pursuant to the intent of the State Environmental Quality Review Act, the project described below is classified as a:

**CHECK ONE**

- Type I Action - with possible significant effect (NEPA or SEQR DEIS, FEIS and SEQR Record of Decision have been prepared).
- Type I Action - with no significant effect (Environmental Assessment Form or Environmental Assessment and Negative Declaration have been prepared and filed).
- Unlisted Action - with possible significant effect (NEPA or SEQR DEIS, FEIS and SEQR Record of Decision have been prepared).
- Unlisted Action - with no significant effect (Environmental Assessment Form or Environmental Assessment and Negative Declaration have been/ will be prepared and filed).
- Type II Action
- Ministerial Act
- Exempt Act

**PROJECT DESCRIPTION**

Modifications to Building 100 including 3 story vertical circulation corridor serving UAV research and development offices. Facade improvements to air-side and landside elevations as well as renovation of approx. 30,000 plus sq. ft. of office space. Improvements to HVAC systems. The Existing 3 story central office area between the east and west hangars are to have interior and exterior rehabilitations performed. The exterior 3 story facade on the public and air side of the offices will be modernized and renovated. This will include a 3 story elevator with stops on all 3 floors. The interior renovations will include extensive office and toilet room upgrades. Natural gas will be routed into the building and become the fuel supply for the HVAC equipment in the center offices, replacing the office steam heating system. The existing steam supply to the east bay will be re-routed clear of the office area. The project also includes replacement of the HVAC controls on the (12) AHU's in the east and west hangars with DDC controls.

  
 \_\_\_\_\_  
 Authorized Signature  
 \_\_\_\_\_  
 Commissioner  
 Title  
 \_\_\_\_\_  
 Date

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>Sponsor</u>	
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> <li>- Railroad force account</li> <li>- Maintenance agreements for sidewalks, lighting, signals, betterments</li> <li>- Betterment Agreements</li> <li>- Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **A2. Right-of-Way (ROW) Incidentals**

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>Sponsor</u>	
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. ROW mapping and any necessary ROW relocation plans.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Secure Appraisals.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Perform Appraisal Review and establish an amount representing just compensation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **B. Right-of-Way (ROW) Acquisition**

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. **If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.**
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.

**C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase**

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

1. Advertise contract lettings and distribute contract documents to prospective bidders.
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.
4. Compile and submit Contract Award Documentation Package.
5. Review/approve any proposed subcontractors, vendors, or suppliers.

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

- |   |                          |                                     |
|---|--------------------------|-------------------------------------|
| 6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7c. For projects that fall under both 7a and 7b above, check boxes for each.  |                          |                                     |
| 8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. Review and approve all shop drawings, fabrication details, and other details of structural work.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 11. Administer all construction contract claims, disputes or litigation.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (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 Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable,

Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of

the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state

agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**  
(To be included in all contracts)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.



The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX B**  
**Requirements for State Aided Transportation Project**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, Anthony J. Picent, Jr., the representative for the Municipality/Sponsor/Grantee certify the referenced entity adopted, or agrees to adopt, the following policies with respect to the project being developed or services rendered for Oneida County/Griffiss International Airport.  
(Insert name of Municipality/Sponsor/Grantee)

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newnycontracts.com/> and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation, as approved by the State.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability or marital status.
- (c) At the request of the Sponsor, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) This organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. This organization and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_  
Signature

Print: \_\_\_\_\_ Title: \_\_\_\_\_  
Responsible Local Official

## APPENDIX B

### Requirements for State Aided Transportation Project

Anthony J. Picone, Jr. (Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises-Equal Employment Opportunity (M/WBE-BEO) program.

The Municipality/Sponsor/Grantee agrees that the Standard M/WBE Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # K007421) are provided below.

#### STANDARD GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE
C: Commodities	7.00%	16.00%
CC: Construction Consultants (Architectural/Engineering)	24.00%	6.00%
CN: Construction	10.00%	15.00%
SC: Services/Consultants (Non-Architectural/Engineering)	8.00%	16.00%

These Standard Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE Goal Plan, as a result of programmatic analysis. The plan is available at: [https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/20180502\\_MWBE\\_Goal\\_Plan.pdf](https://www.dot.ny.gov/main/business-center/civil-rights2/civil-rights-repository/Tab/20180502_MWBE_Goal_Plan.pdf). In furtherance of these goals, the Municipality/Sponsor/Grantee agrees to consider the following statutory factors (See 5 NYCRR 142.2) and establish an appropriate contract goal in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work;
- (2) the potential subcontract opportunities available in the prime contract;
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities; (Disparity Study: <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-reports>)
- (4) the number and types of certified minority-owned and women-owned business enterprises found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work;
- (5) the geographic location of the contract performance;
- (6) the extent to which geography is material to the performance of the contract;
- (7) the ability of certified minority-owned and women-owned enterprises located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the Municipality/Sponsor/Grantee's contract;
- (8) the total dollar value of the work required by the Municipality's/Sponsor's/Grantee's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the Municipality's/Sponsor's/Grantee's contract to the monetary size and term of the project for which the contract is awarded.

**Pre-Advertisement:** As a result of Municipality's/Sponsor's/Grantee's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the Municipality/Sponsor/Grantee believes a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee agrees to obtain NYSDOT approval by submitting a M/WBE Pre-Advertisement Goal Modification Request, with justification, prior to public advertisement of the contract.

**Pre-Award:** If the Municipality/Sponsor/Grantee receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the Municipality/Sponsor/Grantee agrees to obtain NYSDOT approval by submitting a M/WBE Waiver Request demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.

**Post Award:** If any consultant/contractor fails to attain its M/WBE commitment on a contract, the Municipality/Sponsor/Grantee agrees to obtain NYSDOT approval by submitting a M/WBE Waiver Request, demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Nothing stated within this, or associated, document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

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

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

Responsible Local Official

APPENDIX C

**GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION**

The Contractor shall follow the requirements of §102-11 *Equal Employment Opportunity Requirements*. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, which is the county or counties in which the work is located, are as follows:

GOALS FOR PARTICIPATION OF MINORITIES					
COUNTY	%	COUNTY	%	COUNTY	%
Albany	3.2	Herkimer	2.1	Richmond	Table
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	Table	St. Lawrence	2.5
Bronx	Table	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	Table	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	Table	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

(45 FR 65976 – 10/3/1980)

GOALS FOR PARTICIPATION OF MINORITIES BRONX, KINGS, NEW YORK, QUEENS AND RICHMOND COUNTIES			
Electricians	9.0 to 10.2	Bricklayers	13.4 to 15.5
Carpenters	27.6 to 32.0	Asbestos workers	22.8 to 28.0
Steam fitters	12.2 to 13.5	Roofers	6.3 to 7.5
Metal lathers	24.6 to 25.6	Iron workers (ornamental)	22.4 to 23.0
Painters	26.0 to 28.6	Cement masons	23.0 to 27.0
Operating engineers	25.6 to 26.0	Glaziers	16.0 to 20.0
Plumbers	12.0 to 14.5	Plasterers	15.8 to 18.0
Iron workers (structural)	25.9 to 32.0	Teamsters	22.0 to 22.5
Elevator constructors	5.5 to 6.5	Boilermakers	13.0 to 15.5
		All others	16.4 to 17.5

**GOAL FOR PARTICIPATION OF WOMEN**

The goal for the participation of women is 6.9%.

(43 FR 14888 – 4/7/1978)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.



# Griffiss International Airport

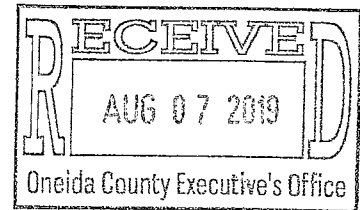
660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

**ANTHONY J. PICENTE, JR.**  
County Executive

**CHAD LAWRENCE**  
Commissioner of Aviation

August 6, 2019

FN 20 19-267



Anthony J. Picente, Jr.  
County Executive  
800 Park Avenue  
Utica, NY 13501

AIRPORT

Dear County Executive Picente:

## WAYS & MEANS

Griffiss International Airport has received a grant offer from New York State Department of Transportation (NYSDOT 2905.76) for the reconstruction of Building 100.


It will be necessary to amend the current capital project to complete the Design and Construction of Building 100 Phase II. It is estimated the additional Building 100 improvements will be a total cost of \$12,000,000.

It is therefore request to amend **Capital Project H-589 – Griffiss Intl. – Building 100 Phase II** as follows:


	<u>Current</u>	<u>Change</u>	<u>Proposed</u>
Bonds	\$5,600,000	\$0	\$5,600,000
Empire State Development	\$1,400,000	\$0	\$1,400,000
NYSDOT	\$0	\$1,500,000	\$1,500,000
Griffiss Institute	\$0	\$3,500,000	\$3,500,000
Total	\$7,000,000	\$5,000,000	\$12,000,000

If you concur please forward to the Board of Legislators for their consideration.

Sincerely,

  
Chad Lawrence  
Commissioner



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente, Jr.  
County Executive  
Date 8-7-19



# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

**ANTHONY J. PICENTE, JR.**  
County Executive

**CHAD LAWRENCE**  
Commissioner of Aviation

August 5, 2019

Honorable Anthony J. Picente, Jr.  
County Executive  
800 Park Avenue  
Utica, NY 13501

FN 20 19-268  
AIRPORT  
WAYS & MEANS

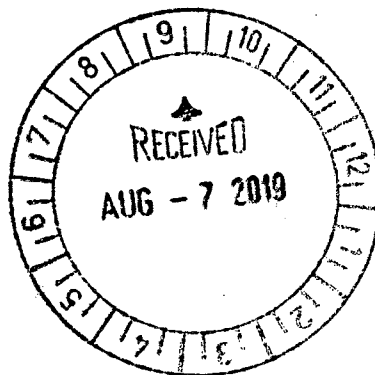
Dear County Executive Picente:

I would like to request two (2) new Airport Maintenance Worker positions at Griffiss International Airport. Oneida County has acquired Building 101 and to continue to operate efficiently and effectively I am requesting these two (2) new Airport Maintenance Worker positions. Airport Maintenance Worker is a grade B15 and non-competitive. The job specification is attached for your review.

Thank you for your consideration in this matter.

Sincerely,

Chad Lawrence  
Commissioner of Aviation



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 8-7-19

Civil Division: Oneida County Government  
Jurisdictional Class: Non-Competitive  
EEO Category: Service-Maintenance  
Revised: 01/07/2019

### **AIRPORT MAINTENANCE WORKER**

**DISTINGUISHING FEATURES OF THE CLASS:** This position exists at the Griffiss International Airport, and performs a variety of unskilled, semi-skilled and skilled tasks related to airfield operations, and facilities and ground maintenance. Such tasks include, but are not limited to: Security patrols; Aircraft Rescue and Firefighting (ARFF) duties; snow removal operations; Foreign Object Debris (FOD) control/removal operations; control of vegetation and wildlife; and, the maintenance of airport infrastructure, such as pavements, storm water drainage structures, and buildings and hangars. It also entails the operation of a variety of heavy equipment used in maintaining runways, taxiways, aircraft parking areas, and surrounding grounds, and the operation of firefighting vehicles and equipment.

Since the operation and maintenance of the airport requires knowledge in a highly technical field and the use of specialized equipment, which affects functions vital to the safety of aircraft operations, and the incumbent must follow closely prescribed federal, state and local laws, rules and regulations, the incumbent is required to perform at a higher level and in a position with a higher consequence of error than maintenance workers assigned to other departments. General and specific instructions are received and work is performed under immediate or general supervision depending on the nature of the task.

The incumbent is also required to complete in-house training in: ARFF vehicle/equipment operation and techniques; Cardiopulmonary Resuscitation (CPR) and First Aid; heavy equipment operation and techniques; Airfield Driving; Airfield Communications; Security procedures; response to Hazardous Material (HAZMAT) spills; the issuance of Notices to Airmen (NOTAM); and, the performance of Airport Field Condition and Safety inspections and reports. The incumbent performs related work as required.

#### **TYPICAL WORK ACTIVITIES:** (Illustrative Only)

- Participates in Airport Rescue – Firefighting (ARFF) duties including the operation of ARFF vehicles, fighting aircraft fires, and rendering emergency first aid treatment;
- Conducts airport field condition and safety inspections, and issues reports and NOTAMs to the Air Traffic Control Tower (ATCT), airport tenants, and the Federal Aviation Administration (FAA);
- Operates a variety of heavy equipment and vehicles including, but not limited to, ARFF vehicles, snowplows, snow blowers, pavement vacuums and sweepers, dump trucks, sanding trucks, and loaders;
- Sweeps, cleans and removes snow and ice and other obstructions and FOD from runways, taxiways, aprons, lights, signage, instrumentation, parking areas, internal roads, parking areas and grounds;
- Maintains, repairs and cleans perimeters, internal roads, runways, taxiways, drainage systems, and mechanical systems;
- Performs semi-skilled building maintenance tasks including, but not limited to, painting, roofing repairs, plumbing, carpentry repairs, heating, masonry, and machinery repairs;

continued...

## **AIRPORT MAINTENANCE WORKER**

page two

### **Typical Work Activities (continued):**

Performs semi-skilled grounds maintenance tasks including, but not limited to, mowing grass, grading earth, patching pavements, and installing signs;  
Patrols airport property and performs security checks;  
Performs routine servicing and maintenance on motor vehicles and equipment;  
Operates radios and maintains contact with the ATCT;  
Attends training programs and classes.

### **FULL PERFORMANCE KNOWLEDGE, SKILLS, ABILITIES AND PERSONAL**

**CHARACTERISTICS:** Demonstrated ability to drive a tractor, heavy truck with plow, fire truck, loader, sanding and broom sweeper truck; Good knowledge of the principles, practices, tools and materials used in the maintenance and repairs of airport buildings and grounds; Working knowledge of standard automotive repair; Ability to learn a working knowledge of ARFF equipment and techniques, First Aid and CPR; Ability to operate specialized equipment utilized in airport operations; Ability to understand and carry out complex oral and written instructions; Ability to operate radios; Ability to establish effective working relationships with co-workers, tenants and the public at the airport; Ability to work outdoors under all weather conditions; Integrity; Mechanical aptitude; Initiative; Good judgment; Physical condition commensurate with the demands of the position.

### **MINIMUM QUALIFICATION:**

Graduation from high school or possession of a high school equivalency diploma.

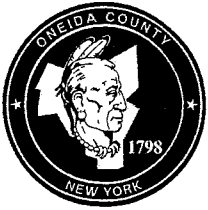
### **SPECIAL REQUIREMENTS:**

1. Possession of a valid New York State driver's license at time of appointment. License must remain valid throughout appointment, to meet the transportation requirements of the job.
2. Must pass a fingerprint-based FBI criminal history background check and be eligible to be granted a security badge mandated by the Transportation Security Administration (TSA).
3. Must successfully complete the required training for certification in ARFF, CPR and First Aid within one (1) year of appointment and maintain certification throughout employment.
4. Must acquire a New York State Class B Commercial Drivers License (CDL) with Air Brakes Endorsement within one (1) year of appointment and maintain the License throughout employment.
5. Must successfully complete FAR Part 139 ARFF training within one (1) year of appointment.

Adopted: 01/28/1982

Revised: 11/13/1995; 08/05/1996; 09/17/1996; 04/23/1997; 01/20/2010; 07/10/2013; 01/21/2015;  
01/07/2019





**ONEIDA COUNTY  
DEPARTMENT OF PLANNING**

Boehlert Center at Union Station  
321 Main St., Utica NY 13501  
Phone: (315) 798-5710 Fax: (315) 798-5852

ANTHONY J. PICENTE, JR.  
County Executive

REGINA A. VENETTOZZI  
Interim Commissioner

August 6, 2019

Hon. Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-270  
**PUBLIC WORKS**

Re: Flood Mitigation Committee Projects

**WAYS & MEANS**

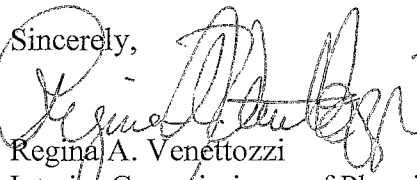
Dear County Executive Picente:

The Flood Mitigation Committee met, considered and approved several projects to alleviate flooding and storm water damage within Oneida County. The projects, the municipalities involved and the amounts to be expended are listed below.

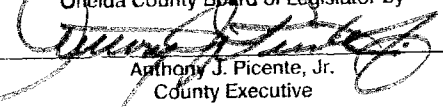
<u>Municipality</u>	<u>Project</u>	<u>Cost</u>
Town of Kirkland	Norton Ave Bridge Replacement	\$550,000.00
Town of Kirkland	Flood plain restoration design	\$200,000.00
Town of New Hartford	Culvert Rightsizing and Road Repairs	\$180,000.00
Town of New Hartford	Stormwater drainage improvements	\$200,000.00
Town of Paris	Culvert Rightsizing and Bank Stabilization	\$25,000.00
Town of Whitestown	Bank Stabilization	\$400,000.00
Town of Trenton	Culvert Rightsizing	\$37,420.00
Town of Trenton	Amendment to Stream Restoration Project	\$20,000.00

These projects are time sensitive and the upstate New York construction season is limited. The distribution of the Flood Mitigation monies and the implementation of these projects will be accomplished through the execution of contracts between the County and several local municipalities. These contracts will be identical in format, with only the specifics of the projects and the amounts to be expended differing in each. As the Flood Mitigation Committee is a creation of the Oneida County Board of Legislators and the membership of the Flood Mitigation consists of multiple legislators, including the Majority and Minority Leaders, I am respectfully requesting that the Board of Legislators confirm and approve the recommendations of the Flood Mitigation Committee and authorize the Law Department to craft separate agreements for each project and authorize you to execute those agreements once formalized.

Should the requests herein meet with your approval, I respectfully request that you forward this letter to the Board of Legislators for their consideration and approval.

Sincerely,  
  
Regina A. Venettozzi  
Interim Commissioner of Planning



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by  
  
Anthony J. Picente, Jr.  
County Executive  
Date 8-7-19



ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.  
County Executive  
ce@ocgov.net

August 9, 2019

Gerald Fiorini  
Chairman of the Board  
Oneida County Legislators  
800 Park Avenue  
Utica, New York 13501

FN 20 19-271

**PUBLIC WORKS  
WAYS & MEANS**

Dear Chairman Fiorini:

As mentioned in the Commissioner of Department of Public Works letter dated August 6, 2019, there is a need for an additional larger snowplow which can handle a larger salt bed and reduce the number of trips to the salt barn which will increase efficiencies and save money. The Commissioner also mentioned the need for a new pickup to replace a truck which will no longer pass inspections to be on public roads.

Fortunately with the sale of the tower on Skyline Drive and the unanticipated increase in NYS Aid for the Court Facilities the County has unanticipated revenue to use in this years budget. This supplemental and the \$15,000 presently available in the account will cover this proposed expenditure.

I therefore, respectfully request your Board to act on this legislation and request your Board's approval of the following 2019 supplemental appropriation for the General Fund:

GENERAL FUND:

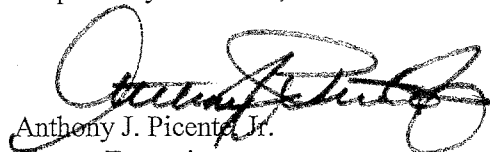
TO:

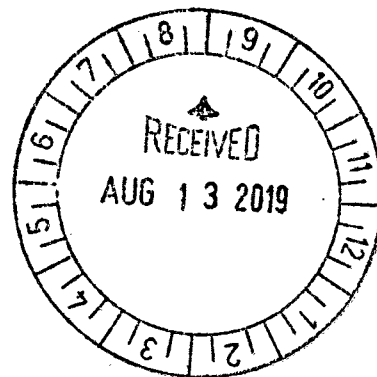
AA# 1620.251 Buildings and Grounds – Automotive Equipment..... \$ 90,000.00

This supplemental appropriation will be fully supported by:

RA# A2674	Sale of County Owned Real Property.....	\$ 82,100.00
RA# A3022	State Aid – Court Facilities.....	<u>7,900.00</u>
	Total.....	\$ <u>90,000.00</u>

Respectfully submitted,

  
Anthony J. Picente, Jr.  
County Executive



CC: Comptroller  
County Attorney  
Budget Director  
DPW Commissioner



**ONEIDA COUNTY**  
**DEPARTMENT OF PUBLIC WORKS**  
George E. Carle Complex  
5999 Judd Road, Oriskany, NY 13424  
Phone: (315) 793-6213 Fax: (315) 768-6299

ANTHONY J. PICENTE, JR.  
County Executive

DENNIS S. DAVIS  
Commissioner

August 6, 2019

Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

Dear County Executive Picente,

The Division of Buildings and Grounds operates a fleet of vehicles for the purpose of general transportation and snow and ice control. At this time, snow and ice removal is hindered by our inability to apply enough deicing chemicals (salt) in a timely fashion. Currently, the crew has to make multiple trips to fill the truck with salt in order to cover the Utica campus for the initial application. The department also needs to replace one support vehicle. The cost to replace one salt/dump truck (\$80,000.00) and one support vehicle (\$25,000.00) would be approximately \$105,000.00.

The Division of Buildings and Grounds has generated unanticipated revenue from the sale of the Kirkland Hill Property and from an increased reimbursement from the NYS Unified Court; therefore, I request the following supplemental appropriations supported by unanticipated revenue.

If you concur, I respectfully request that the Public Works and Ways and Means Committees consider this supplemental appropriation with presentation to the Board of Legislators at their regular scheduled meeting.

Thank you for your continued support.

Sincerely,

Dennis S. Davis  
Commissioner

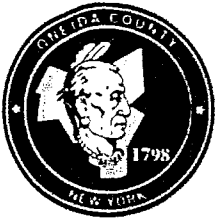
cc: Matthew Baisley, Deputy Commissioner



Reviewed and Approved for Submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 8-7-19



**ONEIDA COUNTY**  
**DEPARTMENT OF PUBLIC WORKS**  
 George E. Carle Complex  
 5999 Judd Road, Oriskany, NY 13424  
 Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE, JR.  
 County Executive

DENNIS S. DAVIS  
 Commissioner

July 12, 2019

FN 20 19-272

Anthony J. Picente, Jr.  
 Oneida County Executive  
 800 Park Avenue  
 Utica, NY 13501

**PUBLIC WORKS**

**WAYS & MEANS**

Dear County Executive Picente,

The City of Rome has prepared a plan to improve the aesthetics and walkability of West Dominick Street and surrounding areas. Completion of this plan includes construction of an art park adjacent to the County office building at 301 W. Dominick Street.

On December 19, 2018, the Oneida County Board of Legislators approved additional funding in Capital Project H-523, Rome Family Court, with the understanding that approximately \$70,000.00 would be used for certain improvements to County property in association with and in support of the City's art park project. Improvements include an electric service to the art park from the County office building at 301 W. Dominick Street.

Enclosed is an agreement between Oneida County and the City of Rome that authorizes payments to the City of Rome for improvements to County property completed by the City of Rome in association with the art park project. The maximum amount payable is \$70,000.00 less the cost of any associated improvements completed by Oneida County.

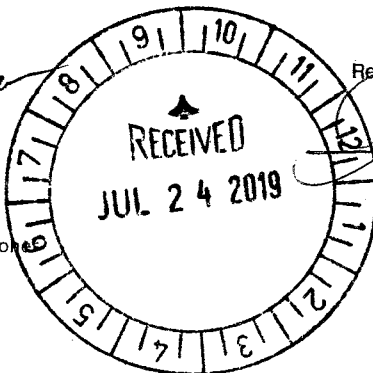
If the enclosed agreement is acceptable, please forward to the Oneida County Board of Legislators for approval.

Thank you for your continued support.

Sincerely,

Dennis S. Davis  
 Commissioner

cc: Mark E. Laramie, PE, Deputy Commissioner



Reviewed and Approved for submittal to the  
 Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
 County Executive

Date 7-22-19

Oneida County Department: Public Works

Competing Proposal \_\_\_\_\_ Only Respondent \_\_\_\_\_ Sole Source RFP \_\_\_\_\_ Other  X

**ONEIDA COUNTY BOARD OF LEGISLATORS**

Name & Address of Vendor:	City of Rome 198 North Washington Street Rome, NY 13440
Title of Activity of Service:	Intermunicipal Agreement
Proposed Dates of Operation:	Start on Execution – 12/31/2020
Client Population/Number to be Served:	N/A

Summary Statements

1) Narrative Description of Proposed Services:

The City of Rome will construct an art park adjacent to the County Office Building at 301 W. Dominick Street, and the County will contribute \$70,000.00 for improvements to County property in association with said art park.

2) Program/Service Objectives and Outcomes: N/A

3) Program Design and Staffing: N/A

4)Funding

Account #:	H-523
Total Funding Requested:	\$70,000.00
Oneida County Dept. Funding Recommendation:	\$70,000.00
Proposed Funding Sources	Federal: \$0.00
	State: \$0.00
	County: \$70,000.00
	Other: \$0.00

Past Performance Data: N/A

O.C. Department Staff Comments: None

INTERMUNICIPAL AGREEMENT  
FOR  
ART PARK CONSTRUCTION

THIS AGREEMENT, made by and between the CITY OF ROME (hereinafter referred to as the "City"), a municipal corporation organized and existing under the laws of the State of New York with offices located at 198 N. Washington Street, Rome, New York 13440, and the COUNTY OF ONEIDA (hereinafter referred to as the "County"), a municipal corporation organized and existing under the laws of the State of New York with offices located at 800 Park Avenue, Utica, New York, 13501 (each a "Party" and collectively the "Parties").

WITNESSETH

WHEREAS, the County and the City have a mutual interest in the beautification and revitalization of the City; and  
WHEREAS, the City has created a plan to improve the aesthetics and walkability of West Dominick Street and surrounding areas in the City of Rome; and

WHEREAS, in furtherance of said plan, the City proposes construction of an art park on West Dominick Street (hereinafter the "Art Park") and construction of improvements on property owned by the County in support of said Art Park; and

NOW, THEREFORE, for and in consideration of the promises and covenants hereinafter set forth, it is agreed between the Parties hereto as follows:

1. SCOPE OF AGREEMENT

- 1.1. The City shall construct improvements in and around the Oneida County Rome Office Building, located at 301 West Dominick Street, in the City of Rome (hereinafter referred to as "the Work").
- 1.2. The Work shall comply with all relevant codes and in accordance with plans and specifications prepared by CLA SITE Landscape Architecture, Engineering & Planning, P.C., dated March 29, 2019, and titled West Dominick Street Art Plaza, City of Rome, Oneida County, New York.

2. TERM

- 2.1. The term of this Agreement shall commence upon receipt of a Notice to Proceed, which shall be a signed writing from the Deputy Commissioner of Engineering, and terminate upon completion of the Work, anticipated to be December 31, 2020.

3. PAYMENT

- 3.1. The County shall contribute a not-to-exceed amount of Seventy Thousand Dollars (\$70,000) towards the cost of the Work.
- 3.2. Payments shall be made to the City following execution of this Agreement and based on work completed.
- 3.3. Payments shall be made only for improvements to property owned by the County.

3.4. The cost of any Work performed by the County, or one of its contractors, associated with the Art Park will be deducted from the aforementioned not-to-exceed amount.

#### 4. SEVERABILITY

4.1. If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the Parties agree that this Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the Parties agree that all other provisions shall remain valid and enforceable.

#### 5. NON WAIVER

5.1. No provision of this Agreement shall be deemed to have been waived by either Party, unless such waiver shall be set forth in a written instrument executed by such Party. Any waiver by any of the Parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.

#### 6. ENTIRE AGREEMENT

6.1. This Agreement contains the binding Agreement between the Parties and supersedes all other agreements and representations, written or oral, on the subject matter.

#### 7. INCORPORATION BY REFERENCE

7.1. The Addendum - Standard Oneida County Conditions, attached hereto, is deemed incorporated in this Agreement as EXHIBIT A.

#### 8. INDEMNIFICATION

8.1. The obligations of the City under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage.

8.2. To the fullest extent permitted by law, the City agrees that it shall defend, indemnify and hold harmless the County and its respective officers, directors, members, agents, employees, and other representatives, from and against all liability, damages, expenses, costs, causes of actions, suits, losses, claims or judgments arising from property damage, personal injuries or death to persons arising from or out of the Work of the City and its agents, servants or employees, and from any loss or damage arising from the acts or failure to act or any default or negligence by the City or failure on the part of the City to comply with any of the covenants, terms or conditions of this Agreement. The City shall not be required to defend and indemnify the County against claims alleging negligent acts of commission or omission attributable solely to the County. The City further shall save the County harmless from all claims for labor or materials used in the City's performance under this Agreement.

#### 9. INSURANCE REQUIREMENTS

9.1. The City shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.

9.2. Commercial General Liability (CGL) coverage with limits of not less than One Million Dollars (\$1,000,000) each occurrence, and Two Million Dollars (\$2,000,000) Annual Aggregate. CGL coverage shall be written on ISO

Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products, completed operations, personal and advertising injury. The County shall be included as an additional insured, on a primary and non-contributory basis before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured. The City shall maintain said CGL coverage for itself and the additional insured for the duration of the contract, and maintain completed operations coverage for itself and the additional insured for at least three (3) years after completion.

9.3. Workers' Compensation and Employer's Liability, pursuant to statutory limits.

9.4. Business Automobile Liability with limits of at least One Million Dollars (\$1,000,000) each accident. Coverage must include liability arising out of all owned, leased, hired and non-owned automobiles. County shall be included as an additional insured on a primary and non-contributing basis.

9.5. Commercial Umbrella coverage with limits of at least Three Million Dollars (\$3,000,000) each occurrence. The County shall be included as an additional insured. Umbrella coverage for such additional insured shall apply as primary and non-contributory before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insured.

9.6. Waiver of Subrogation: The City waives all rights against the County and its agents, officers, and employees for recovery of damages to the extent these damages are covered by insurance maintained per requirements stated above.

9.7. The County shall not execute this Agreement until certificates evidencing the insurance required by this Section have been provided. The certificates shall be on forms approved by the County, and shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the County. Acceptance of the certificates shall not relieve the City of any of the insurance requirements, nor decrease the liability of the City. The County reserves the right to require the City to provide insurance policies for review by the County. The City grants the County a limited power of attorney to communicate with the City's insurance provider and/or agent for the express purpose of confirming the coverages required hereunder.

## 10. AUTHORITY TO ACT/SIGN

10.1. The City's signatory hereby represents, warrants, personally guarantees and certifies that he has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder; the execution and delivery by the City's signatory of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by the City. No other action on the part of the City or any other person or entity, are necessary to authorize the City's signatory to enter into this Agreement, or to consummate the transactions contemplated herein.



11. ADVICE OF COUNSEL

11.1. Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has affixed their hands and seals the day and year mentioned below.

**Oneida County**

**City of Rome**

APPROVED JUN 17 2019 

By:

\_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

By: 

\_\_\_\_\_  
Jacqueline M. Izzo  
Mayor

Date:

\_\_\_\_\_

Date: June 17, 2019

\_\_\_\_\_

**Approved**

By:

\_\_\_\_\_  
Linda B. Lark  
Assistant County Attorney

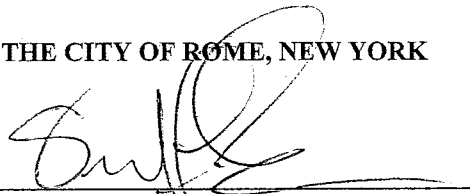
Date:

\_\_\_\_\_

PURSUANT TO SECTION 171 OF THE ROME CITY CHARTER,  
I HEREBY CERTIFY THAT THE CITY OFFICER WHO  
ENACTED THE SUBJECT CONTRACT ON BEHALF OF  
THE CITY OF ROME HAD AUTHORITY AND POWER  
TO SO ACT AND THAT SUCH CONTRACT IS IN  
PROPER FORM AND PROPERLY EXECUTED.

THE CITY OF ROME, NEW YORK

BY:

A handwritten signature in black ink, appearing to read "Gerard F. Feeney", written over a horizontal line.

GERARD F. FEENEY  
CORPORATION COUNSEL

**EXHIBIT A**

**ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS**

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

- B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and
  - D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;
- ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.
- c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
    - i. The Contractor will or will continue to provide a drug-free workplace by:
      - A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
      - B. Establishing an ongoing drug-free awareness program to inform employees about:

- 1) The dangers of drug abuse in the workplace;
- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the



County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
  - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so

are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set

forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from

public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from

another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT.

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY.

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including:



chewing; holding in the mouth; or expectoration of chewing tobacco.

- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



**ONEIDA COUNTY  
DEPARTMENT OF PUBLIC WORKS**

George E. Carle Complex  
5999 Judd Road, Oriskany, NY 13424  
Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE, JR.  
County Executive

DENNIS S. DAVIS  
Commissioner

August 6, 2019

Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

FN 20 19-273

Dear County Executive Picente,

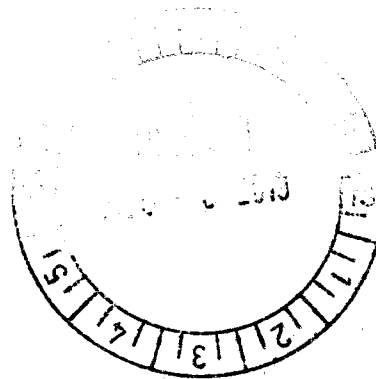
Oneida County has secured financial aid from New York State in the amount of \$1,563,500.00 for reconstruction of culverts and structures on Holman City Road, Church Road, North Road, and Knoxboro Road. In addition, applications have been submitted to New York State for additional financial aid in the amount of \$612,230.00 to fund the aforementioned projects. Capital Project H-498 will be used to fund these projects and the budget must be amended to include additional State aid. Construction cost estimate and funding summary attached.

I respectfully request a \$2,175,730.00 budget increase in Capital Project H-498 to be funded by financial aid from New York State.

Thank you for your continued support.

Sincerely,

Dennis S. Davis  
Commissioner



cc: Mark E. Laramie, PE, Deputy Commissioner

Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 8-7-19

North Road – Knoxboro Road Structure Replacements  
 Construction Cost and Funding Summary

Project Phase	Estimated Cost
Design	\$149,700.00
Construction	\$1,497,700.00
Construction Inspection	\$142,560.00
<b>Total Estimated Cost</b>	<b>\$1,789,960.00</b>

Funding Source	Amount
NYS Grant SAM	\$1,198,500.00
DEC Flood Mitigation Grant	\$295,730.00 (application filed – not secured)
Oneida County	\$295,730.00
	<b>\$1,789,960.00</b>

Holman City Road – Church Road Structure Replacements  
 Construction Cost and Funding Summary

Project Phase	Estimated Cost
Design	\$73,000.00
Construction	\$825,000.00
Construction Inspection	\$100,000.00
<b>Total Estimated Cost</b>	<b>\$998,000.00</b>

Funding Source	Amount
NYS Grant SAM	\$365,000.00
DEC Flood Mitigation Grant	\$316,500.00 (application filed – not secured)
Oneida County	\$316,500.00
	<b>\$998,000.00</b>



ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.  
County Executive  
ce@ocgov.net

August 13, 2019

Gerald Fiorini  
Chairman of the Board  
County Board of Legislators  
800 Park Avenue  
Utica, NY 13501

Dear Chairman:

As per the letter from the Commissioner of Department of Public Works, his Department has been awarded a New York State Grant in the amount of \$1,563,500.00. The Department is also in the process of securing another grant from New York State in the amount of \$612,230.00. These grants will be used for the reconstruction of culverts and structures on Holman City Road and Church Road in the Town of Paris along with North Road and Knoxboro Road in the Town of Augusta.

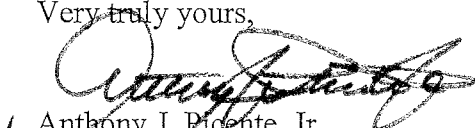
In order to appropriate these funds it is necessary to amend the capital project to include this additional funding.

I therefore request your Board's approval of amending **Capital Project H-498 –DPW – County Highway and Bridge – Phase IV** as follows:

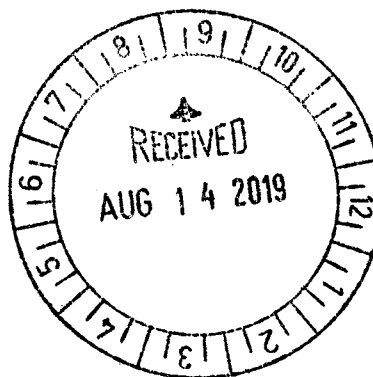
	<u>Current</u>	<u>Change</u>	<u>Proposed</u>
H - 498 Bonds	<u>\$ 11,466,000.</u>	<u>\$ 2,175,730.</u>	<u>\$ 13,641,730.</u>
Totals	<u>\$ 11,466,000.</u>	<u>\$ 2,175,730.</u>	<u>\$ 13,641,730.</u>

Thank you for the Board's kind attention to this request.

Very truly yours,

  
Anthony J. Picente, Jr.  
County Executive

CC: Comptroller  
County Attorney  
Budget  
Commissioner of DPW





**ONEIDA COUNTY  
DEPARTMENT OF PUBLIC WORKS**

George E. Carle Complex  
5999 Judd Road, Oriskany, NY 13424  
Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE, JR.  
County Executive

DENNIS S. DAVIS  
Commissioner

FN 20 19-274

August 6, 2019

Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

Dear County Executive Picente,

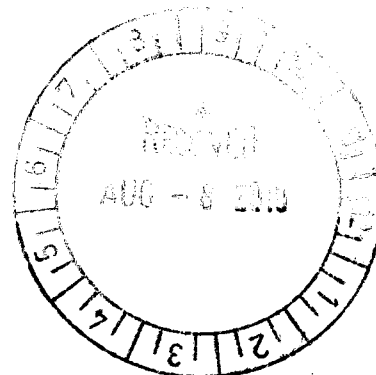
Oneida County has secured financial aid from New York State in the amount of \$4,520,000.00 for reconstruction of Middle Settlement Road in the Town of New Hartford. Capital Project H-298 will be used to fund this project and the budget must be amended to include additional State aid. Construction cost estimate and funding summary attached.

I respectfully request a \$4,520,000.00 budget increase in Capital Project H-298 to be funded by financial aid from New York State.

Thank you for your continued support.

Sincerely,

Dennis S. Davis  
Commissioner



cc: Mark E. Laramie, PE, Deputy Commissioner

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 8-7-19

Middle Settlement Road Reconstruction  
Construction Cost and Funding Summary

<u>Project Phase</u>	<u>Estimated Cost</u>
Design	\$419,000.00
Design Supplemental Agreement	\$97,000.00
ROW Incidentals and Acquisition	\$215,000.00
Construction	\$3,371,135.00
Construction Inspection	\$364,000.00
<u>Total Estimated Cost</u>	<u>\$4,466,135.00</u>

<u>Funding Source</u>	<u>Amount</u>
NYS Grant PIT S&A (PIN 2754.27.101)	\$ 402,000
NYS Grant PIT S&A (PIN 2754.27.201)	\$ 30,000
NYS Grant PIT S&A (2754.27.301)	\$2,688,000
NYS Grant CAP (2754.27.302)	\$ 500,000
NYS Grant DASNY (2754.27.303)	\$ 900,000
<u>Total Proposed Funding</u>	<u>\$4,520,000.00</u>



ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

ANTHONY J. PICENTE, JR.  
County Executive  
ce@ocgov.net

August 13, 2019

Gerald Fiorini  
Chairman of the Board  
County Board of Legislators  
800 Park Avenue  
Utica, NY 13501

Dear Chairman:

As per the letter from the Commissioner of Department of Public Works, his Department has been awarded a New York State Grant in the amount of \$4,520,000.00. This grant is to be used for the reconstruction of Middle Settlement Road in the Town of New Hartford.

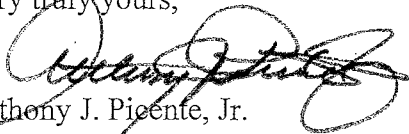
In order to appropriate these funds it is necessary to amend the capital project to include this additional funding.

I therefore request your Board's approval of amending **Capital Project H-298 –DPW – Highway Bridge Replacement / Rehab Program (ISTEA)** as follows:

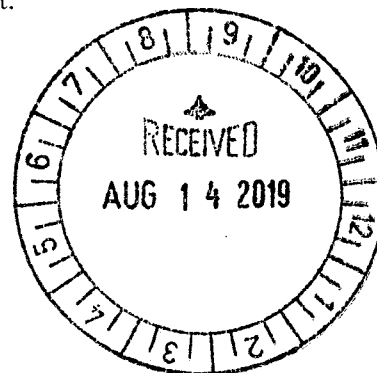
	<u>Current</u>	<u>Change</u>	<u>Proposed</u>
H - 298 Bonds	\$ 3,684,050.	\$ 00.	\$ 3,684,050.
H - 298 State Aid	\$ 1,239,250.	\$4,520,000.	\$ 5,759,250.
H - 298 Federal	\$20,588,000.	\$ 00.	\$20,588,000.
H - 298 Trans / Gen	<u>\$ 1,862,400.</u>	<u>\$ 00.</u>	<u>\$ 1,862,400.</u>
Totals	\$27,373,700.	\$4,520,000.	\$31,893,700.

Thank you for the Board's kind attention to this request.

Very truly yours,

  
Anthony J. Picente, Jr.  
County Executive

CC: Comptroller  
County Attorney  
Budget  
Commissioner of DPW



Anthony J. Picente Jr.  
County Executive

Colleen Fahy-Box  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES**

County Office Building 800 Park Avenue Utica, NY 13501  
Phone (315) 798-5514 Fax (315) 793-6044

June 17, 2019

Honorable Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-275  
HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Attached for your review and approval is a Purchase of Service Agreement between Oneida County, through its Department of Social Services, and Cedarbrook Village, Incorporated located at 101 Sitrin Lane, New Hartford, New York 13413 for assisted living services.

Assisted living is for those individuals who are unable to be maintained in their homes due to increased personal care needs. This may include the need to have 24 hour supervision such as in the case of early onset of Alzheimer's or the need for assistance in administering one's medications. As our aging population continues to grow, so does the need for appropriate housing with supportive services within our communities. Cedarbrook Village, Incorporated is able to provide 15 beds to meet this need.

The Agreement shall commence upon execution and continue through December 31, 2024. The contractor is paid directly by New York State through eMedNY; the cost of which is included in the County's Medicaid Cap.

I am respectfully requesting the approval of this Agreement between Oneida County, through its Department of Social Services, and Cedarbrook Village, Incorporated. If you approve, please forward to the Board of Legislators for consideration at their next meeting. Thank you for your consideration.

Sincerely,

*Colleen Fahy-Box*  
Colleen Fahy-Box  
Commissioner

CFB/vlc  
attachment



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive  
Date 7-22-19



# 37801

Oneida Co. Department Social Services

Competing Proposal \_\_\_\_\_

Only Respondent \_\_\_\_\_

Sole Source RFP \_\_\_\_\_

Oneida County Board of Legislators

Contract Summary

Name of Proposing Organization: Cedar Brook Village, Inc.  
101 Sitrin Lane  
New Hartford, New York 13413

Title of Activity or Services: Assisted Living Program

Proposed Dates of Operations: Upon Date of Execution

Client Population/Number to be Served: Eligible Medicaid Recipients

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services**

This agreement provides prior approved medical services through Oneida County Office of Continuing Care to individuals residing in Assisted Living Programs. Assisted Living is for those individuals who are unable to be maintained in their homes as they need to have 24 hour supervision such as in the case of early onset of Alzheimer's or they may need assistance in administering their medications.

**2). Program/Service Objectives and Outcomes -**

This agreement provides medical services with prior approval by Office of Continuing Care to those individuals residing in assisted living programs. The medical services combined with assisted living will delay or alleviate the necessity for a higher level of care such as skilled nursing

**3). Program Design and Staffing Level -**

**Total Funding Requested:** New York State determines Rate based on level of care needed.

**Oneida County Dept. Funding Recommendation:** Account #:A6102.495

**Mandated or Non-mandated:** Mandated Service

**Proposed Funding Source (Federal \$ /State \$ / County \$):**

Federal	56 %
State	32 %
County	12 %

**Cost Per Client Served:** Based on each individual clients medical needs. Rates for these medical services are determined by New York State.

**Past performance Served:** This contract is paid directly by New York State through eMedNY. The cost of this service to the Department is included in the Counties Medicaid Cap.

**O.C. Department Staff Comments:** The Department Contracts with a variety of assisted living programs to allow for availability of needed services.

**THIS AGREEMENT**, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York and having its principal offices at 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the “County”), through its Department of Social Services (hereinafter referred to as the “Department”), and Cedarbrook Village, Incorporated, located at 101 Sitrin Lane, New Hartford, New York 13413, a domestic not-for-profit corporation (hereinafter referred to as the “Provider”).

WITNESSETH:

**WHEREAS**, the parties hereto desire to make available to the County of Oneida Assisted Living Program Services for Medical Assistance recipients under Title XIX of the Federal Social Security Act; and

**WHEREAS**, the Legislature of the State of New York has authorized the New York State Department of Health to approve Assisted Living Programs in accordance with Social Services Law (SSL) Section 461-1 and regulations promulgated in accordance with such Section at 18 NYCRR Section 485.6(n), Part 494 and Section 505.35; and

**WHEREAS**, the New York State Department of Health has approved the Provider’s application to become an Assisted Living Program and to provide such services to Medical Assistance recipients;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE COUNTY AND THE PROVIDER AS FOLLOWS:**

A. TERM OF AGREEMENT:

This Agreement shall commence upon execution by both parties, and shall continue in full force and effect until December 31, 2024 unless earlier terminated pursuant to one of the provisions contained in section “M” of this Agreement.

B. ELIGIBILITY AND PRIOR AUTHORIZATION FOR ASSISTED LIVING PROGRAM SERVICES:

1. The Department shall determine whether an applicant for Assisted Living Program Services is eligible for Medical Assistance.
2. The Provider shall arrange for the provision of Assisted Living Program Services to Medical Assistance recipients.
3. The Provider shall be responsible for assuring that each Assisted Living Program applicant or recipient is assessed or reassessed, as appropriate, to determine whether he or she meets the admission or retention standards set forth in 18 NYCRR Section 494.4. The Provider shall be responsible for ensuring that such assessments or reassessments are forwarded to the Department as required by 18 NYCRR Sections 494.4(h)(3) and (4) and 505.35(h)(3) and (4).

4. The Provider shall be responsible for ensuring that Medical Assistance Services provided in the Assisted Living Program are furnished only to those Medical Assistance recipients who meet the eligibility requirements for the Assisted Living Program, as specified in 18 NYCRR Section 494.4 and with respect to whom the Department has prior authorized payment for Medical Assistance Services. The Provider shall comply with such other provisions of 18 NYCRR Sections 494.4(h) and 505.35 as well as any other provisions of the New York State Department of Health's regulations as are relevant to the provision of services to Medical Assistance recipients participating in the Assisted Living Program.
5. The Provider shall be responsible for ensuring that the Department is immediately notified when any Medical Assistance recipient to whom the Assisted Living Program Services have been furnished enters a hospital to receive in-patient care or enters a residential health care facility.
6. The Department shall determine, in accordance with 18 NYCRR Sections 505.35(h)(3), (4) and (5), whether to give prior authorization for Medical Assistance payment for Medical Assistance Services provided in the Assisted Living Program for each Assisted Living Program applicant or recipient who has been assessed or reassessed, as appropriate, for Assisted Living Program Services and whose assessment or reassessment has been forwarded to the Department for review.
7. When the Department conducts its own assessment or reassessment, as appropriate, of an Assisted Living Program applicant or recipient and disagrees with the Provider's assessment or reassessment, the Department shall forward its and the Provider's assessment or reassessment to the local professional director or designee in accordance with 18 NYCRR Section 505.35(h)(3)(iii) or 505.35(h)(5)(iii), as appropriate. The local professional director or designee is responsible for the final determination as to whether prior authorization for Medical Assistance payment should be given for the Assisted Living Program applicant or recipient.

#### C. ASSISTED LIVING PROGRAM SERVICES:

1. Assisted Living Program Services shall include the following:
  - a. Resident Services: As specified in 18 NYCRR Section 494.5(a), Resident Services shall include room, board, housekeeping, supervision, personal care (other than personal care services included in the Medical Assistance Program), case management and home health services.
  - b. Medical Assistance Services: As specified in 18 NYCRR Sections 494.5(b) and 505.35(h)(1), Medical Assistance Services shall include personal care services, home health aide services, personal emergency response services, nursing services, physical therapy, occupational therapy, speech therapy, medical supplies and equipment not requiring prior approval, and

adult day health care provided in a program approved by the New York State Commissioner of Health.

2. Case Management:

- a. The Provider shall ensure that Case Management Services are provided to each Medical Assistance recipient with respect to whom the Department has given prior authorization for Medical Assistance payment for Assisted Living Program Services. Case Management Services shall be provided in accordance with 18NYCRR Sections 494.6(b) and 505.35(g) and shall include the following activities:
  - i. Receive referrals for Assisted Living Program Services and provide information about such services to Medical Assistance recipients referred to the Provider;
  - ii. Refer an Assisted Living Program applicant whom the Provider reasonably expects may be eligible for Medical Assistance to the Department;
  - iii. Permit access by a Medical Assistance recipient to his or her case records which the Provider maintains;
  - iv. Establish linkages to services provided by other community agencies, provide information about these services to Medical Assistance recipients and establish criteria for referring Medical Assistance recipients to these services;
  - v. To the maximum extent possible, achieve economic efficiencies, including but not limited to the use of shared aide consistent with the Provider's staffing standards;
  - vi. Arrange for the reduction or discontinuance of Medical Assistance Services provided to a recipient in the Assisted Living Program when the Provider or the Provider's delegate reassesses the recipient and determines that such services must be reduced or discontinued; and
  - vii. Arrange for the continuance of Medical Assistance Services provided to a recipient in the Assisted Living Program when the Provider or the Provider's delegate reassesses the recipient and determines that the recipient should be reauthorized for such services.
    - a. Notwithstanding the Provider's reassessment, the Department and the local professional director or designee may determine that the recipient's Medical Assistance Services must be discontinued, subject to the recipient's notice, fair hearing and aid-continuing rights.

D. TRAINING AND LICENSES:

1. The Provider shall ensure that each employee who provides Personal Care Services to Medical Assistance recipients has successfully completed the training requirements for Personal Care Services specified in 18 NYCRR Section 505.14(e). The Provider shall ensure that each employee or other person who provides any other service to Medical Assistance recipients has successfully completed the appropriate training, licensing or similar requirement for such service as may be specified by the New York State Department of Health's regulations, the New York State Education Department, or by any other provision of State law or regulation.
2. The Provider shall ensure that documentation is maintained in each employee's personnel record to establish that the employee has successfully completed any required training, licensing or similar requirement.
3. Provider shall not be required to attend or undergo any training by the Department. Provider shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

E. PAYMENTS

1. Payment for the residential component of the Assisted Living Program shall be made as follows:
  - a. When an Assisted Living Program recipient is eligible for Supplemental Security Income (SSI) benefits, the Provider shall charge the recipient for the residential component of the Provider's services. However, the Provider shall not charge the recipient an amount that exceeds the SSI Congregate Care Level III rate.
  - b. When an Assisted Living Program recipient is not eligible for SSI benefits and is eligible for Medical Assistance only after incurring expenses equal to or greater than his/her excess income amount, as determined in accordance with the New York State Department of Health's regulations at 18 NYCRR Part 360, the Provider shall charge the recipient for the residential component of the Provider's services. However, the Provider shall not charge the recipient an amount that exceeds the SSI Congregate Care Level III rate.
2. Payment for the Medical Assistance component of the Assisted Living Program shall be made as follows:
  - a. The Department is responsible for prior authorization of Medical Assistance payment to the Provider for Medical Assistance Services specified in Section C, paragraph 1(b) of this Agreement and in 18 NYCRR Sections 494.5(b) and 505.35(h)(1).
  - b. Medical Assistance payment shall be made at the capitated rate established in accordance with New York State Department of Health regulations at 10 NYCRR Section 86-7. The Provider understands and agrees that such

capitated rates are determined on an individual basis for each Medical Assistance recipient who participates in an Assisted Living Program and that the capitated rates may increase or decrease during the term of this Agreement. Such capitated rate is payment-in-full for the Medical Assistance Services, as specified in Section C, paragraph 1(b) of this Agreement, provided to Assisted Living Program recipients.

- c. Payment shall continue to be made to the Provider at the capitated rate when a Medical Assistance recipient who is an Assisted Living Program resident is absent from the Assisted Living Program in order to visit friends or relatives if:
  - i. The recipient has resided in the Assisted Living Program for at least 30 days;
  - ii. The Assisted Living Program obtains a statement from the recipient's physician approving of the absence;
  - iii. The Assisted Living Program can ensure that the recipient's health care needs will be met during his or her absence;
  - iv. The visit is limited to two (2) days duration for any single absence;
  - v. The Assisted Living Program obtains prior authorization from the Department if the recipient's total days of absence exceed more than ten (10) days in a twelve (12) month period;
  - vi. The Assisted Living Program assumes fiscal responsibility for the provision of any home care services included in the Medical Assistance home care services rate that are required by the recipient during his or her absence which the family member or friend is unable or unwilling to provide;
  - vii. The Assisted Living Program documents all absences as required by the New York State Department of Health. This documentation must be maintained in the recipient's record and a copy of the designated form must also be included in the recipient's/resident's transfer records when he or she is transferred to another Assisted Living Program.
3. No payment shall be made under this Agreement when a Medical Assistance recipient, to whom the Provider furnishes services, enters a hospital to receive in-patient care or enters a Residential Health Care Facility. Nor shall payment be made under this Agreement for any Medical Assistance Services provided to Assisted Living Program recipients with respect to whom the Department has not provided prior authorization of payment for such services.

4. The Provider shall ensure that Medical Assistance Services for any Assisted Living Program recipient are not discontinued solely because the costs of such Medical Assistance Services exceed the amount of the capitated payment rate.

F. NOTICE AND FAIR HEARINGS:

1. The Department shall notify Medical Assistance recipients of their right to a fair hearing to appeal the Department's determination regarding their eligibility for Medical Assistance Services provided in the Assisted Living Program. The Department shall provide such notices in the following circumstances:
  - a. When the Provider determines that an Assisted Living Program applicant is eligible for Assisted Living Program Services, however, the Department and the local professional director or designee determine, in accordance with 18 NYCRR Section 505.35(h)(3)(iii), that Medical Assistance Services provided in the Assisted Living Program must be denied to the Assisted Living Program applicant; and
  - b. When the Provider determines that an Assisted Living Program recipient is eligible to continue to receive Assisted Living Program Services, however the Department and the local professional director or designee determine, in accordance with 18 NYCRR Section 505.35(h)(5)(iii), that Medical Assistance Services provided in the Assisted Living Program must be discontinued to the Assisted Living Program recipient.
2. The Department shall notify Medical Assistance recipients of their right to a fair hearing by using notices developed and required by the New York State Department of Health.
3. The Provider shall participate in fair hearings when determined necessary by the Department or New York State Department of Health.

G. QUALITY OF SERVICE:

1. This Agreement does not diminish the Provider's responsibility for maintaining the quality and adequacy of Assisted Living Program Services. The Provider shall be responsible for the following:
  - a. Ensuring that Assisted Living Program Services provided in accordance with this Agreement comply with Social Services Law Sections 367-h and 461-1; 18 NYCRR Part 494 and Section 505.35; and any other applicable provision of State or federal law or regulation;
  - b. Ensuring the quality of Assisted Living Program Services provided by the Provider or any entity with which the Provider has a subcontract for the provision of Assisted Living Program Services;



- c. Ensuring compliance with the plans of care the Provider establishes for Assisted Living Program recipients.

#### H. PERFORMANCE OF SERVICES:

1. The Provider represents that the Provider is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Assisted Living Program Services. The Provider shall use the Provider's best efforts to perform the Assisted Living Program Services such that the results are satisfactory to the County. The Provider shall be solely responsible for determining the location, method, details and means of performing the Assisted Living Program Services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
2. The Provider may, at the Provider's own expense, employ or engage the services of such employees, subcontractors and/or partners as the Provider deems necessary to perform the Assisted Living Program Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Provider shall be solely responsible and shall remain liable for the performance of the Assisted Living Program Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and regulations. The Provider shall expressly advise the Assistants of the terms of this Agreement.
3. The Provider acknowledges and agrees that the Provider and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.
4. The Provider shall inform the County within twenty-four (24) hours if it is unable or unwilling to perform services pursuant to this Agreement. The Provider maintains the right to do so at any time and the County maintains the right to contract with other individuals or entities to perform the same Assisted Living Program Services.

#### I. PROVIDER AS INDEPENDENT CONTRACTOR:

1. It is expressly agreed that the relationship of the Provider and its Assistants to the County shall be that of Independent Contractors. The Provider and its Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Provider and its Assistants, in accordance with their status as Independent Contractors, covenant and agree that they will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.

2. The Provider warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Provider and the County agree that the Provider is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
3. The Provider and its Assistants shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
4. The Provider acknowledges and agrees that neither the Provider, nor its Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
5. The Provider shall be solely responsible for applicable taxes for all compensation paid to the Provider or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Provider's form of business organization, and with respect to the Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Provider shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
6. The Provider shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
7. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Provider's or its Assistants' Independent Contractor status, it is agreed that both the County and the Provider shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
8. The Provider shall comply with Federal and State laws as supplemented in the Department of Labor regulations and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.

J. INSURANCE AND INDEMNIFICATION:

1. The Provider shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
  - a. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.

- i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
  - ii. Oneida County, and all other parties required by Oneida County, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds. Coverage for additional insureds shall include completed operations.
  - iii. Abuse and Molestation coverage must be included.
- b. Professional Liability coverage with limits of \$1,000,000 each occurrence and \$3,000,000 aggregate.
- i. Coverage for review of cases and resulting professional assessment.
  - ii. Coverage for Abuse and Molestation.
- c. Business Automobile Liability
- i. Business Automobile Liability with limits of at least \$1,000,000 each accident.
  - ii. Business Automobile Liability coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - iii. Oneida County shall be included as additional insured on the Business Automobile Liability policy. Coverage for additional insured shall be on a primary and non-contributing basis.
- d. Commercial Umbrella / Excess Liability
- i. Commercial Umbrella / Excess Liability limits must be at least \$5,000,000.
  - ii. Commercial Umbrella / Excess Liability coverage must include as additional insureds all entities that are additional insureds on the CGL.
  - iii. Commercial Umbrella / Excess Liability coverage for additional insureds shall apply as primary and non-contributing before any other insurance or

self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.

e. Workers' Compensation and Employer's Liability

i. Statutory limits apply.

2. Waiver of Subrogation: The Provider waives all rights against Oneida County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Professional Liability, Business Automobile Liability, Commercial Umbrella / Excess Liability or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.
3. Certificates of Insurance: Prior to the start of any work the Provider shall provide certificates of insurance to Oneida County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Provider's CGL policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to Oneida County.
4. Indemnification: The Provider agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of action, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the negligent performance of services by the Provider and its sub-consultants, agents, servants, or employees, and from any loss or damage arising, occurring or resulting from the negligent acts or failure to act or any default or negligence by the Provider and its sub-consultants or failure on the part of the Provider and its sub-consultants to comply with any of the covenants, terms or conditions of this Agreement.

K. PROVIDER'S RECORDKEEPING RESPONSIBILITIES:

1. The Provider shall complete and maintain all required employee payroll records.
2. The Provider shall maintain records and accounting procedures that properly reflect all direct and indirect costs expended in the performance of this Agreement. The Provider shall collect and maintain all fiscal and program statistical records or other documentation as required by the Department or the New York State Department of Health.
3. At all times during this Agreement and for six (6) years after final payment in accordance with this Agreement, the Provider shall provide all authorized representatives of the Department, the New York State Department of Health, and the State or Federal government with full access to all records relating to the Provider's performance under, or funds payable pursuant to, this Agreement for the purpose of examining, auditing or copying such records.

4. The Provider shall comply with all applicable Federal and State requirements governing the confidentiality of information relating to Medical Assistance recipients including, but not limited to, Section 1902(a)(7) of the Social Security Act and Social Services Law Section 369, the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act and implementing regulations at 45 CFR Parts 160 and 164, and any regulations promulgated in accordance with Federal and State statutory provision, and with 18 NYCRR Section 360-8.1. The Provider and the Department shall execute the HIPAA Business Associate Agreement, Appendix C to this Agreement.
5. The Provider shall maintain all records and other documents relating to payment for, or the provision of, Medical Assistance Services provided in the Assisted Living Program to Medical Assistance recipients under this Agreement for six (6) years after the Provider receives Medical Assistance payment for such services.
6. The Provider shall be responsible for ensuring that the provisions of subdivision (a) through (e) of this section apply to any subcontract related to performance under this Agreement.

L. NOTICE OF PROVIDER'S SUBCONTRACTS OR OTHER AGREEMENTS:

The Provider shall notify the Department of any affiliated agencies with which it has direct or indirect agreements, subcontracts for services, or any other arrangement under which the amounts the Provider receives as payment for Medical Assistance Services provided in the Assisted Living Program are shared among or transferred between the Provider and any other entity.

M. TERMINATION OF AGREEMENT:

1. The Department shall have the right to terminate this Agreement under the following conditions:
  - a. Upon receipt of notification that Federal and/or State Medical Assistance reimbursement is not available for Medical Assistance Services provided in the Assisted Living Program;
  - b. The New York State Department of Health has revoked the Provider's authority to provide an Assisted Living Program;
  - c. The Department has determined that each of the Medical Assistance recipients to whom the Provider has been furnishing services is no longer eligible for Medical Assistance;
  - d. The Department has determined that an emergency exists that could jeopardize the health, safety or welfare of Medical Assistance recipients to whom the Provider furnishes services;
  - e. The Provider fails to perform its obligations pursuant to this Agreement;

- f. Violation by the Provider of any of the material terms of this Agreement or participation in Medical Assistance fraud; and/or
    - g. The Department may terminate this Agreement for the reasons specified in Appendix B attached to this Agreement.
  2. The Provider shall terminate this Agreement when the Provider voluntarily chooses to surrender its license as an Assisted Living Program.
  3. The Provider may terminate this Agreement when:
    - a. The New York State Department of Health revises the requirements for the Provider's provision of services and the Provider reasonably finds these requirements unacceptable.
  4. By Mutual Agreement. This Agreement may be terminated by the mutual agreement of the Department and the Provider.

N. CLOSE-OUT PROCEDURES:

1. Upon termination of this Agreement, the Provider shall comply with all New York State Department of Health and Department close-out procedures, including, but not limited to the following:
  - a. Within five (5) business days after this Agreement terminates, the Provider shall transfer to the Department, or the Department's designee, a copy of the Provider's records pertaining to all Medical Assistance recipients to whom the Provider has previously furnished, or is currently furnishing, Assisted Living Program Services.
  - b. Within thirty (30) calendar days after this Agreement terminates, the Provider shall notify the Department in writing of all obligations relating to this Agreement that the Provider necessarily incurred before the date this Agreement terminated and that came due after such date. The Department shall authorize payment to the Provider in accordance with this Agreement for such obligations. The Department shall not authorize payment to the Provider for any obligations that the Provider incurs and pays after this Agreement terminates.
  - c. Within thirty (30) calendar days after this Agreement terminates, the Provider shall account for and refund to the Department any overpayments or excess funds paid to the Provider pursuant to this Agreement.
  - d. Within ninety (90) calendar days after this Agreement terminates, the Provider shall submit to the Department a final report, completed by a certified public accountant, of the Provider's receipts and expenditure of funds pursuant to this Agreement.

O. EMPLOYMENT PRACTICES:

The Provider shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin; the implementing regulations prescribed by the Federal Secretary of Labor at 41 Code of Federal Regulations (CFR), Part 60; and the Federal Regulations contained in 45 CFR Part 84, entitled "Non-discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."

P. AGREEMENT TO RENEGOTIATE:

The parties may renegotiate this Agreement in the event that the New York State Department of Health issues new or revised requirements for the provision of services and the parties determine that renegotiation is necessary to comply with such revised requirements. Any renegotiated agreement is subject to review and approval of the County and the New York State Department of Health.

Q. AMENDMENT OF AGREEMENT:

1. This Agreement may be amended whenever determined necessary by the Department and the Provider; however, such amendments shall not be effective until approved by the County and the New York State Department of Health.
2. The Department and/or the parties must submit all proposed amendments to the New York State Department of Health for review.
3. All amendments must be in writing, duly signed by all parties, and be annexed to this Agreement.

R. LOCAL VARIATIONS:

Local variations to this Agreement, if any, are set forth in Appendix B, which is attached to and made a part of this Agreement. Such local variations shall be effective only if the New York State Department of Health has approved them, in writing, and if the terms and form of such variations do not conflict with the contents of this Agreement.

S. EXPENSES:

The Provider is solely responsible for paying all of its business expenses related to furnishing the Assisted Living Program Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

T. CHOICE OF VENUE:

If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of competent jurisdiction sitting in Oneida County, New York or the United States District Court for the Northern District of New York.

U. ENTIRE AGREEMENT:

1. This Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitutes the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement.
2. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the parties sought to be bound.

V. ADVICE OF COUNSEL:

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated opposite their respective signature.

\*\*\*\*\*

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

Oneida County: \_\_\_\_\_

Anthony J. Picente Jr., County Executive

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Approved: Maryangela Scalzo  
Maryangela Scalzo, Assistant County Attorney

\*\*\*\*\*

Date: 7/18/19

Oneida County Department of Social Services: Colleen Fahy-Box  
Colleen Fahy-Box, Commissioner

\*\*\*\*\*

Date: 7/16/19

Cedarbrook Village, Incorporated: Christa K. Scarpia

Title: CEO

MedNY ID #: 03065249

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APPENDIX A  
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
  - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
  - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
  - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
  - (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
    - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
    - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
  - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
  - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- \*(d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

\*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

\*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;



2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more a disclosure within the meaning of sub-paragraph VII (a)

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\*\*Note: Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

## APPENDIX B

### STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

#### PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

#### NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
  1. By certified or registered United States mail, return receipt requested;
  2. By facsimile transmission;
  3. By personal delivery;
  4. By expedited delivery service; or
  5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

#### GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.



- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
  - 1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
  - 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
  - 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
  1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
  2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
  3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
  4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
  5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
  6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
  7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:  
[http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp)
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

## REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, from, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

#### CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services  
Contract Administration Office, 4<sup>th</sup> Floor  
800 Park Ave  
Utica, New York, 13501

#### PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

## PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

## TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment



purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

## CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to , notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

## FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

## ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

#### RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

#### COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from



## Appendix C

### Federal Health Insurance Portability and Accountability Act Business Associate Agreement (Agreement) Governing Privacy and Security

- I. Definitions. For purposes of this Agreement:
- a) "Business Associate" shall mean Cedarbrook Village, Incorporated Assisted Living Program.
  - b) "Covered Program" shall mean Oneida County and the Oneida County Department of Social Services.
  - c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
- a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
  - b) Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
  - c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
  - d) Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
    - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;

4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  5. Contact procedures for Covered Program to ask questions or learn additional information.
- e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
  - f) Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
  - g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
  - h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
  - i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
  - j) Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to comply with 45 CFR § 164.528.
  - k) Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

### III. Permitted Uses and Disclosures by Business Associate

- a) Except as otherwise limited in this Agreement, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this Agreement.
- b) Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- c) Business Associate may disclose Protected Health Information as Required by Law.

#### IV. Term and Termination

- a) This Agreement shall be effective for the term as specified in the Agreement between Business Associate and Covered Program to which this is annexed, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix.
- b) Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this Agreement if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- c) Effect of Termination.
  - 1. Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected

Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- a) Any violation of this Agreement may cause irreparable harm to the Covered Program. Therefore, the Covered Program may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- b) Business Associate shall indemnify and hold the Covered Program harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the Covered Program from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Covered Program.

VI. Miscellaneous

- a) Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- b) Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- c) Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix to this Agreement shall survive the termination of this Agreement.
- d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- e) HIV/AIDS. If HIV/AIDS information is to be disclosed under this Agreement, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F



**Oneida County Department of Social Services  
Contractor and Contract Staff  
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of Cedarbrook Village, Incorporated, (the  
Name of Contract Agency

“Service Provider”), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

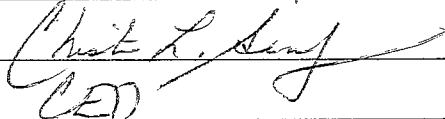
I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

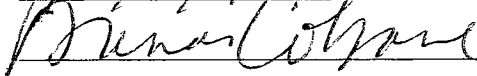
I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: Christa L. Serafin

Signature: 

Title: CEO

Date: 7/16/19

Witness: 

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS. AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County



available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

## 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



**Anthony J. Picente Jr.**  
County Executive

**Colleen Fahy-Box**  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES**

County Office Building 800 Park Avenue Utica, NY 13501  
Phone (315) 798-5514 Fax (315) 793-6044

June 17, 2019

Honorable Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-276

HEALTH & HUMAN SERVICES

**WAYS & MEANS**

Dear Mr. Picente:

Attached for your review and approval is a Purchase of Service Agreement between Oneida County, through its Department of Social Services, and Cedarbrook Village, Incorporated located at 105 Sitrin Lane, New Hartford, New York 13413 for the provision of assisted living services.

Assisted living is for those individuals who are unable to be maintained in their homes due to increased personal care needs. This may include the need to have 24 hour supervision such as in the case of early onset of Alzheimer's or the need for assistance in administering one's medications. As our aging population continues to grow, so does the need for appropriate housing with supportive services within our communities. Cedarbrook Village, Incorporated is able to provide two (2) beds formerly located at their 101 Sitrin Lane location to meet this need.

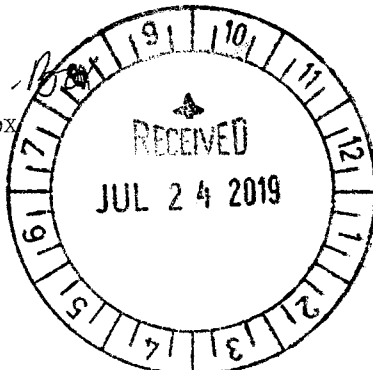
The Agreement shall commence upon execution and continue through December 31, 2024. This Provider is paid directly by New York State through eMedNY, the cost of this service to the Department is included in the Counties Medicaid Cap.

I am respectfully requesting the approval of this agreement between Oneida County Department of Social Services and Cedarbrook Village, Incorporated Thank you for your consideration.

Sincerely,

*Colleen Fahy-Box*  
Colleen Fahy-Box  
Commissioner

CFB/vlc  
attachment



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 7-22-19

# 37802

Oneida Co. Department Social Services

Competing Proposal \_\_\_\_\_

Only Respondent \_\_\_\_\_

Sole Source RFP \_\_\_\_\_

Oneida County Board of Legislators  
Contract Summary

Name of Proposing Organization: Cedar Brook Village, Inc.  
105 Sitrin Lane  
New Hartford, New York 13413

Title of Activity or Services: Assisted Living Program

Proposed Dates of Operations: Upon Date of Execution

Client Population/Number to be Served: Eligible Medicaid Recipients

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services**

This agreement provides prior approved medical services through Oneida County Office of Continuing Care to individuals residing in Assisted Living Programs. Assisted Living is for those individuals who are unable to be maintained in their homes as they need to have 24 hour supervision such as in the case of early onset of Alzheimer's or they may need assistance in administering their medications.

**2). Program/Service Objectives and Outcomes -**

This agreement provides medical services with prior approval by Office of Continuing Care to those individuals residing in assisted living programs. The medical services combined with assisted living will delay or alleviate the necessity for a higher level of care such as skilled nursing

**3). Program Design and Staffing Level -**

**Total Funding Requested:** New York State determines Rate based on level of care needed.

**Oneida County Dept. Funding Recommendation:** Account #:A6102.495

**Mandated or Non-mandated:** Mandated Service

**Proposed Funding Source (Federal \$ /State \$ / County \$):**

Federal	56 %
State	32 %
County	12 %

**Cost Per Client Served:** Based on each individual clients medical needs. Rates for these medical services are determined by New York State.

**Past performance Served:** This contract is paid directly by New York State through eMedNY. The cost of this service to the Department is included in the Counties Medicaid Cap.

**O.C. Department Staff Comments:** The Department Contracts with a variety of assisted living programs to allow for availability of needed services.

**THIS AGREEMENT**, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York and having its principal offices at 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the “County”), through its Department of Social Services (hereinafter referred to as the “Department”), and Cedarbrook Village, Incorporated, located at 105 Sitrin Lane, New Hartford, New York 13413, a domestic not-for-profit corporation (hereinafter referred to as the “Provider”).

WITNESSETH:

**WHEREAS**, the parties hereto desire to make available to the County of Oneida Assisted Living Program Services for Medical Assistance recipients under Title XIX of the Federal Social Security Act; and

**WHEREAS**, the Legislature of the State of New York has authorized the New York State Department of Health to approve Assisted Living Programs in accordance with Social Services Law (SSL) Section 461-1 and regulations promulgated in accordance with such Section at 18 NYCRR Section 485.6(n), Part 494 and Section 505.35; and

**WHEREAS**, the New York State Department of Health has approved the Provider’s application to become an Assisted Living Program and to provide such services to Medical Assistance recipients;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE COUNTY AND THE PROVIDER AS FOLLOWS:**

A. TERM OF AGREEMENT:

This Agreement shall commence upon execution by both parties, and shall continue in full force and effect until December 31, 2024 unless earlier terminated pursuant to one of the provisions contained in section “M” of this Agreement.

B. ELIGIBILITY AND PRIOR AUTHORIZATION FOR ASSISTED LIVING PROGRAM SERVICES:

1. The Department shall determine whether an applicant for Assisted Living Program Services is eligible for Medical Assistance.
2. The Provider shall arrange for the provision of Assisted Living Program Services to Medical Assistance recipients.
3. The Provider shall be responsible for assuring that each Assisted Living Program applicant or recipient is assessed or reassessed, as appropriate, to determine whether he or she meets the admission or retention standards set forth in 18 NYCRR Section 494.4. The Provider shall be responsible for ensuring that such assessments or reassessments are forwarded to the Department as required by 18 NYCRR Sections 494.4(h)(3) and (4) and 505.35(h)(3) and (4).

4. The Provider shall be responsible for ensuring that Medical Assistance Services provided in the Assisted Living Program are furnished only to those Medical Assistance recipients who meet the eligibility requirements for the Assisted Living Program, as specified in 18 NYCRR Section 494.4 and with respect to whom the Department has prior authorized payment for Medical Assistance Services. The Provider shall comply with such other provisions of 18 NYCRR Sections 494.4(h) and 505.35 as well as any other provisions of the New York State Department of Health's regulations as are relevant to the provision of services to Medical Assistance recipients participating in the Assisted Living program.
5. The Provider shall be responsible for ensuring that the Department is immediately notified when any Medical Assistance recipient to whom the Assisted Living Program Services have been furnished enters a hospital to receive inpatient care or enters a residential health care facility.
6. The Department shall determine, in accordance with 18 NYCRR Sections 505.35(h)(3), (4) and (5), whether to give prior authorization for Medical Assistance payment for Medical Assistance Services provided in the Assisted Living Program for each Assisted Living Program applicant or recipient who has been assessed or reassessed, as appropriate, for Assisted Living Program Services and whose assessment or reassessment has been forwarded to the Department for review.
7. When the Department conducts its own assessment or reassessment, as appropriate, of an Assisted Living Program applicant or recipient and disagrees with the Provider's assessment or reassessment, the Department shall forward its and the Provider's assessment or reassessment to the local professional director or designee in accordance with 18 NYCRR Section 505.35(h)(3)(iii) or 505.35(h)(5)(iii), as appropriate. The local professional director or designee is responsible for the final determination as to whether prior authorization for Medical Assistance payment should be given for the Assisted Living Program applicant or recipient.

C. ASSISTED LIVING PROGRAM SERVICES:

1. Assisted Living Program Services shall include the following:
  - a. Resident Services: As specified in 18 NYCRR Section 494.5(a), Resident Services shall include room, board, housekeeping, supervision, personal care (other than personal care services included in the Medical Assistance Program), case management and home health services.
  - b. Medical Assistance Services: As specified in 18 NYCRR Sections 494.5(b) and 505.35(h)(1), Medical Assistance Services shall include personal care services, home health aide services, personal emergency response services, nursing services, physical therapy, occupational therapy, speech therapy, medical supplies and equipment not requiring prior approval, and adult day health care provided in a program approved by the Commissioner of Health.

2. Case Management:

- a. The Provider shall ensure that Case Management Services are provided to each Medical Assistance recipient with respect to whom the Department has given prior authorization for Medical Assistance payment for Assisted Living Program Services. Case Management Services shall be provided in accordance with 18 NYCRR Sections 494.6(b) and 505.35(g) and shall include the following activities:
  - i. Receive referrals for Assisted Living Program Services and provide information about such services to Medical Assistance recipients referred to the Provider;
  - ii. Refer an Assisted Living Program applicant whom the Provider reasonably expects may be eligible for Medical Assistance to the Department;
  - iii. Permit access by a Medical Assistance recipient to his or her case records which the Provider maintains;
  - iv. Establish linkages to services provided by other community agencies, provide information about these services to Medical Assistance recipients and establish criteria for referring Medical Assistance recipients to these services;
  - v. To the maximum extent possible, achieve economic efficiencies, including but not limited to the use of shared aide consistent with the Provider's staffing standards;
  - vi. Arrange for the reduction or discontinuance of Medical Assistance Services provided to a recipient in the Assisted Living Program when the Provider or the Provider's delegate reassesses the recipient and determines that such services must be reduced or discontinued; and
  - vii. Arrange for the continuance of Medical Assistance Services provided to a recipient in the Assisted Living Program when the Provider or the Provider's delegate reassesses the recipient and determines that the recipient should be reauthorized for such services.
    - a. Notwithstanding the Provider's reassessment, the Department and the local professional director or designee may determine that the recipient's Medical Assistance Services must be discontinued, subject to the recipient's notice, fair hearing and aid-continuing rights.

D. TRAINING AND LICENSES:

1. The Provider shall ensure that each employee who provides Personal Care Services to Medical Assistance recipients has successfully completed the training requirements for Personal Care Services specified in 18 NYCRR Section 505.14(e). The Provider shall ensure that each

employee or other person who provides any other service to Medical Assistance recipients has successfully completed the appropriate training, licensing or similar requirement for such service as may be specified by the New York State Department of Health's regulations, the New York State Education Department, or by any other provision of State law or regulation.

2. The Provider shall ensure that documentation is maintained in each employee's personnel record to establish that the employee has successfully completed any required training, licensing or similar requirement.
3. Provider shall not be required to attend or undergo any training by the Department. Provider shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

#### E. PAYMENTS

1. Payment for the Residential component of the Assisted Living Program shall be made as follows:
  - a. When an Assisted Living Program recipient is eligible for Supplemental Security Income (SSI) benefits, the Provider shall charge the recipient for the residential component of the Provider's services. However, the Provider shall not charge the recipient an amount that exceeds the SSI Congregate Care Level III rate.
  - b. When an Assisted Living Program recipient is not eligible for SSI benefits and is eligible for Medical Assistance only after incurring expenses equal to or greater than his/her excess income amount, as determined in accordance with the New York State Department of Health's regulations at 18 NYCRR Part 360, the Provider shall charge the recipient for the residential component of the Provider's services. However, the Provider shall not charge the recipient an amount that exceeds the SSI Congregate Care Level III rate.
2. Payment for the Medical Assistance component of the Assisted Living Program shall be made as follows:
  - a. The Department is responsible for prior authorization of Medical Assistance payment to the Provider for Medical Assistance Services specified in Section C, paragraph 1(b) of this Agreement and in 18 NYCRR Sections 494.5(b) and 505.35(h)(1).
  - b. Medical Assistance payment shall be made at the capitated rate established in accordance with New York State Department of Health regulations at 10 NYCRR Section 86-7. The Provider understands and agrees that such capitated rates are determined on an individual basis for each Medical Assistance recipient who participates in an Assisted Living Program and that the capitated rates may increase or decrease during the term of this Agreement. Such capitated rate is payment-in-full for the Medical Assistance

Services, as specified in Section C, paragraph 1(b) of this Agreement, provided to Assisted Living Program recipients.

- c. Payment shall continue to be made to the Provider at the capitated rate when a Medical Assistance recipient who is an Assisted Living Program resident is absent from the Assisted Living Program in order to visit friends or relatives if:
  - i. The recipient has resided in the Assisted Living Program for at least 30 days;
  - ii. The Assisted Living Program obtains a statement from the recipient's physician approving of the absence;
  - iii. The Assisted Living Program can ensure that the recipient's health care needs will be met during his or her absence;
  - iv. The visit is limited to two (2) days duration for any single absence;
  - v. The Assisted Living Program obtains prior authorization from the Department if the recipient's total days of absence exceed more than ten (10) days in a twelve (12) month period;
  - vi. The Assisted Living Program assumes fiscal responsibility for the provision of any home care services included in the Medical Assistance home care services rate that are required by the recipient during his or her absence which the family member or friend is unable or unwilling to provide;
  - vii. The Assisted Living Program documents all absences as required by the New York State Department of Health. This documentation must be maintained in the recipient's record and a copy of the designated form must also be included in the recipient's/resident's transfer records when he or she is transferred to another Assisted Living Program.
3. No payment shall be made under this Agreement when a Medical Assistance recipient, to whom the Provider furnishes services, enters a hospital to receive inpatient care or enters a Residential Health Care Facility. Nor shall payment be made under this Agreement for any Medical Assistance Services provided to Assisted Living Program recipients with respect to whom the Department has not provided prior authorization of payment for such services.
4. The Provider shall ensure that Medical Assistance Services for any Assisted Living Program recipient are not discontinued solely because the costs of such Medical Assistance Services exceed the amount of the capitated payment rate.



F. NOTICE AND FAIR HEARINGS:

1. The Department shall notify Medical Assistance recipients of their right to a fair hearing to appeal the Department's determination regarding their eligibility for Medical Assistance Services provided in the Assisted Living Program. The Department shall provide such notices in the following circumstances:
  - a. When the Provider determines that an Assisted Living Program applicant is eligible for Assisted Living Program Services, however, the Department and the local professional director or designee determine, in accordance with 18 NYCRR Section 505.35(h)(3)(iii), that Medical Assistance Services provided in the Assisted Living Program must be denied to the Assisted Living Program applicant; and
  - b. When the Provider determines that an Assisted Living Program recipient is eligible to continue to receive Assisted Living Program Services, however the Department and the local professional director or designee determine, in accordance with 18 NYCRR Section 505.35(h)(5)(iii), that Medical Assistance Services provided in the Assisted Living Program must be discontinued to the Assisted Living Program recipient.
2. The Department shall notify Medical Assistance recipients of their right to a fair hearing by using notices developed and required by the New York State Department of Health.
3. The Provider shall participate in fair hearings when determined necessary by the Department or New York State Department of Health.

G. QUALITY OF SERVICE:

1. This Agreement does not diminish the Provider's responsibility for maintaining the quality and adequacy of Assisted Living Program Services. The Provider shall be responsible for the following:
  - a. Ensuring that Assisted Living Program Services provided in accordance with this Agreement comply with Social Services Law Sections 367-h and 461-1; 18 NYCRR Part 494 and Section 505.35; and any other applicable provision of state or federal law or regulation;
  - b. Ensuring the quality of Assisted Living Program Services provided by the Provider or any entity with which the Provider has a subcontract for the provision of Assisted Living Program Services;
  - c. Ensuring compliance with the plans of care the Provider establishes for Assisted Living Program recipients.

H. PERFORMANCE OF SERVICES:

1. The Provider represents that the Provider is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Assisted Living Program Services. The Provider shall use the Provider's best efforts to perform the Assisted Living Program Services such that the results are satisfactory to the County. The Provider shall be solely responsible for determining the location, method, details and means of performing the Assisted Living Program Services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
2. The Provider may, at the Provider's own expense, employ or engage the services of such employees, subcontractors and/or partners as the Provider deems necessary to perform the Assisted Living Program Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Provider shall be solely responsible and shall remain liable for the performance of the Assisted Living Program Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and regulations. The Provider shall expressly advise the Assistants of the terms of this Agreement.
3. The Provider acknowledges and agrees that the Provider and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.
4. The Provider shall inform the County within twenty-four (24) hours if it is unable or unwilling to perform services pursuant to this Agreement. The Provider maintains the right to do so at any time, and the County maintains the right to contract with other individuals or entities to perform the same Assisted Living Program Services.

I. PROVIDER AS INDEPENDENT CONTRACTOR:

1. It is expressly agreed that the relationship of the Provider and its Assistants to the County shall be that of Independent Contractors. The Provider and its Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Provider and its Assistants, in accordance with their status as Independent Contractors, covenant and agree that they will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
2. The Provider warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Provider and the County agree that the

Provider is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.

3. The Provider and its Assistants shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
4. The Provider acknowledges and agrees that neither the Provider, nor its Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
5. The Provider shall be solely responsible for applicable taxes for all compensation paid to the Provider or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Provider's form of business organization, and with respect to the Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Provider shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
6. The Provider shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
7. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Provider's or its Assistants' Independent Contractor status, it is agreed that both the County and the Provider shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
8. The Provider shall comply with federal and state laws as supplemented in the Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

#### J. INSURANCE AND INDEMNIFICATION:

1. The Provider shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
  - a. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.
    - i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability

arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.

- ii. Oneida County, and all other parties required by Oneida County, shall be included as additional insureds. Coverage for additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds. Coverage for additional insureds shall include completed operations.
  - iii. Abuse and Molestation coverage must be included.
- b. Professional Liability coverage with limits of \$1,000,000 each occurrence and \$3,000,000 aggregate.
- i. Coverage for review of cases and resulting Professional assessment.
  - ii. Coverage for Abuse and Molestation.
- c. Business Automobile Liability
- i. Business Automobile Liability with limits of at least \$1,000,000 each accident.
  - ii. Business Automobile Liability coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - iii. Oneida County shall be included as additional insured on the Business Automobile Liability policy. Coverage for additional insured shall be on a primary and non-contributing basis.
- d. Commercial Umbrella / Excess Liability
- i. Commercial Umbrella / Excess Liability limits must be at least \$5,000,000.
  - ii. Commercial Umbrella / Excess Liability coverage must include as additional insureds all entities that are additional insureds on the CGL.
  - iii. Commercial Umbrella / Excess Liability coverage for additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.
- e. Workers' Compensation and Employer's Liability

i. Statutory limits apply.

2. Waiver of Subrogation: The Provider waives all rights against Oneida County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Professional Liability, Business Automobile Liability, Commercial Umbrella / Excess Liability or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.
3. Certificates of Insurance: Prior to the start of any work the Provider shall provide certificates of insurance to Oneida County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Provider's CGL policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to Oneida County.
4. Indemnification: The Provider agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the negligent performance of services by Provider and its sub-consultants, agents, servants, or employees, and from any loss or damage arising, occurring or resulting from the negligent acts or failure to act or any default or negligence by the Provider and its sub-consultants or failure on the part of the Provider and its sub-consultants to comply with any of the covenants, terms or conditions of this Agreement.

K. PROVIDER'S RECORDKEEPING RESPONSIBILITIES:

1. The Provider shall complete and maintain all required employee payroll records.
2. The Provider shall maintain records and accounting procedures that properly reflect all direct and indirect costs expended in the performance of this Agreement. The Provider shall collect and maintain all fiscal and program statistical records or other documentation as required by the Department or the New York State Department of Health.
3. At all times during this Agreement and for six (6) years after final payment in accordance with this Agreement, the Provider shall provide all authorized representatives of the Department, the New York State Department of Health, and the state or federal government with full access to all records relating to the Provider's performance under, or funds payable pursuant to, this Agreement for the purpose of examining, auditing or copying such records.
4. The Provider shall comply with all applicable federal and state requirements governing the confidentiality of information relating to Medical Assistance recipients including, but not limited to, Section 1902(a)(7) of the Social Security Act and Social Services Law Section 369, the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information

Technology for Economic and Clinical Health Act and implementing regulations at 45 CFR Parts 160 and 164, and any regulations promulgated in accordance with Federal and State statutory provision, and with 18 NYCRR Section 360-8.1. The Provider and the Department shall execute the HIPAA Business Associate Agreement, Appendix C to this Agreement.

5. The Provider shall maintain all records and other documents relating to payment for, or the provision of, Medical Assistance Services provided in the Assisted Living Program to Medical Assistance recipients under this Agreement for six (6) years after the Provider receives Medical Assistance payment for such services.
6. The Provider shall be responsible for ensuring that the provisions of subdivision (a) through (e) of this section apply to any subcontract related to performance under this Agreement.

L. NOTICE OF PROVIDER'S SUBCONTRACTS OR OTHER AGREEMENTS:

1. The Provider shall notify the Department of any affiliated agencies with which it has direct or indirect agreements, subcontracts for services, or any other arrangement under which the amounts the Provider receives as payment for Medical Assistance Services provided in the Assisted Living Program are shared among or transferred between the Provider and any other entity.

M. TERMINATION OF AGREEMENT:

1. The Department shall have the right to terminate this Agreement under the following conditions:
  - a. Upon receipt of notification that Federal and/or State Medical Assistance reimbursement is not available for Medical Assistance Services provided in the Assisted Living Program;
  - b. The New York State Department of Health has revoked the Provider's authority to provide an Assisted Living Program;
  - c. The Department has determined that each of the Medical Assistance recipients to whom the Provider has been furnishing services is no longer eligible for Medical Assistance;
  - d. The Department has determined that an emergency exists that could jeopardize the health, safety or welfare of Medical Assistance recipients to whom the Provider furnishes services;
  - e. The Provider fails to perform its obligations pursuant to this Agreement;
  - f. Violation by the Provider of any of the material terms of this Agreement or participation in Medical Assistance fraud; and/or
  - g. The Department may terminate this Agreement for the reasons specified in Appendix B attached to this Agreement.

2. The Provider shall terminate this Agreement when the Provider voluntarily chooses to surrender its license as an Assisted Living Program.
3. The Provider may terminate this Agreement when:
  - a. The New York State Department of Health revises the requirements for the Provider's provision of services and the Provider reasonably finds these requirements unacceptable.
4. By Mutual Agreement. This Agreement may be terminated by the mutual agreement of the Department and the Provider.

N. CLOSE-OUT PROCEDURES:

1. Upon termination of this Agreement, the Provider shall comply with all New York State Department of Health and Department close-out procedures, including, but not limited to the following:
  - a. Within five (5) business days after this Agreement terminates, the Provider shall transfer to the Department, or the Department's designee, a copy of the Provider's records pertaining to all Medical Assistance recipients to whom the Provider has previously furnished, or is currently furnishing, Assisted Living Program Services.
  - b. Within thirty (30) calendar days after this Agreement terminates, the Provider shall notify the Department in writing of all obligations relating to this Agreement that the Provider necessarily incurred before the date this Agreement terminated and that came due after such date. The Department shall authorize payment to the Provider in accordance with this Agreement for such obligations. The Department shall not authorize payment to the Provider for any obligations that the Provider incurs and pays after this Agreement terminates.
  - c. Within thirty (30) calendar days after this Agreement terminates, the Provider shall account for and refund to the Department any overpayments or excess funds paid to the Provider pursuant to this Agreement.
  - d. Within ninety (90) calendar days after this Agreement terminates, the Provider shall submit to the Department a final report, completed by a certified public accountant, of the Provider's receipts and expenditure of funds pursuant to this Agreement.

O. EMPLOYMENT PRACTICES:

1. The Provider shall comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin; the implementing regulations prescribed by the Federal Secretary of Labor at 41 Code of Federal Regulations (CFR), Part 60; and the Federal Regulations contained in 45 CFR Part 84, entitled "Non-discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."

P. AGREEMENT TO RENEGOTIATE:

1. The parties may renegotiate this Agreement in the event that the New York State Department of Health issues new or revised requirements for the provision of services and the parties determine that renegotiation is necessary to comply with such revised requirements. Any renegotiated agreement is subject to review and approval of the County and the New York State Department of Health.

Q. AMENDMENT OF AGREEMENT:

1. This Agreement may be amended whenever determined necessary by the Department and the Provider; however, such amendments shall not be effective until approved by the County and the New York State Department of Health.
2. The Department and/or the parties must submit all proposed amendments to the New York State Department of Health for review.
3. All amendments must be in writing, duly signed by all parties, and be annexed to this Agreement.

R. LOCAL VARIATIONS:

Local variations to this Agreement, if any, are set forth in Appendix B, which is attached to and made a part of this Agreement. Such local variations shall be effective only if the New York State Department of Health has approved them, in writing, and if the terms and form of such variations do not conflict with the contents of this Agreement.

S. EXPENSES:

The Provider is solely responsible for paying all of its business expenses related to furnishing the Assisted Living Program Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

T. CHOICE OF VENUE:

If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of competent jurisdiction sitting in Oneida County, New York or the United States District Court for the Northern District of New York.



U. ENTIRE AGREEMENT:

1. This Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitutes the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement.
2. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the parties sought to be bound.

V. ADVICE OF COUNSEL:

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated opposite their respective signature.

\*\*\*\*\*

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

Oneida County: \_\_\_\_\_  
Anthony J. Picente Jr., County Executive

\*\*\*\*\*

Approved: Maryangela Scalzo  
Maryangela Scalzo, Assistant County Attorney

\*\*\*\*\*

Date: 7/18/19

Oneida County Department of Social Services: Colleen Fahy-Box  
Colleen Fahy-Box, Commissioner

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Date: 7/16/19

Cedarbrook Village, Incorporated: Christie L. Acuff

Title: CEO

MedNY ID #: 03065249

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APPENDIX A  
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
  - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
  - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
  - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
  - (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
    - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
    - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
  - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
  - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- \*(d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

\*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

\*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more a disclosure within the meaning of sub-paragraph VII (a)

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\*\*Note: Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

## APPENDIX B

### STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

#### PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

#### NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
  1. By certified or registered United States mail, return receipt requested;
  2. By facsimile transmission;
  3. By personal delivery;
  4. By expedited delivery service; or
  5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

#### GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.



- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
  - 1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
  - 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
  - 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
  1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
  2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
  3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
  4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
  5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
  6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
  7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:  
[http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp)
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

## REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, from, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

#### CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services  
Contract Administration Office, 4<sup>th</sup> Floor  
800 Park Ave  
Utica, New York, 13501

#### PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

## PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

## TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment



purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

## CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to , notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

## FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

## ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

#### RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

#### COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from



## Appendix C

### Federal Health Insurance Portability and Accountability Act Business Associate Agreement (Agreement) Governing Privacy and Security

- I. Definitions. For purposes of this Agreement:
- a) "Business Associate" shall mean Cedarbrook Village Incorporated Assisted Living Program.
  - b) "Covered Program" shall mean Oneida County and the Oneida County Department of Social Services.
  - c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
- a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
  - b) Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
  - c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
  - d) Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
    - 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;

4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  5. Contact procedures for Covered Program to ask questions or learn additional information.
- e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Program agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
  - f) Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
  - g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
  - h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
  - i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
  - j) Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to comply with 45 CFR § 164.528.
  - k) Business Associate agrees to comply with the security standards for the protection of electronic protected health information in 45 CFR § 164.308, 45 CFR § 164.310, 45 CFR § 164.312 and 45 CFR § 164.316.

### III. Permitted Uses and Disclosures by Business Associate

- a) Except as otherwise limited in this Agreement, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this Agreement.
- b) Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- c) Business Associate may disclose Protected Health Information as Required by Law.

#### IV. Term and Termination

- a) This Agreement shall be effective for the term as specified in the Agreement between Business Associate and Covered Program to which this is annexed, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix.
- b) Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this Agreement if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- c) Effect of Termination.
  - 1. Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected

Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- a) Any violation of this Agreement may cause irreparable harm to the Covered Program. Therefore, the Covered Program may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- b) Business Associate shall indemnify and hold the Covered Program harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the Covered Program from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Covered Program.

VI. Miscellaneous

- a) Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- b) Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- c) Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix to this Agreement shall survive the termination of this Agreement.
- d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- e) HIV/AIDS. If HIV/AIDS information is to be disclosed under this Agreement, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F



**Oneida County Department of Social Services  
Contractor and Contract Staff  
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of \_\_\_\_\_, (the  
Name of Contract Agency

“Service Provider”), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: Christa L. Serata  
Signature: Christa L. Serata  
Title: CEO  
Date: 7/16/19  
Witness: Dennis Coburn

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter;

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
  - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
  - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
- D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
- 1) Abide by the terms of the statement; and
  - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:
- Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County



available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKERS' COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



Anthony J. Picente, Jr., County Executive

Robin E. O'Brien, Commissioner



Phone: (315) 768-3660  
Fax: (315) 768-3670  
Website: www.ocgov.net  
Email: mentalhealth@ocgov.net

120 Airline Street  
Suite 200  
Oriskany, New York 13424

June 13, 2019

FN 20 19-277

Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES

**WAYS & MEANS**

Dear Mr. Picente:

I am forwarding four (4) copies of a Third Amendment to a purchase of services Agreement between the Oneida County Department of Mental Health and **Upstate Cerebral Palsy, Inc.** for your review and signature.

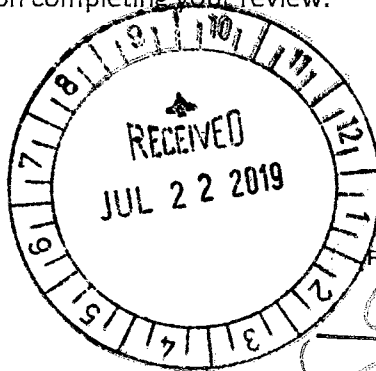
This Third Amendment modifies terms and conditions **effective upon execution through December 31, 2020** and will increase funding by **\$22,699.00** for a new total of **\$3,218,818**. This amount reflects **100%** OMH State Aid funding.

Thank you very much for your time and consideration of this request. I would be pleased to respond to any questions or concerns you might have with regard to this Amendment. If this meets with your approval, please forward this to the Board of Legislators upon completing your review.

Respectfully,

*Robin E. O'Brien*

Robin E. O'Brien  
Commissioner



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 7-22-19

REO/md  
Encs.



Oneida Co. Department: MENTAL HEALTH

Competing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u>  X  </u>

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** Upstate Cerebral Palsy, Inc.  
1020 Mary Street  
Utica, NY 13501

**Title of Activity or Service:** Supported Housing/Case Management  
Mentally Ill Chemical Abuse Network (MICA)  
Assisted Competitive Employment (ACE)  
Ongoing Integrated Supported Employment (OISE)  
Advocacy

**Proposed Dates of Operation:** Upon execution through December 31, 2020  
(Amendment #3 – County funds re-allocation)

**Client Population/Number to be Served:** Adults and children with serious and persistent  
mental illness

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Funding allocation increase to represent actual OMH State Aid received for Supported Housing Rental and Community Services.
- 2) **Program/Service Objectives and Outcomes:** The primary objective of all services is to support individuals to help them achieve and maintain the most independent level of functioning in their lives.
- 3) **Program Design and Staffing:** All services are licensed by the NYS Office of Mental Health (OMH), as applicable. Assisted Competitive Employment is monitored and certified through the NYS Education Department Bureau of Vocational & Educational Services for Individuals with Disabilities (ACCESS-VR). All programs meet the appropriate staffing models developed and monitored by the NYS Office of Mental Health (OMH) in concert with the NYS Division of Budget (DOB) and in conjunction with guidelines and regulations.

**Total Funding Requested:** \$3,218,818.00                      **Account #** A4310.49517

**Oneida County Dept. Funding Recommendation:** \$3,218,818.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** State funds

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** This is Amendment #3 and represents an increase in funding allocation in the amount of \$22,699.00. This Amendment is supported by 100% OMH State Aid.

## AMENDMENT

**THIS THIRD AMENDMENT** is by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York, 13501, by and through its Department of Mental Health, with offices at 120 Airline Street, Suite 200, Oriskany, New York 13424, herein collectively referred to as the “County,” and Upstate Cerebral Palsy, Inc., a domestic not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office located at 1020 Mary Street, Utica, New York 13501, hereinafter referred to as the “Provider Agency.”

### WITNESSETH

**WHEREAS**, the County and the Provider Agency entered into an agreement whereby the Provider Agency provides mental health services to Oneida County residents, hereinafter referred to as the “Original Agreement” (County contract number 22436), a copy of which is attached hereto as Exhibit “A.” The Original Agreement is in effect from January 1, 2018 through December 31, 2020; and

**WHEREAS**, since the execution of the Original Agreement, the New York State Office of Mental Health, herein referred to as “OMH,” adjusted the funding provided to the Original Agreement to reflect a Cost of Living Adjustment (COLA) in the amount of \$77,487.00 resulting in an amendment to the Original Agreement, hereinafter referred to as the “First Amendment” (County contract no. 65474), a copy of which is attached hereto as Exhibit “B;” and

**WHEREAS**, since the execution of the First Amendment, OMH increased State Aid funding to support the Provider Agency’s Supported Housing Rental Assistance and Supported Housing Community Services programs in the amount of \$28,851.00 resulting in a second amendment to the Original Agreement, hereinafter referred to as the “Second Amendment” (County contract no. 73605), a copy of which is attached hereto as Exhibit “C,” and

**WHEREAS**, since the execution of the Second Amendment, the County has allocated additional funding to support these services in the amount of \$22,699.00; and

**WHEREAS**, the parties are desirous of entering into this Third Amendment to the Original Agreement regarding the following provisions,

**NOW THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. This Third Amendment shall become effective upon execution.
2. Section 3 of the Original Agreement, as amended by the First and Second Amendments, shall be replaced with the following language:

For the Services provided, the Oneida County Department of Mental Health shall reimburse the Provider Agency a maximum of three million two hundred eighteen thousand eight hundred eighteen dollars (\$3,218,818.00) during the term of this Agreement. This shall include, but not

be limited to, travel time, evaluation time and any court time as deemed necessary by the court before which the Provider Agency must appear. The payment schedule shall be based upon submission of an Oneida County voucher to the Department. Vouchers submitted by the Provider Agency shall include a detailed and itemized description of the services provided under this Agreement for the period captured in the voucher. Annexed hereto and made part hereof as Appendix A is the Provider Agency's contract budget for the term of this Agreement.

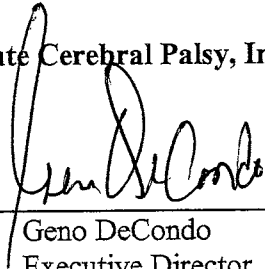
- a. The total amount stated above may be changed by New York State on a year-to-year basis as the State changes its funding determinations. This change may necessitate an amendment of this Agreement. Such an amendment may require formal approval by the County's Board of Legislators.
3. Appendix A of the Original Agreement, as amended by the First and Second Amendments, which is the Provider Agency's contract budget, shall be replaced with the Appendix A that is attached hereto and made a part hereof.
4. All other terms of the Original Agreement, as amended by the First and Second Amendments, remain in effect without change or alteration.

**IN WITNESS THEREOF**, the County and the Provider Agency have signed this Third Amendment on the day and year first above written.

**County of Oneida**

By: \_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

**Upstate Cerebral Palsy, Inc.**

By:  \_\_\_\_\_  
Geno DeCondo  
Executive Director

Approved

\_\_\_\_\_  
Maryangela Scalzo, Esq.  
Assistant County Attorney

<b>UPSTATE CEREBRAL PALSY</b>		<b>49517</b>	<b>TOTAL THREE YEAR BUDGET:</b>		<b>\$</b>	<b>3,218,818.00</b>
<b>APPENDIX A</b>			<b>APPENDIX A</b>			<b>APPENDIX A</b>
<b>YEAR</b>	<b>2018</b>		<b>YEAR</b>	<b>2019</b>		<b>YEAR</b>
OMH:	\$ 1,029,927.00		OMH:	\$ 1,065,373.00		OMH:
OASAS:	\$ -		OASAS:	\$ -		OASAS:
OPWDD:	\$ -		OPWDD:	\$ -		OPWDD:
COUNTY:	\$ -		COUNTY:	\$ -		COUNTY:
<b>ANNUAL TOTAL:</b>	<b>\$ 1,029,927.00</b>		<b>ANNUAL TOTAL:</b>	<b>\$ 1,065,373.00</b>		<b>ANNUAL TOTAL:</b>
<i>MONTHLY VOUCHER:</i>	<i>\$ 85,827.00</i>		<i>MONTHLY VOUCHER:</i>	<i>\$ 88,781.00</i>		<i>MONTHLY VOUCHER:</i>
<i>DEC VOUCHER:</i>	<i>\$ 85,830.00</i>		<i>LAST VOUCHER:</i>	<i>\$ 88,782.00</i>		<i>LAST VOUCHER:</i>
<u>AMENDMENT</u>			<u>AMENDMENT</u>			<u>AMENDMENT</u>
SUPPLEMENTAL OMH	\$ 25,829.00					\$ -
SUPPLEMENTAL OMH	\$ 9,617.00			\$ -		\$ -
HTC OISE TRANSFER	\$ 22,699.00			\$ -		\$ -
	\$ -			\$ -		\$ -
	\$ -			\$ -		\$ -
	\$ -			\$ -		\$ -
<b>ADJUSTED TOTAL:</b>	<b>\$ 1,088,072.00</b>		<b>ADJUSTED TOTAL:</b>	<b>\$ 1,065,373.00</b>		<b>ADJUSTED TOTAL:</b>
						\$ 1,065,373.00

Acct	Funding Sc	49517	40640	UCP 2018	Updated 11/14/18		
		Program Name	Prog Code/Index	State Aid			
UCP	OASAS	NONE			-		
		OASAS-UCP Aid					
UCP	OMH	Psychosocial Club	0770-00	965	932		
UCP	OMH	Psychosocial Club/Personnel Services Enhancements	0770-00	965S	7		
UCP	OMH	Assisted Competative Employment - Community Suppor	1380-00	014	31,844		
UCP	OMH	Assisted Competative Employment - Innovative Pyschiat	1380-00	039Q	14,761		
UCP	OMH	Assisted Competative Employment - Community Reinve:	1380-00	200	6,110		
UCP	OMH	Assisted Competative Employment /COLA	1380-00	965	984		
UCP	OMH	Assisted Competative Employment - Personnel Services	1380-00	965S	77		
UCP	OMH	Advocacy/Support Services - Community Support Servic	1760-00	014	149,099		
UCP	OMH	Advocacy/Support Services - Child & Family Clinic Plus	1760-00	039L	47,244		
UCP	OMH	Advocacy/Support Services - Community Reinvestment	1760-00	200	187,401		
UCP	OMH	Advocacy/Support Services/COLA	1760-00	965	5,948		
UCP	OMH	Onging Integrated Supported Employment Services - Int	4340-00	037	39,994		
UCP	OMH	Onging Integrated Supported Employment Services - Coi	4340-00	200	61,168		
UCP	OMH	Onging Integrated Supported Employment Services - CO	4340-00	965	3,214		
UCP	OMH	Onging Integrated Supported Employment Services/Per	4340-00	965S	71		
UCP	OMH	MICA Network - Community Reinvestment	5990-00	200	56,398		
UCP	OMH	MICA Network - Homeless/MICA	5990-00	300	141,458		
UCP	OMH	MICA Network/COLA	5990-00	965	3,373		
UCP	OMH	MICA Network - Personnel Services Enhancements	5990-00	965S	259		
UCP	OMH	Supported Housing Rental Assistance - Supported Housi	6050-00	078	193,011		
UCP	OMH	Supported Housing Rental Assistance - MRT Supported H	6050-00	580	12,065		
UCP	OMH	Supported Housing Community Services - Supported Ho	6060-00	078	80,383		
UCP	OMH	Supported Housing Community Services - Supported Ho	6060-00	200C	40,206		
UCP	OMH	Supported Housing Community Services - MRT Supporte	6060-00	580	12,065		
		OMH-UCP Aid		2018		1,088,072	
							2019 1,110,776 (+ 22,704)
UCP	County	None					2020 1,110,776 (+ 22,704)
		Total UCP Aid				1,088,072	
		Last Contract				1,029,927	
		Contract To Be Amended				58,145	
		COLA	0770-00	965	932		
		Personnel Services Enhancements	0770-00	965S	7		
		ADJUST PRIOR FUNDING	1380-00	200	(3,643)		
		COLA	1380-00	965	984		
		Personnel Services Enhancements	1380-00	965S	41		
		Difference-original contract / Fund allocation.	1760-00	014	5,179		
		Difference-original contract / Fund allocation.	1760-00	039L	12,448		
		ADJUST PRIOR FUNDING	1760-00	200	71,275		
		COLA	1760-00	965	5,948		
		Onging Integrated Supported Employment Services - Int	4340-00	037	12,543.00	12,546.00	
		ADJUST PRIOR FUNDING	4340-00	200	(32,145)		
		Onging Integrated Supported Employment Services - Coi	4340-00	200	8,454.00	8,454.00	
		COLA	4340-00	965	1,512		
		COLA - Onging Integrated Supported Employment Servic	4340-00	965	1,702.00	1,704.00	
		Personnel Services Enhancements	4340-00	965S	35		
		ADJUST PRIOR FUNDING	5990-00	200	(35,487)		
		COLA	5990-00	965	3,373		
		Personnel Services Enhancements	5990-00	965S	59		
		ADJUST PRIOR FUNDING	6050-00	078	(566)		
		ADJUST PRIOR FUNDING	6050-00	580	478		
		ADJUST PRIOR FUNDING	6060-00	078	2,949		
		ADJUST PRIOR FUNDING	6060-00	200C	1,589		
		ADJUST PRIOR FUNDING	6060-00	580	478		
		Net Increase				58,145	22,704
						2,018	2019 & 2020

## AGREEMENT

THIS AGREEMENT between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501, by and through its Department of Mental Health, with offices at 120 Airline Street, Suite 200, Oriskany, New York 13424, hereinafter collectively referred to as the "County," and Upstate Cerebral Palsy, Inc., a domestic not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office located at 1020 Mary Street, Utica, New York 13501, hereinafter referred to as the "Provider Agency."

### WITNESSETH:

WHEREAS, the County through its Department of Mental Health desires to establish a comprehensive and integrated system of community mental health services as required by Article 41 of the Mental Hygiene Law of the State of New York; and

WHEREAS, Article 41 of New York State Mental Hygiene Law mandates and authorizes the County through its Department of Mental Health to enter into a series of agreements, which establish a comprehensive and integrated system of community mental health services that will address the needs of the citizens and residents of Oneida County; and

WHEREAS, the Provider Agency hereby warrants that it has the proper and necessary staff and infrastructure to act as a provider and resource to and for the County's Department of Mental Health, hereinafter referred to as the "Department;"

NOW THEREFORE, in consideration of the covenants hereinafter expressed, the parties agree as follows:

1. The term of this Agreement shall be from January 1, 2018 through December 31, 2020 or until terminated according to the termination requirements contained within this Agreement.
2. Scope of Services. The Provider Agency shall:
  - a. Provide Supported Housing services to assist consumers in locating and securing housing, and providing supports to include financial assistance with security deposits, and purchasing furniture. Case Management Services as part of these Supported Housing services will include assistance in choosing housing, negotiating leases, financial consultations, assistance in daily living and linkage to needed services;
  - b. Facilitate Mentally Ill Chemical Abuser (MICA) Network Case Management Services to dually diagnosed homeless individuals. This facilitation will include the provision of support, advocacy, and linkage to treatment in an effort to avoid contacts with the criminal justice system and prevent homelessness;
  - c. Provide Assisted Competitive Employment (ACE) services, which are temporary, short-term supports to individuals interested in returning to the workforce. ACE services shall include intake/assessment, information and referral, job readiness skills, and job coaching;

- d. Provide Ongoing Integrated Supported Employment (OISE) services by securing competitive employment; and providing on-site coaching, employer consultation, and supports in integrated community settings;
  - e. Provide advocacy services to seriously and persistently mentally ill adults on an individualized and as needed basis, 24 hours per day and seven days per week. These advocacy services will include linkage to mental health legal services and/or access to peer services;
  - f. Referrals to the Provider Agency. The Provider Agency shall accept referrals for the services provided under this Agreement either from the County's (SPOA/A) or through Central New York Health Home Network, Inc.
    - i. If the Provider Agency accepts a referral through Central New York Health Home Network, Inc., the Provider Agency shall promptly provide a copy of that referral to the Department;
    - ii. If the Provider Agency declines a referral from Central New York Health Home Network, Inc. because it is inappropriate for the Provider Agency to service, then the Provider Agency shall provide prompt notice of such declination to the Department;
    - iii. On a monthly basis, the Provider Agency shall provide the Department with the following lists, with each list including the client's name and date of birth:
      - A. A list of all cases that are currently open to the Provider Agency, whether referred to the Provider Agency by the SPOA/A or the Central New York Health Home Network, Inc.; and
      - B. A list of all cases that have been closed by the Provider Agency since the last monthly report.
3. For the Services provided, the Oneida County Department of Mental Health will reimburse the provider Agency a maximum of Three Million Eighty-Nine Thousand Seven Hundred Eighty-One Dollars and no cents (\$3,089,781.00) during the term of this Agreement. This shall include but not be limited to travel time, evaluation time and any court time as deemed necessary by the court before which the Provider Agency must appear. The payment schedule will be based upon submission of an Oneida County Voucher to the Department. Vouchers submitted by the Provider Agency shall include a detailed and itemized description of the services provided under this Agreement for the period captured in the voucher. Annexed hereto and made part hereof as Appendix A is the Provider Agency's contract budget for the term of this Agreement.
- a. The total amount stated above may be changed by New York State on a year-to-year basis as the State changes its funding determinations. This change may necessitate an amendment of this Agreement. Such an amendment may require formal approval by the County's Board of Legislators.
4. The County will make payments to the Provider Agency either monthly or quarterly based on payments made to the County by New York State and the timely submission of correct monthly payment vouchers. Payments will be provided subsequent to services rendered and upon review of the voucher receipt submitted by the Provider Agency.
5. The Provider Agency agrees to participate in the development and implementation of the Local Governmental Plan required by New York State Mental Hygiene Law Section 41.18.

Participation may include but not necessarily be limited to: attendance at appropriate subcommittee meetings; notification to a subcommittee of intent to submit a Certificate of Need (CON) application and/or grant application which will modify services offered by the Provider Agency; submission of planning reports and CON applications and/or Prior Approval Review applications, which are required by 14 NYCRR Part 551, to the County prior to submission to the State; and attendance and cooperation with various ad hoc work groups of the subcommittee.

6. Independent Contractor Status.

- a. It is expressly agreed that the relationship of the Provider Agency to the County shall be that of an Independent Contractor. The Provider Agency's employees shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Provider Agency and its employees, in accordance with their status as independent contractors, covenant and agree that they will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the County or the Department by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. Provider Agency warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar services to other entities and/or the general public as a regular course of business. Provider Agency and County agree that Provider Agency is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
- c. The Provider Agency's employees shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. Provider Agency acknowledges and agrees that neither Provider Agency, nor its employees, shall be eligible for any County employee benefits, including retirement membership credits.
- e. Provider Agency shall be solely responsible for applicable taxes for all compensation paid to Provider Agency or its employees under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Provider Agency's self-employment, sole proprietorship or other form of business organization, and with respect to its employees, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). Provider Agency shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
- f. The Provider Agency shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Provider Agency's Independent Contractor status, it is agreed that both the County and the Provider Agency shall have the right to participate in any



- conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Provider Agency agrees to comply with Federal and State Laws as supplemented in the Department of Labor regulation and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.
7. The Provider Agency agrees, where applicable, to provide any and all services, authorized by this Agreement or by other license or certification, to individuals who are subject to an Assisted Outpatient Treatment (AOT) order pursuant to New York State Mental Hygiene Law Section 9.60, as well as to individuals that meet the criteria for an AOT order but have been diverted from the formal court proceedings. The Provider Agency further agrees to provide any and all required client-specific information as required by the State of New York and/or the Department for monitoring purposes. It is expressly understood that all information sent to the Department will be handled in a safe and confidential manner.
  8. In the event that the State or County approves or makes changes to the funding amount that is listed in Appendix A, the Provider Agency, at the request of the County shall submit a revised budget plan which reflects the approved operating costs, net operating costs, and funding by the various deficit funding sources. It is expressly understood that the County assumes no responsibility for either costs not approved for reimbursements by the either the County or the State; or changes to the budget anytime during the contract period. Should any expenses be disapproved in a post-audit by the State of New York or funds are not spent in the approved programs during the fiscal year, the Provider Agency shall submit a check payable to the County's Commissioner of Finance equal to the amount of any disallowance already paid to the Provider Agency by the County within thirty (30) days of notification. This provision shall apply to this Agreement and all previous agreements between the County and the Provider Agency.
  9. The Provider Agency agrees to submit to the County, on the last business day of the following month at the end of each quarter (e.g., Jan-Mar report due April 30th), a quarterly financial analysis, performance analysis, and service utilization report. In addition, the Provider Agency agrees to submit the following reports by the listed required dates as applicable to funding received:
    - a. Office of Persons with Developmental Disabilities (OPWDD) budgets for the current year is required to be received by the County by February 1st.
    - b. Office of Alcoholism and Substance Abuse Services (OASAS) estimated claims for the prior year are required to be received by the County by April 15th.
    - c. Pre-Approved 30-day Office of Mental Health (OMH) Consolidated Fiscal Report (CFR) extension requests for the prior year OMH CFR are required to be received by the County by April 15th.
    - d. OMH, OASAS and OPWDD fully audited CFRs for the prior year that do not have a pre-approved 30-day extension (OMH only) are required to be received by the County by April 15<sup>th</sup> of each year. An OPWDD estimated CFR is required by this date if an extension was filed. An OASAS estimated claim is required to be received by this date; no extension allowed for OASAS CFRs.

- e. Fully audited CFRs for OMH, OPWDD, and OASAS for the prior year with an extension submitted for OMH and OPWDD and/or an estimated OASAS CFR supplied to the County by April 15th are required to be received by the County by May 15th.
  - f. OASAS mid-year claim for the current year is required to be received by the County by August 15th.
  - g. OASAS Consolidated Budget Report (CBR) for the next year is (with scope) required to be received by the County by September 15th.
  - h. OMH CBRs for the current year are required to be received by the County by October 15th.
  - i. The Provider Agency is only responsible for reporting to the New York State agency or agencies that provide the funding for this Agreement.
  - j. The Provider Agency shall comply with the County's contract monitoring, which will include contract compliance evaluations, completion of quality assurance participant surveys, and other measures deemed necessary by the County to ensure contract compliance.
10. The Provider Agency shall submit a copy of the following reports to the County during the first quarter of each Fiscal Year:
- a. Disaster Response Plan. In addition, the Provider Agency will participate in the development of an Oneida County plan to respond to man-made or natural disasters. The Provider Agency shall also provide the County with the Provider Agency's records regarding annual staff training on its Disaster Response Plan.
  - b. Accounting System & Financial Capability Questionnaire (where applicable).
  - c. Corporate Compliance Plan. The plan will reflect efforts to ensure that personnel are aware of and in compliance with relevant laws and regulations.
  - d. Annual Audit and Financial Reports.
  - e. Federal Single Audit Report. If the Provider Agency is scheduled to receive funds in excess of \$300,000.00 or more in a year in federal funds, exclusive of Medicaid and Medicare. The single audit shall be conducted in accordance with Office of Management Budget (OMB) Circular A-133, OMB Circular A-110, the OMB Circular A-102 and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act Amendments of 1996.
11. The Provider Agency shall operate all programs in compliance with the laws, rules and regulations as passed and/or promulgated by the County, State or Federal governments. It is further understood by the Provider Agency that agencies and departments of New York State other than the OMH, OASAS, and OPWDD, may promulgate these rules and regulations.
12. The Provider Agency agrees to defend, indemnify and save harmless the County for any loss the County may suffer when such losses result from claims of any person or organization injured by the acts or omissions of Provider Agency, its officers and/or employees or subcontractors. Furthermore, the Provider Agency agrees to indemnify, defend, and save harmless the County, and its officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from all claims and losses occurring or resulting to any person, firm, or

corporation who may be injured or damaged by the Provider Agency in the performance of the this Agreement, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this Agreement or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

13. The Provider Agency shall obtain and maintain comprehensive general liability insurance satisfactory to the County with a minimum of \$1,000,000 per occurrence coverage and \$2,000,000 aggregate coverage. In addition, the Provider Agency shall obtain and maintain professional liability insurance satisfactory to the County with a minimum of \$1,000,000 per occurrence coverage and \$2,000,000 aggregate coverage. Further, the Provider Agency shall obtain and maintain umbrella liability insurance satisfactory to the County with a minimum of \$5,000,000 per occurrence coverage and \$5,000,000 aggregate coverage. Further, the Provider Agency shall obtain and maintain commercial automobile liability insurance satisfactory to the County with a minimum of \$1,000,000 combined single limit, such coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. Further, the Provider Agency shall obtain and maintain Workers' Compensation and Employer's Liability insurance at the statutory limits in the State of New York. The County of Oneida shall be named as an "Additional Insured" on a "primary and non-contributing basis" in the Provider Agency's insurance policies. Proof of all insurance coverage must be provided to the County at the time of the execution of this Agreement. It is expressly understood that if during the course of this Agreement, said insurance policy is canceled or otherwise allowed to lapse, the Provider Agency must provide the County proof of insurance consistent with the requirements listed above. Failure to provide proof of insurance is a basis for the County to seek the immediate termination of this Agreement.
14. The Provider Agency waives all rights against Oneida County and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, professional liability, or Workers' Compensation and Employers Liability insurance maintained per requirements stated above.
15. Either party may terminate this Agreement by giving fifteen (15) days prior written notice of such termination to the other party. Notwithstanding the above, if, through any cause, the Provider Agency fails to comply with legal, professional, County or State requirements for the provision of the services covered under this Agreement, or if the Provider Agency becomes bankrupt or insolvent or falsify their records or reports, the County may terminate this Agreement effective immediately, or, at its option, effective at a later date after sending notice of such termination to the Provider Agency.
  - a. The County shall be released from any and all responsibilities and obligations arising from the services covered by this Agreement, effective as of the date of termination. The County shall be responsible for payment of all claims for services provided and costs incurred by the Provider Agency prior to the termination of this Agreement that are pursuant to and after Provider Agency compliance with the terms and conditions herein.
  - b. Notice of termination must be in writing, signed by an authorized official, and sent to the other party by certified mail or messenger, and receipt shall be requested. Notice of

termination shall be deemed delivered as of the date of its posting by certified mail or at the time it is delivered to the other party by messenger.

- c. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding the Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. The laws of the State of New York shall govern this Agreement and jurisdiction and venue shall lie within the State of New York.

16. The Provider Agency agrees to maintain files in a confidential manner pursuant to the applicable statutes contained in New York State Mental Hygiene Law and any State or Federal statute regulating such files. Information contained in these files shall be released only upon the written consent of the client being served or to the Department as outlined below.

- a. It is expressly understood that as a Provider Agency for the Department, it may and will receive confidential information from the Department and this information may have been received from other independent contractors and/or licensed agencies. The Provider Agency agrees that all such information will be considered as being confidential and shall not be re-disclosed without the written consent of the individual.

b. Accordingly, as a condition of and in consideration of access to confidential information, the Provider Agency promises that:

- i. They will use confidential information only as needed to perform the duties outlined in the "Scope of Services" above for the Department and its Single Point of Access & Accountability (SPOA/A) program. This means, among other things, that:

- A. The Provider Agency will only access confidential information for which there is a need to know; and

- B. The Provider Agency will not in any way divulge, copy, release, sell, loan, review, alter or destroy any confidential information except as properly authorized; and

- C. The Provider Agency will not misuse confidential information or carelessly handle confidential information.

- ii. The Provider Agency will safeguard and will not disclose any access code or any other authorization that allows access to confidential information. The Provider Agency accepts responsibility for all activities undertaken using any access code and other authorization.

- iii. The Provider Agency will report activities by any individual or entity that is suspected of or may compromise the confidentiality of confidential information. Reports made in good faith about suspect activities will be held in confidence to the extent permitted by law, including the name of the individual reporting the activities.

- iv. The Provider Agency understands that the obligations under this Agreement will continue after termination of employment and that it is further understood that any privileges hereunder are subject to periodic review, revision and if appropriate, renewal.

- v. The Provider Agency understands that there is no right or ownership interest in any confidential information referred to in this Agreement. The Department may at any time revoke any access code, other authorization, or access to confidential information. At all times during the course of providing services under this


Agreement, the Provider Agency will safeguard the confidentiality of all confidential information.

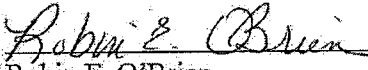
- iv. The Provider Agency will be responsible for any misuse or wrongful disclosure of confidential information and for any failure to safeguard an access code or other authorization access to confidential information. It is expressly understood that any failure to comply with this Agreement may result in immediate termination of access to the information system and legal action against the Provider.
17. The Provider Agency agrees not to discriminate or refuse assistance to individuals diagnosed with AIDS or an HIV infection or an HIV related illness. If the Provider Agency is provided with any confidential HIV related information during the course of providing services and in accordance with "Program Requirements For Social Services" found at 18 NYCRR Part 403, and the confidentiality and disclosure requirements of New York State Public Health Law Section 2782, they shall be informed of the penalties and fines for any re-disclosure found to be in violation of New York State law and/or regulation.
    - a. The Provider Agency shall include the following written statement when disclosing any confidential HIV-related information:
      - i. "This information has been disclosed to you from confidential records, which are protected by State Law. State Law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State Law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure."
  18. The Provider Agency agrees that its employees and agents, as mandated reporters, will report all instances of suspected child abuse, neglect, and/or maltreatment to the New York Statewide Central Register as required by New York State Social Services Law. Each verbal report to the Statewide Central Register shall be followed by the submission of completed Form 2221A ("Report of Suspected Child Abuse or Maltreatment") to the local Department of Social Services. The Provider Agency shall also notify the Commissioner of the Department of any and all reports made to the Statewide Central Register.
  19. The Provider Agency is solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed for equipment, tools, office space, support services or other general operating expenses.
  20. The Provider Agency shall not be required to attend or undergo any training by the County. The Provider Agency shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.
  21. Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

22. It is understood that this instrument represents the entire Agreement of the parties hereto; both parties shall execute that all previous understandings are merged herein; and that no modifications hereof shall be valid unless written evidence shall be executed thereof.
23. Annexed hereto and made a part hereof as Appendix A (Contract Budget) and Appendix B (Standard Oneida County Contract Addendum), which are additional terms, covenants and conditions that the respective parties agree to be bound by and follow as part of this Agreement.

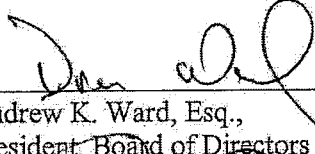
IN WITNESS THEREOF, the County and the Provider have signed this Amendment on the day and year first above written.


**COUNTY OF ONEIDA**

By:  3/1/18  
Anthony J. Picente, Jr. Date  
Oneida County Executive

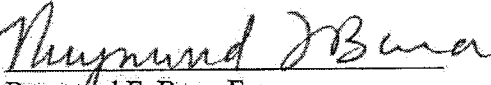
By:  12/20/17  
Robin E. O'Brien Date  
Commissioner, Department of Mental Health

**UPSTATE CEREBRAL PALSY, INC.**

By:  12/12/17  
Andrew K. Ward, Esq. Date  
President, Board of Directors

By:  12/12/17  
Louis Tehan Date  
President and Chief Executive Officer

Approved

By:   
Raymond F. Bara, Esq.  
Assistant County Attorney

UPSTATE CEREBRAL PALSY		TOTAL THREE YEAR BUDGET: \$		3,089,781.00
APPENDIX A				
YEAR	2018	2019	2020	
OMH:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	
OASAS:	\$ -	\$ -	\$ -	
OPWDD:	\$ -	\$ -	\$ -	
COUNTY:	\$ -	\$ -	\$ -	
ANNUAL TOTAL:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	
MONTHLY VOUCHER:	\$ 85,827.00	\$ 85,827.00	\$ 85,827.00	
LAST VOUCHER:	\$ 85,830.00	\$ 85,830.00	\$ 85,830.00	
AMENDMENT				
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
ADJUSTED TOTAL:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	
APPENDIX A				
YEAR	2018	2019	2020	
OMH:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	
OASAS:	\$ -	\$ -	\$ -	
OPWDD:	\$ -	\$ -	\$ -	
COUNTY:	\$ -	\$ -	\$ -	
ANNUAL TOTAL:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	
MONTHLY VOUCHER:	\$ 85,827.00	\$ 85,827.00	\$ 85,827.00	
LAST VOUCHER:	\$ 85,830.00	\$ 85,830.00	\$ 85,830.00	
AMENDMENT				
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
	\$ -	\$ -	\$ -	
ADJUSTED TOTAL:	\$ 1,029,927.00	\$ 1,029,927.00	\$ 1,029,927.00	

**STANDARD ONEIDA COUNTY CONTRACT ADDENDUM**

THIS ADDENDUM, entered into on this 1 day of January 2018, between the County of Oneida, hereinafter known as COUNTY, and a contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as CONTRACTOR.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, and thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

**1. Executory or Non-Appropriation Clause.**

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

**2. Oneida County Board of Legislators: Resolution #249 Solid Waste Disposal Requirements.**

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

**3. Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements.**

a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:



1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal Grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.

b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,

1. The Contractor certifies that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contracts under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
- d. Have not within a three-year period, preceding this Contract, had one or more public transactions (Federal, State, or local) for cause or default; and

2. Where the Contractor is unable to certify any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. The Contractor will or will continue to provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - b. Establishing an on-going drug-free awareness program to inform employees about:
    1. The dangers of drug abuse in the workplace;
    2. The Contractor's policy of maintaining a drug-free workplace;
    3. Any available drug counseling, rehabilitation, and employee assistance program; and
    4. The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
  - c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
  - d. Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the Contract, the employee will:
    1. Abide by the terms of the statement; and
    2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
  - e. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
  - f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;
    1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the Requirements of the Rehabilitation Act of 1973, as amended; or
    2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
  - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e),(f).

2. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

#### 4. Health Insurance Portability and Accountability Act (HIPAA).

When applicable to the services provided pursuant to the Contract:

a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:

1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access protected health information electronically; and
3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.

- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  2. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  5. Make available protected health information in accordance with 45 CFR § 164.524;
  6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.528;
  7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
  8. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Contractor on behalf of, the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
  9. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by the Contractor on behalf of, the County that the Contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Contract to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  2. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or

3. There is a material change in the business practices and procedures of the County.

e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

**5. Non-Assignment Clause.**

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

**6. Workers' Compensation Benefits.**

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**7. Non-Discrimination Requirements.**

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any

employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**8. Wage and Hours Provisions.**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County approved sums due and owing for work done upon the project.

**9. Non-Collusive Bidding Certification.**

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

**10. Records.**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails and attachments, rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an

office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

**11. Identifying Information and Privacy Notification.**

a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payees, on its invoice or claim for payment, must give the reason or reasons why the payee does not have such number or numbers.

b. Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

**12. Conflicting Terms.**

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

**13. Governing Law.**

This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. Prohibition on Purchase of Tropical Hardwoods.**

The Contractor certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the County.

**15. Compliance with New York State Information Security Breach and Notification Act.**

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

**16. Gratuities and Kickbacks.**

a. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.



b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### **17. Audit**

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to or permit the County to examine or obtain copies of any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### **18. Certification of compliance with the Iran Divestment Act.**

Pursuant Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (OGS) website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any Bidder/Contractor seeking to renew or extend a Contract or assume the

responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138

June 1, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-278

HEALTH & HUMAN SERVICES

**WAYS & MEANS**

Dear Mr. Picente:

Under section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, municipalities are mandated to provide payment for transportation services rendered to preschool aged children classified as disabled.

Attached are two (2) copies of an Agreement between Oneida County through its Health Department and Auburn Limousines, Inc. for the provision of transportation services for the period of September 1, 2019 through August 31, 2022 with two consecutive one-year options to extend.

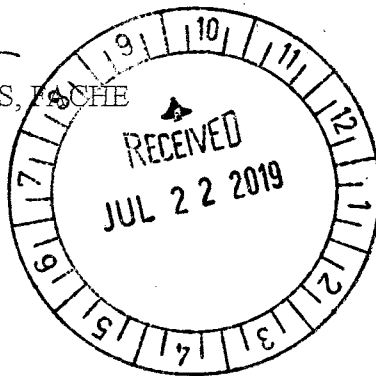
This is a New York State mandated program. The cost of the service is not anticipated to not exceed \$9,500,000.00 for the term of this agreement. Oneida County is responsible for 40.5% of the expenses and the remaining 59.5% is reimbursed by New York State.

If this meets with your approval, please forward to the Board of Legislators for further action.

Sincerely,

Phyllis D. Ellis, BSN, MS, F.A.C.H.E.  
Director of Health

CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente Jr.  
County Executive  
Date 7-19-19



**Agreement between Oneida County and  
Auburn Limousines, Inc.**

THIS Agreement, made and entered into by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with offices located at 800 Park Avenue, Utica New York 13501, hereinafter referred to as the "County," and Auburn Limousines, Inc., a domestic business corporation with its offices located at 245 Commerce Boulevard, Liverpool, New York 13088, hereinafter referred to as the "Contractor."

**WITNESSETH:**

**WHEREAS**, pursuant to Sections 4406 and 4410 of the New York State Education Laws, Section 236 of the Family Court Act, and other applicable acts and amendments, the County must provide transportation for certain children with special needs who are receiving services in connection with the County's preschool special education programs; and

**WHEREAS**, the County has issued a Request for Bids, Bid Reference no. 2038 for the provision of Preschool Transportation Services for Preschool Children with Disabilities, and the Contractor has submitted its proposal to provide the necessary services; and

**WHEREAS**, the County desires to accept the Contractor's proposal and avail itself of the Contractor's services; and

**WHEREAS**, the Contractor is willing and able to perform the services required by this Agreement;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

I. Definitions

Whenever in this Agreement, Route plans or billing documents relating to this Agreement, the following terms, phrases, pronouns or abbreviations are used, the intent and meaning shall be interpreted as follows:

- a. "ADA" shall mean the Americans with Disabilities Act of 1990, as that act may be amended from time to time.
- b. "Agent" shall mean the transportation management services provider designated by the County to coordinate, oversee and monitor transportation services on its behalf. For clarity and the avoidance of doubt, any actions that the County is permitted to take, and/or any requests that the County may make hereunder, may be taken or

made directly by the Agent. The Contractor shall be required to comply with such request made and/or such action taken by the Agent as if such action is taken or the request is made by the County. Failure by the Contractor to comply with requests the Agent may make, or interference with actions the Agent may take hereunder, shall be deemed breaches of the Contractor's duty to the County.

- c. "Children with Special Needs" shall mean those children, ages 0-5 years, whom the County has determined are eligible for transportation at public expense. These children shall hereinafter be referred to as "Passengers."
- d. "Client Assistance" shall mean to guide, direct and/or provide physical assistance to the Passengers if needed and as necessary to carry out the trip's purpose. This will include, but not necessarily be limited to, assisting a Passenger in the fastening of seat belts, assisting a Passenger in and out of a car seat, and assisting a Passenger on and off the vehicle. Such other Client Assistance consistent with a Passenger's needs and the Trip's purpose shall be rendered at the Agent's instruction.
- e. "Combined Routing" shall mean the process by which, only at the Agent's instruction, the Contractor shall combine Passengers attending two (2) or more Facilities, regardless if the Facility is governed by this Agreement, onto one (1) Route. Such combinations may consist of placing such Passengers on the same Run or of placing Runs to separate locations and at distinct times of the day on the same Route. This may also include the transportation of Passengers to individual therapy or other special sessions, or to primary destination facilities on an irregular or infrequent basis. In addition, "Combined Routing may include Runs arranged independently by or on behalf of County departments other than the Department of Health.

Further, if two (2) facilities are at a sufficient proximity that the normal driving time between them is fifteen (15) minutes or less at the time of day that the trip normally shall be made, the Agent may instruct the Contractor to combine trips to and/or from such facilities onto a single Run. In the event that each facility is serviced by a different contractor, the County or the Agent shall determine, in its sole discretion, which contractor shall perform the Run.

- f. "Continuous Midday Trip" a Continuous Midday Trip is one on which Passengers are both delivered to and picked up from the same site (or two contiguous sites) and on which all the following conditions are satisfied:

1. Each Trip has a bell time that corresponds to the definition of a midday trip; and
  2. The bell times for the arrival and departure portions of the Trip are within fifteen (15) minutes of one another; and
  3. If two sites are involved, the two sites are at a sufficient proximity that the normal driving time between them is fifteen (15) minutes or less at the time of day that the Trip can be added to a midday vehicle (as specified in the definition of "Combined Routing").
- g. "Curb -to-Curb Transport" shall mean that the Vehicle shall pick-up and drop-off each Passenger at a point as close to the entry of the Passenger's pick-up and drop-off location as safety will permit. At the Facility, the pick-up and drop-off shall be made where instructed by such Facility; at all other places the pick-up and drop-off shall be "right-hand" only so that no Passenger crosses the street to enter the Vehicle. In connection with the foregoing, without the Agent's prior approval, Drivers or Driver Assistants shall not meet a Passenger at the entry to his or her pick-up or drop-off location and escort him or her to the Vehicle or from the Vehicle to the entry of his or her pick-up or drop-off location.
- h. "Driver" shall mean any person who operates a Vehicle used in connection with the services, and, unless otherwise specified, shall include a regularly scheduled driver, a substitute driver or a spare driver.
- i. "Driver Assistant" or "Escort" shall mean a person, other than the Driver, assigned to a Vehicle used in connection with the services, to assist Passengers and the Driver. The Driver Assistant is a person who may be staff or a volunteer or special personnel such as nurses, provided by a parent or a Facility to accompany a Passenger on a Vehicle to ensure that the Passenger received needed services or resources. The Driver Assistant shall be a person assigned by the Contractor. Escorts shall be assigned at the instruction of the County or the Agent. There will be a Driver Assistant on every Vehicle.
- j. "Facility" shall mean the destination point of a Run at which services are provided to a Passenger. As the context requires, these terms shall also mean the organization providing the service.

- k. "Full Day Vehicle" a Full Day Vehicle is one which performs three (3) or more Trips during a single day.
- l. "Loaded Run" shall mean the operation of a Vehicle, with respect to a Run to a Facility or Facilities, from the point at which the first Passenger is picked up through the Facility bell time at the end of the Run, or, with respect to a Run from a Facility or Facilities, from the Facility's bell time at the beginning of a Run to the point at which the last Passenger is dropped off.
- m. "Notice" shall mean a written notice. Notice shall be served upon the Contractor either personally or by leaving the notice at the Contractor's last known business address, or by leaving the notice with the Contractor's agent in charge of providing the services, or addressed to the Contractor at the place of business given in the bid documents and deposited in a postpaid wrapper in any post box regularly maintained by the United States Postal Service. Notice shall be deemed given on the date delivered in person or when mailed.
- n. "Round Trip" a Round Trip typically consists of one morning Trip to and one afternoon Trip from a Facility or Facilities on which the same Passengers are delivered to and picked up from a Facility or Facilities. As used herein, however, the definition is expanded to include any pair of Trips to or from a destination(s) (which may or may not include the same Facility or Passengers).
- o. "Route" shall mean the combination of all Runs that a Vehicle executes throughout the day. A Route may be structured to require the pick-up and drop-off at more than one destination locations during the day. Final determination regarding Routes and the number of Passengers assigned to each Route shall be made by the County or its Agent.
- p. "Route Segments," "Runs" or "Trips" shall mean a contiguous series of Passenger pick-up points to bring the Passengers to a Facility or the series of Passenger drop-off points to take them home from a Facility. Final determination regarding Runs and the number of Passengers assigned to each shall be made by the Agent or the County.
- q. "Safety Apparatus" shall mean any device used in conjunction with safety belts, designed for use in motor vehicles to restrain, seat or position Passengers, and which meet the applicable Federal Motor Vehicle Safety Standards set out in 49 CFR



571.213. An "Appropriate safety Apparatus" shall mean a Safety Apparatus system for which the Passenger meets the size and weight recommendation of the manufacturer of such system. It is the Contractor's obligation to maintain a current knowledge of such law(s) and to train its transportation staff in the application and use of the required Safety Apparatus. This definition does not refer to any restraint or system of restraints used for disciplinary measures. The use of the same for the purpose of discipline alone is expressly forbidden. Notwithstanding anything to the contrary contained in any law, no item of "Safety Apparatus" shall have been recalled and no item shall be more than six (6) years old, and shall be in accordance with Standard No. 213 (Child Restraint Systems) of the Federal Motor Vehicle Standards.

- r. "Services" shall mean utilization of appropriate Vehicles for the transportation of the number of Passengers, assigned by the County or the Agent, to and from the places at which the contractor is instructed by the Agent to pick-up and/or drop-off those Passengers at destination locations where the Passengers are authorized to receive their special services.
- s. "Stand-alone Trip" In the event a Vehicle can only be utilized for single "Trip" (i.e. it cannot be linked with other trips) half of the Round Trip price for the Vehicle shall be charged by the Contractor.
- t. "Technical Specifications" shall mean the section of this Agreement dealing with technical requirements of the Services to be performed under this Agreement, including materials, equipment services, workmanship, qualifications and licensing.
- u. "Vehicle" as the context requires, shall mean a bus, van, or passenger car which meets or exceeds the Technical Specifications herein, and which is capable of seating the number of Passengers assigned to each Route Segment. Vehicles shall include spare or replacement equipment. The Vehicles shall provide Curb-to-Curb Transport. All Vehicles used in the performance of this Agreement shall be authorized by the County or the Agent.

## II. Term

- a. This Agreement shall commence September 1, 2019 and continue through August 31, 2022.

- b. The County shall have two (2) separate and consecutive options to extend this Agreement for additional periods of one (1) year each on all of the terms and conditions contained in this Agreement. Each such option shall be at the sole and exclusive right of the County. Each option shall be exercised in writing and such option shall commence upon the expiration of the immediately preceding contract period.

### III. Scope

- a. Pursuant to the provisions of Sections 4406 and 4410 of the Education Laws of 1989, Section 235 of the Family Court Act, and other applicable acts and amendments, the Oneida County Department of Health requires transportation for certain Children with Special Needs who are receiving services in connection with the County's Preschool and Early Intervention Programs. These children will be age 0-5.
- b. This service will be provided to pre-school age children designated by the County or its Agent, and only to such children, and shall consist of regular Routes and Runs, although additions and deletions to the Trips may be required periodically.
- c. Transportation provided to the Passengers shall be provided on weekdays, and at least three (3) business days prior notice of Run scheduling change and/or additional Passengers to be added to existing Runs will be given. However, under special circumstances (such as those when specific equipment not otherwise required herein, is needed) efforts will be made to provide at least five (5) days prior notice.
- d. No Run shall exceed fifty (50) miles, and without the prior consent of the County, no Run shall exceed seventy-five (75) minutes. However, in exceptional circumstances of time, distance, weather, or load factors, such as a single Vehicle being used to transport Passengers to two (2) separate schools, the County or the Agent shall have the option, at its sole discretion, of approving an extension for the time of a Run not to exceed ninety (90) minutes.
- e. It is understood that the County may make use of other types of transportation. The form of transportation to be utilized shall be determined by the County or the Agent. In this respect, nothing in this Agreement shall be construed so as to imply that the County will make exclusive use of sedan, van or bus services in connection with the transportation of individuals serviced by the County.

- f. At the County's sole discretion, and at the instruction of the County or the Agent, transportation shall be provided from a defined point of origin to a transfer point rather than to an actual Facility destination.
- g. Vehicles transporting multiple Passengers may be requested to drop some Passengers off at interim points without additional payment. By way of example, but without limitation, this type of Trip might include a single Vehicle providing service to Passengers attending two (2) separate Facilities.

#### IV. Technical Specifications

##### a. Service Requirements:

1. The overall service area for the Service is Oneida County, New York, except as may be specified in individual Routes. Some Services may be rendered between sites within the County and sites outside of the County.
2. The Contractor shall render the Services in a safe, efficient and courteous manner. Such courtesy shall apply to the Passengers, parents, and the staff of the Facilities. In this regard, the Contractor shall institute the specific procedures for the reporting of accidents and incidents as the Agent directs. The Contractor shall report all such matters on the forms promulgated by the Agent. In addition, the Passengers, parents and/or Facility staff members may report complaints and incidents to the County or the Agent. In the event that such matters are reported, the Contractor shall cooperate fully and diligently in the resolution of such matters. In the event that the County or the Agent require the reassignment of a Driver or Driver Assistant as part of such complaint resolution, such reassignment shall be made with due dispatch. Upon request by the County or Agent, the Contractor shall provide a full written explanation of any incident or complaint.
3. The Contractor shall be notified of special service requirements of Passengers receiving the Services. Such requirements may include providing Vehicles that are capable of transporting special equipment, an adult caregiver, and similar special requirements. The Contractor shall have Vehicles available to meet these needs on prior notice which is reasonable under the circumstances.

4. As set out in the Section herein below entitled "Equipment Requirements," some Passengers may require an Appropriate Safety Apparatus in the nature of seat belts, harnesses and/or car seats or booster seats (for Passengers over forty (40) pounds). The Contractor shall provide such equipment.
5. During the term of this Agreement the Contractor shall provide the Drivers and Driver Assistants with safety training and training in the appropriate matter of managing the Preschool and Early Intervention Passengers in accordance with Section VI (d) of this Agreement. The Agent may attend and/or oversee such training sessions. The Contractor shall notify the Agent of the time, date and location scheduled for such training sessions.
6. The Contractor is not expected to provide service exclusively on behalf of the County and Vehicles not then in use in connection with the provision of Services hereunder may be used by the Contractor at the Contractor's sole discretion.
7. While a Vehicle is being used to render Services hereunder, the Contractor shall not commingle one or more County Passengers with other passengers without the prior written approval of the County. Such approval, if applied for, may be granted or denied for an entire class of Trips or on a case by case basis.
8. From time to time, when it is feasible based on destination and bell time, and in the best interest of the County to do so, the County or the Agent may instruct the Contractor or approve the Contractor's request to commingle one or more Passengers who are transported in accordance with another County's Preschool Program. In the event such instruction or permission is given, the County reserves the right to withdraw the authorization in the event that the need to transport additional Passengers added to the County's program would cause an additional cost to the County.
9. The County retains the right and option to determine whether Passengers who might otherwise be transported pursuant to this Agreement might be assigned to public transit, either County-operated vehicles or private (volunteer) transport or to other forms of transportation contracted for by the County, where such alternate assignment is deemed by the County to be feasible and in the best interest of the County.

10. In no event shall the Contractor accept any instructions concerning changes to Routes or Runs or institute such changes, including instruction to add Passengers to, or delete Passengers from any Route or Run, without an instruction from the Agent, which instruction shall be made on a form promulgated by the Agent.
11. The Contractor shall be responsible for contacting the parents, caregivers, and/or guardians of Passengers to be transported and confirming the transportation arrangements immediately upon being notified of the Trip requirements. In connection with this:
  - i. Such confirmation shall include the estimated time of pick-up and drop-off.
  - ii. At least five (5) days before the commencement of Services for the Summer and/or Fall program sessions, the Contractor shall perform a dry-run of the pick-ups and drop-offs with respect to each Run, and shall ensure that the Driver and Driver Assistant introduce themselves to the Passenger's parent, caregiver and/or guardian.
  - iii. With respect to Passengers authorized for Services after the completion of the pre-Services dry-runs, and/or in the event that changes in a Passenger's transportation arrangements approved by the Agent occur, the Contractor shall provide prior notification to parents, caregivers and/or guardians concerning the Services starting dates and approximate time for pick-up and drop-off in accordance with a procedure approved by the County or Agent.
  - iv. In the event that such change alters the pick-up or drop-off time of other Passengers, the Contractor shall notify the parents, caregivers and/or guardians of the new pick-up and drop-off times.
  - v. As set out in Section III(c) above, at least three (3) business days' notice of Run scheduling and/or additional Passengers to be added to existing Runs shall be given. However, under special circumstances (such as those in which specific equipment not otherwise required herein, is needed) efforts shall be made to provide at least five (5) days prior notice. The Contractor shall commence Services to the Passengers within such time period.
12. All Vehicles shall have a Driver Assistant on board at all times.

13. The Contractor shall have a FAX service available at its place of business so as to enable the forwarding of printed material related to the Services to be provided under this Agreement between the Contractor, the County and the Agent. In connection with this, the Contractor shall designate a telephone number to be dedicated to this purpose at sufficient and specific times.

b. Equipment Requirements:

1. No Vehicle used in connection with the Services shall be more than ten (10) years old.
2. All vehicles used in the performance of the Services shall comply with the applicable requirements of the New York State Department of Motor Vehicles, Department of Transportation, and the Vehicle and Traffic Law (VTL) of the State of New York, as well as County and local statutes, rules and regulations governing or pertaining to the transportation of Passengers on a bus, van or passenger vehicle.
3. All Vehicles used by the Contractor must be inspected and registered as required for the applicable Vehicle providing the specific Services described herein, and such inspections shall be maintained as current, and each Vehicle shall display a current inspection and registration sticker at all times. The Contractor shall supply Vehicles meeting federal, state and local requirements as of the date of the commencement of Services. Upon request by the County or the Agent, the Contractor shall provide the Agent with a list of VIN numbers, registration numbers and dates, and inspection dates, with respect to Vehicles to be used in connection with the Services (including any spare or substitute Vehicles).
4. As set out in Section IV (a)(4) above, Vehicles shall have suitable Safety Apparatus for the assigned Passengers to be transported. The Safety Apparatus shall be those suitable for preschool handicapped children, and shall include those Safety Apparatus mentioned in Section IV (a)(4). The Contractor shall be responsible for ensuring that the Drivers and Drivers Assistants are trained in the use of car seats and other Safety Apparatus.
5. With respect to wheelchair vehicles, lifts must include a manual override feature. In addition, there shall be an interlock feature that prevents the operation of the lift unless the emergency brake is set.

6. All Vehicles used in the performance of the Services must be equipped with a seat belt cutter, a standard first-aid kit, at least (three) 3 flares and/or reflectors, and a fire extinguisher which complies with all applicable rules and regulations for that type of Vehicle. In addition to the foregoing, all wheelchair vehicles shall be equipped with a fire blanket.
7. The Contractor understands that the intent of the Services is to meet the needs of the Passengers transported. As a result, on instruction from the Agent, additional required equipment shall be carried by and/or installed on a vehicle(s).
8. Re-grooved or recapped tires of any type are not acceptable in the performance of the Services, and shall not be used.
9. Snow tires shall be installed on all Vehicles requiring them on the earlier of the first snow fall or November 1. The snow tires shall remain on those Vehicles until March 1st or such later date as reasonable prudence requires.
10. The Agent shall have the right to inspect each Vehicle providing Services and all maintenance records concerning those Vehicles. Such inspection may take place at the Contractor's yard or at Facilities. The Contractor shall instruct its Drivers and Driver Assistants to cooperate with the Agent in connection with Field-Site inspections. As requested by the Agent, the Contractor shall provide the Agent with copies of the maintenance records for each Vehicle.
11. No Vehicle used to provide Services shall display any advertisement, political or otherwise, without the written authorization of the County.
12. The Contractor shall install and maintain an FM mobile two-way radio, mobile phone or other means of communication acceptable to the County and/or Agent in all Vehicles used to furnish Services hereunder. In the event that a mobile two-way radio is used, a copy of the Contractor's FCC radio license number as proof of authority to operate the radio shall be supplied prior to the commencement of the Services hereunder. In the event a mobile phone is used, under no circumstances shall the Vehicle be moving when the mobile phone is in use.

V. Operations and Procedures

a. Route Planning and Adjustments

1. The Agent shall be responsible for Route planning and shall provide such Route plans to the Contractor.
2. During the term of this Agreement, adjustments to the Runs and Routes may be necessary based on the most current Passenger populations.
3. Throughout the term of this Agreement the County and the Agent shall evaluate the need for either an increase or decrease in the number of Runs or Vehicles based on transportation service coordination opportunities among Facilities providing services to the County's Preschool / Early Intervention children, and where possible, with programs providing services to other counties' preschool / Early Intervention children. Route adjustments may be made by either of the following:
  - i. Commingling: From time to time, when it is feasible based on destination and bell time, and in the best interest of the County to do so, the Agent may instruct the Contractor to commingle, or approve the Contractor's request to commingle one or more passengers who are transported in accordance with another county's Preschool Program. In the event such instruction or permission is given, the County reserves the right to withdraw the authorization in the event that the need to transport additional Passengers added to the Oneida County program would cause an additional cost to the County.
  - ii. Vehicle (Route) Optimization: The maximization of a Vehicle's potential usage (or minimizing Vehicle idle time) throughout the day by increasing the number of Runs being assigned to a given Vehicle (Route). This is done by taking into consideration Vehicle idle time, Vehicle capacity, and distance traveled (including non- Loaded Vehicle Hours).
4. When Passengers are added or deleted in an existing Facility, the County or the Agent shall have final approval of all Routes as they shall be configured after such changes have taken effect. If, in the judgement of the Contractor, a Vehicle must be added to accommodate an additional Passenger, then the Contractor



must apply in writing to the Agent for the new Vehicle and receive written, dated approval before payment will be made for such additional Vehicle. The County reserves the right to increase or decrease the number of Vehicles and to alter or modify any transportation schedules at its discretion.

5. If the most efficient Run or Route requires a certain size Vehicle, but if the Contractor uses a different size Vehicle, or more Vehicles than authorized, the payment shall be made only for the authorized size Vehicle, and the authorized number of Vehicles.
6. If a new or additional Facility is opened or added, and that new or additional Facility is within the reasonable proximity of an existing Facility serviced by the Contractor, this Agreement shall be deemed to include that new or additional Facility, and the fees applicable to that existing Facility shall apply.
7. If a new or additional Facility is opened or added that is not within a reasonable proximity of an existing Facility serviced by the Contractor, the County may seek one or more bids for the transportation of Passengers to the new Facility.

b. Passengers:

1. The Contractor shall provide transportation to all individuals authorized by the County, during the times, and for the purpose authorized in writing by the County.
2. Vehicles used in connection with the Services hereunder shall be restricted to the transportation of specified approved Passengers. In connection with this:
  - i. Only individuals authorized by the County or the Agent shall be permitted to ride on the Vehicles while they are being used in connection with the Services hereunder. For the avoidance of doubt, children of Drivers and other persons not acting in an official capacity are not permitted to ride aboard the Vehicles at any time without the prior consent and/or instruction of the Agent.
  - ii. Commingling of passengers being transported in connection with programs similar to the Services described herein, whether on behalf of any private or

public program provider or jurisdiction other than the County, shall not be permitted without the prior written approval of the Agent.

3. As additional Passengers enter the Oneida County Preschool /Early Intervention Program, they shall be transported by the Contractor if the Passenger enters a Facility or Route covered by this Agreement.
4. All Passengers riding on the Vehicles are to board and be discharged at designated stops only. Other stops are prohibited.
5. Procedures if a Passenger, caregiver or parent is not at the appropriate pick-up or drop-off point:
  - i. The Driver shall radio the Contractor's dispatcher ("Dispatcher") about the parent or caregiver not being at home (or at the scheduled drop-off location) to receive the Passenger, and shall remain on site until instructed by the Dispatcher.
  - ii. The Dispatcher shall then contact the Agent concerning the parent/caregiver not being at the site. The Agent and the Dispatcher shall confirm with each other information concerning alternate pick-up or drop-off locations.
  - iii. The Dispatcher shall telephone the pick-up or drop-off location and, if there is no answer, shall then call alternate pick-up or drop-off sites at telephone numbers previously provided to the Agent and the Contractor. If a Passenger is dropped off at an alternate drop-off location, the Driver shall make proper documentation of that alternate drop-off.
  - iv. Subject to a (1), above, if other Passengers remain to be dropped off, the Dispatcher shall instruct the Driver to continue on the Route, and if phone contact with the parent or caregiver, or with the alternate site is made, the Dispatcher shall immediately notify the Agent, and shall then instruct the Driver to return to the drop-off location or alternate location at the conclusion of the Run. Subject to a (5), below, if no alternate drop-off site can be secured, the Driver shall return the Passenger to the Facility; however, if the Facility cannot or will not accept the Passenger, the Driver shall take the Passenger to the Contractor's terminal for the parent or caregiver to pick-up. After a reasonable time, not to exceed one (1) hour, in

consultation with the County and/or the Agent, the Contractor shall contact the appropriate service described in section C (5), below.

- v. In the event that notwithstanding the above measures, an appropriate person to receive the Passenger cannot be located, on the instruction of the County or the Agent, the Contractor shall contact the Child Protective Division of the Oneida County Department of Social Services or such other agency as may be instructed.
- vi. The Contractor shall complete and submit to the Agent an incident report in the form designated by the Agent.

6. Absences:

- i. Facility staff, the County (or the Agent), caretakers and/or parents, as and if applicable, shall be responsible for notifying the Contractor at least two (2) hours before a scheduled pick-up time, if a Passenger is not going to the Facility or returning from the Facility on a particular day(s).
- ii. If prior notice (as defined in Paragraph 6 (i) above) is given to the Contractor (or the Contractor should otherwise have known) that all Passengers on a given Trip would not be attending the site involved, then no payment is due to the Contractor for that day for that portion of the billing unit. If no such prior notice is given, the Contractor shall be paid one-half of the normal rate for the applicable Vehicle. Note that the non-appearance of a Passenger (or Passengers) for a Trip to a site constitutes prior notice that the Trip from the site performed exclusively for that Passenger (or Passengers) shall not be required for that day.

7. No-Shows:

- i. If a Vehicle arrives at the designated pick-up point and the Passenger is not ready for pick-up within three (3) minutes of the scheduled pick-up, then the Passenger shall be deemed to be a "no-show."
- ii. If a Passenger is a no-show, the Driver shall notify the Dispatcher immediately, and the Dispatcher shall notify the Agent before the end of the day.

- iii. The Contractor and the Agent shall maintain a record of the number of times a Passenger is a no-show, and the Contractor shall comply with policies promulgated by the Agent from time to time concerning no-shows.
  - iv. If a Passenger is a no-show on three (3) consecutive days, the Contractor shall notify the County or Agent of the fact, and thereafter shall not return to pick up that Passenger until notified by the County or Agent.
  - v. The Contractor and the Agent shall maintain telephone lines at all hours of dispatching and operation so as to enable the Agent and the Contractor to receive calls canceling scheduled Trips. During hours in which dispatching and operations are not being conducted, the Contractor shall either maintain an answering machine at the Contractor's premises, or employ an answering service, in order to ensure that calls canceling Trips can be received and acted on so as to avoid no-shows. In most situations, Trips must be canceled no less than two (2) hours before the scheduled pick-up time. In the event that the Trip is not canceled in a timely manner, the Passenger shall be considered a no-show.
8. The Contractor shall provide a sufficient number of appropriate Vehicles to meet the Service demands of the County. Provision of sufficient and appropriate Vehicles shall be determined by the Contractor's ability to provide on time service.
9. "On-Time Service" shall be defined as service within a ten (10) minute period prior to the scheduled pick-up time and drop-off time; provided that the Contractor shall not have the Passengers at the Facility earlier than five (5) minutes before classes begin.
10. The Route Number (or other identifying designation) shall be clearly displayed on the Driver's right-hand side of the vehicle.
11. Passenger Volume/Peak Loads: It is understood that the number of Passengers shown as requiring transportation may be amended at any time or times, and that it is the nature of the program to be serviced pursuant to this Agreement that the volume of Passengers may increase or decrease at any time.

c. Emergency Drills:

1. Vehicles shall meet all requirements of Section 3623 of the New York State Education Law and the regulations promulgated thereunder regarding emergency drills, including, but not limited to practice and instruction in the location, use and operation of the emergency door, fire extinguisher, first aid equipment and windows as a means of escape in case of fire or accident. Further, each Passenger transported shall be drilled in emergency procedures. Such instruction shall be given by the Contractor as required by law. A minimum of three (3) such emergency drills shall be held on all vehicles used in connection with the Services. The first shall be conducted during the first week of the fall session, the second between November 1st and December 31st, and the third between March 1st and April 30th. In the event that a Vehicle is to be used in connection with Services during a summer session, an additional emergency drill shall be conducted during the first week of that summer session.
2. No emergency drills or training of the Passengers shall be conducted while Vehicles are in Route.
3. In order to comply with the schedules of the various Facilities, the Contractor shall provide, at no additional cost to the County, that all Vehicles, Drivers and Driver Assistants shall be available to conduct emergency drills at designated Facilities at a designated time other than regularly scheduled Route times, for the purpose of completing the drills.
4. The Contractor shall verify to the Agent, on forms designated by the Agent, that each Vehicle, Driver, and Driver Assistant has complied with the emergency drill requirements. The verification shall include the date, time and Route number of each Vehicle.

d. Driver and Driver Assistant Duties:

1. It shall be the duty of a Driver Assistant to assist the Driver in the supervision of Passengers for the duration of each Run. For this purpose, the Driver Assistant shall sit in the appropriate place in order to fulfill his or her supervisory responsibilities.

2. It shall be the responsibility of the Driver and/or Driver Assistant to assist Passengers in embarking and disembarking safely from Vehicles.
3. The Driver and the Driver Assistant shall be able to properly read and understand a road map. The Driver Assistant must be able to assist the Driver with verbal directions.
4. All Drivers and Driver Assistants shall present a neat appearance and must maintain a polite, professional and courteous attitude toward the public, Facility personnel, parents and Passengers.
5. Each Driver and Driver Assistant shall wear an appropriate ID badge at all times that they are on duty. The ID badge shall be in the form and format promulgated by the Agent from time to time, or approved by the Agent in writing.
6. All Drivers and Driver Assistants (including substitute Drivers and substitute Driver Assistants) shall be responsible for current knowledge of approved Routes and approved changes to the Routes and for performing their Routes as designated. In every event in which a Route change occurs, the Driver and the Driver Assistant (including substitute Drivers and substitute Driver Assistants) shall each be responsible for acquiring from the Dispatcher (or other designated Contractor official), at the earliest possible moment, updated Driver directions.
7. Drivers who are permitted to take Vehicles home, whether overnight or at midday (between Runs), shall in every event check in with the Dispatcher prior to the start of each Run, to ascertain whether there are any Route changes. Such check-in may be made by phone or radio.
8. Drivers and Driver Assistants shall not smoke on Vehicles or in Facilities or on Facility grounds at any time. Drivers and Driver Assistants shall not eat or drink any liquid on the Vehicle, be under the influence of a controlled substance or medication, or perform any act, or conduct themselves in any manner that may impair the safe operation of a Vehicle, while such Vehicle is transporting Passengers.
9. Drivers or Driver Assistants shall not disembark from the Vehicle when Passengers are inside except to assist a Passenger embarking or disembarking or in case of emergencies; and in such case before leaving his/her seat, the Driver

shall stop the motor, leave the transmission in park, set the auxiliary brake, and remove the ignition key. Notwithstanding this, on wheelchair vehicles the motor must remain on in order that the lift will operate. Therefore, on such Vehicles, the Driver or the Driver Assistant may leave the Vehicle while the motor is running, but only to operate the lift and assist the wheelchair Passenger on or off the Vehicle.

10. Prior to the start of any Run, all Drivers shall perform a "pre-trip inspection" of the Vehicle in accordance with the procedure established by the Contractor and approved by the County or the Agent.
11. All Drivers and Driver Assistants shall perform a "post-trip" inspection of their Vehicle in accordance with the procedure established by the Agent. The "post-trip" procedure must be implemented at every Facility after every trip subsequent to unloading Passengers, to ensure that there are no sleeping Passengers or articles left on the Vehicle. Such a "post-trip" inspection shall also be performed before the Vehicle is left at the Contractor's yard.
12. All Drivers and Driver Assistants are required to secure the Passengers into their assigned safety restraints. The Contractor shall ensure that all Drivers and Driver Assistants are instructed in the proper use and operation of such Safety Apparatus.
13. No Vehicle shall be operated while a Passenger is standing. In the event of a breach of this provision the Driver shall be deemed to be operating the Vehicle in an unsafe manner.
14. A Driver or Driver Assistant shall not fill the Vehicle's gas tank while Passengers are on the Vehicle. A breach of this provision shall be deemed to be operating the Vehicle in an unsafe manner.
15. A Driver shall not make a right turn at a red light while Passengers are aboard the Vehicle. A breach of this provision shall be deemed to be operating the Vehicle in an unsafe manner.
16. Drivers shall admit and discharge only Passengers authorized by the Agent and only at designated pick-up or destination points. There shall be no unauthorized stops while Passengers are on the Vehicle.

17. Drivers and/or Driver Assistants shall release a Passenger only to persons authorized to receive that Passenger. In dropping off at the appropriate Facility, this means releasing the Passenger only to a person or persons designated by the Facility; in dropping of the Passenger at his/her childcare location, this means releasing the Passenger only to the caregiver or to a person authorized by the caregiver to receive the Passenger.
18. All Drivers shall operate Vehicles at a rate of speed no greater than five miles under the posted speed limit.
19. Each Driver and Driver Assistant shall be responsible for the complete control of his/her Vehicle and the Passengers being transported therein. It shall be the responsibility of the Driver to maintain good order on Vehicles. Notwithstanding this, in no event shall any Driver or Driver Assistant, in the performance of their duties, treat any Passenger roughly.
20. Drivers and Driver Assistants shall not permit their Passengers to have heads or arms out of open windows. In the event a Driver or Driver Assistant observes such activity, he/she shall immediately take appropriate corrective measures.
21. Any violations of good conduct and proper behavior on the part of the Passengers shall be handled without the use of force or fear. All such incidents shall be reported to the Facility to which the Passenger is being transported as well as to the Agent in accordance with procedures promulgated by the County or the Agent.
22. All Drivers and Driver Assistants shall immediately report to their supervisors any unusual incident that occurs or is observed by them during the course of providing Services hereunder, and/or any accident that occurs while transporting Passengers to or from destination Facilities. In the event of an incident, the report shall be made no later than the completion of the Run during which such incident occurs. In the case of an accident, such report shall be made immediately by means of the telecommunications equipment on the Vehicle, and the Dispatcher shall follow the procedure set out in Section c (23) below and any additional or substitute procedure promulgated by the County or the Agent. The Contractor shall be required to submit a written report to the County or Agent on a form prescribed by the County which complies with the requirements



of Article 19-A of the VTL and 8 NYCRR § 156.3 of the Regulations for the Commissioner of Education, if applicable, and in a format mutually agreed upon by the County or Agent and the Contractor. This statement must be in writing and signed by the Driver (and/or Driver Assistant) and a supervisor.

23. In connection with the foregoing, and in accordance with Section 413, Subdivision 1 of the Social Services Law, it shall be the obligation of each Driver and Driver Assistant to immediately report any mistreatment of a Passenger, to the Contractor and to the County or the Agent. In addition, such a report shall be made when a Driver and/or Driver Assistant has reasonable cause to suspect that a Passenger is an abused or maltreated child. The failure to promptly report such an incident shall be grounds for the removal of a Driver and/or Driver Assistant from the performance of the Services.
24. The Contractor shall instruct Drivers and Driver Assistants that in the event that they are requested to transport a Passenger's medication to or from Facilities, they are to comply. Such medication shall be carried in a sealed container, and must be in the possession of the Driver or Driver Assistant at all times during transit and kept in a location that is not accessible to any Passenger. Upon conclusion of the Trip the Driver or Driver Assistant shall deliver the medication to the appropriate staff member at the Facility and shall note the date and that Passenger's name. Under no circumstances shall medication be administered to any Passenger by a Driver or Driver Assistant.
25. Drivers and Driver Assistants shall comply with the requirements of the master plan for procedures and communications in the event of snow or severe weather concerns, emergency days, destination Facility closings, early dismissals, caregivers not at home, alternate drop-offs, or Vehicle emergencies. The Contractor shall be familiar with the County's "Parent Handbook," and shall adhere to the procedures specified in that document.
26. As an alert to the possibility that a Run might be excessive in either mileage or in time, Drivers and/or Driver Assistants must notify their supervisor when the regular riding time for any Passenger exceeds seventy-five (75) minutes (or ninety (90) minutes subject to a fifteen (15) minute tolerance based on circumstances such as unusual traffic and weather conditions). The Contractor shall immediately notify the Agent of such occurrences.

e. Accidents:

1. Notwithstanding any law, statute, or policy that defines an "accident" as involving financial loss in any specified amount, the following procedure, and any substitute or replacement procedure, shall apply to any accident involving a Vehicle transporting Passengers hereunder, regardless of whether the accident has resulted in financial loss (i.e. damages) to any party. The County or Agent shall provide the Contractor with accident and emergency procedures to be followed by Drivers, Driver Assistants and Contractor's staff. The Contractor shall promptly communicate all accident related information to the County and Agent, parents or caregivers, and destination Facilities. For all accidents occurring while Passengers are on board, or in connection with Passengers boarding or leaving a Vehicle, and all other accidents or incidents involving Routes, the following procedures shall be followed:
  - i. In any instance in which a vehicular accident occurs while Passengers are on board, regardless of the severity or whether apparent injuries have occurred, the contractor shall ensure that the police are summoned to the scene, and the Driver and Driver Assistant shall remain at the scene until the police instruct otherwise.
  - ii. When the severity or nature of the accident requires or when emergency services are required for Passengers and/or the Driver, Driver Assistant, or passengers of another vehicle, the dispatcher shall contact 911 and request ambulance service.
  - iii. The Contractor shall immediately notify first the Agent and then the destination Facility, reporting to each the location and extent of the accident together with the names of the Passengers involved, and shall provide a description of the accident/injuries.
  - iv. The Contractor shall provide all accident information, as requested by the County or Agent, to those caregivers, destination Facilities and agencies authorized by the County.
  - v. The Contractor shall secure a copy of the police report concerning the accident at the earliest possible time, and shall provide a copy of same to the Agent. In addition, the Contractor shall prepare accident/emergency reports

for the applicable of the New York State Department of Motor Vehicles, New York State Department of Transportation, New York State Department of Education, the County and Agent within twenty-four (24) hours, utilizing approved State and/or County forms.

f. Material to be Carried on Vehicles:

The Contractor shall provide all Drivers with the following: map-books of Oneida County and adjacent counties; Route sheets with Passenger names, addresses, phone numbers and emergency addresses and phone numbers; appropriate forms for noting whether scheduled Passengers have been present on the Run ("Driver Attendance Logs"); and "left/right sheets" with specific Route locations and times from first pick-up to the last scheduled drop-off. All Drivers and Routes shall receive revisions to map-books and directions as Agent- approved changes occur. The foregoing material shall be present on the Vehicles at all times. On request, the Contractor shall provide copies of the above mentioned materials to the Agent for its approval and records.

g. Confidentiality:

1. Neither Drivers, Driver Assistants, nor any other member of the Contractor's staff shall discuss or disclose any confidential information concerning the Passengers with any other party without prior written consent of the parent, a supervisor and the County or Agent. For the purposes of this paragraph, confidential information shall include, but not be limited to:
  - i. The names of Passengers, the Facilities any Passenger attends; and
  - ii. Information received for the purpose of increasing awareness of a behavioral problem or medical condition, which information is needed to assure the safety and welfare of a Passenger ("safety/welfare information"). Notwithstanding the foregoing, in the event a parent or caregiver provides safety/welfare information to a Driver or Driver Assistant, such information will be immediately communicated by the Driver and/or Driver Assistant to the Dispatcher, and by the Dispatcher to the Agent.

- iii. The Contractor shall ensure that each Driver and Driver Assistant complies with the confidentiality requirements set out in the HIPAA regulations, as those regulations may be modified from time-to-time.
  - iv. No less than once each month, the Contractor shall search the three (3) Medicaid exclusion databases to ensure that no member of its staff who is responsible for accounting and/or invoicing for Contractor's Services is included on such list.
  - v. Appendix A to this Agreement is a Driver/Driver Assistant Confidentiality Agreement. The Contractor shall instruct every Driver and Driver Assistant who performs Services for the County in the confidentiality requirements, and shall ensure that all such Drivers and Driver Assistants sign a copy of the Driver/Driver Assistant Confidentiality Agreement. The signed copy of such agreement shall be placed in the Driver's or Driver Assistant's file.
- h. Record Keeping:
1. All Drivers and Driver Assistants shall cooperate in any record keeping systems established by the County or the Agent. All Drivers and Driver Assistants shall be required to complete transportation forms regarding Passengers, attendance, and all other forms as shall be stipulated by the Agent from time to time during the term of this Agreement. To assure the accuracy and currency of such records, recording shall occur at the beginning or completion of each Run.
  2. The County requires prompt notice of any extended Passenger absences from scheduled Runs. For the purpose of this paragraph, "extended absences" shall be absences of five (5) or more consecutive days. The Contractor shall cooperate with the Agent in establishing a procedure for the taking of attendance on each Run, and for reporting extended absences promptly. The Agent has promulgated a form on which the Contractor shall notify the Agent of extended absences. Such form shall be provided to the Contractor by the Agent prior to the commencement of Services.
  3. Drivers and/or Driver Assistants shall maintain a Driver Attendance Log on a daily basis. The County may promulgate the form of the Driver Attendance Log and designate the information that is to be provided on it. The County may alter and/or redesign the Driver Attendance Log from time-to-time so as to record

information that the County is required and/or desires to gather for the purpose of Medicaid Reimbursement or for any other reason. The Driver Attendance Log shall be signed by the Driver and the Driver Assistant and provided to their supervisor on a weekly basis for submission to the County.

4. If the Driver or Driver Assistant knows or suspects that a Passenger has moved, or that a Passenger no longer requires transportation, this information shall be included on the attendance records, and the Contractor shall promptly notify the Agent in accordance with the procedure established by the Agent.
5. All invoices with respect to the Services shall be accompanied by a monthly claim voucher in a form and format promulgated by the County. Each such voucher shall include a completed Driver Attendance Log in the form annexed hereto as Appendix B.

#### VI. Personnel Requirements

- a. Before providing any Services to the County, each Driver shall have a Class B (with an S endorsement) or C (with an N1 endorsement) NYS CDL license (depending on the Vehicle to be driven) with a P endorsement. A list of all certified Drivers and license numbers, license class and endorsements, license expiration date, and a list of all their accidents and violations incurred in the past three (3) years will be retained by the Contractors and provided to the County upon request. Such a list shall be updated upon each and every change.
- b. In accordance with 18, NYCRR § 505.10 (Transportation for Medical Care and Services) of the New York State Department of Health Rules and Regulations, Contractors that provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such contractors must be qualified under Article 19 of the VTL and all other regulatory requirements. Such contractors and their drivers must comply with all requirements of the New York State Department of Transportation and the New York State Department of Motor Vehicles or have a statement in writing from the appropriate Department or Departments verifying that the contractors or their drivers are exempt from such requirements. The Contractor shall comply with the foregoing on behalf of itself and the Drivers.

- c. Drivers shall receive the amount of behind the wheel defensive training as required by applicable statute and/or regulation, and such training shall include classroom instruction.
- d. Drivers and Driver Assistants shall comply with the requirements of and receive such training as is required by Section 19 (a) of the VTL or other regulations. By way of example, but not in limitation, in accordance with 8 NYCRR 156.3 (b) (5) (iii), all Drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year. In addition, in accordance with the New York State Education Department regulations and Section 1229-e of the VTL, Drivers and Driver Assistants providing Services shall be required to attend not less than two (2) training sessions per year specifically concerning understanding of and attention to the special needs of preschool handicapped children. The Contractor shall ensure the attendance of all Drivers and Driver Assistants at the required refresher courses and/or training sessions at no cost to the County, and shall provide the Agent with an acknowledgement of attendance at such session(s) on request. The Contractor may employ a person or firm to provide such training, and if this is done, the Contractor shall ensure the attendance of all Drivers and Driver Assistants at no cost to the County.
- e. In accordance with the provisions of New York State Social Services Law (“SSL”) §424-a, the Contractors shall clear all Drivers and Driver Assistants through the New York State Central Registry for Child Abuse and Maltreatment (the “Registry”). In order to facilitate this clearance, the Contractor and each Driver and Driver Assistant must complete the form to be provided by the Registry. §424-a of the SSL provides for a fee to be charged in connection with such clearance. §424-a further provides that an employer may charge this fee back to the employee. Such fees shall be the Contractors sole responsibility. The Contractors shall maintain a record of submissions and clearances.
- f. The Contractors shall ensure that the Drivers and Driver Assistants provide the County with safe transportation. In connection with this, the Contractor shall ensure that the Drivers and Driver Assistants meet the following minimum qualifications:
  - 1. No moving violations during the past twelve (12) months.
  - 2. There is no more than one (1) moving violation during the past five (5) years.

3. Under no condition shall an applicant be accepted as a Driver or Driver Assistant if he or she (a) has been convicted of a felony; or (b) has been convicted of a drug or alcohol offense; or (c) if there has been a finding of child abuse/maltreatment based on a submission of the individual's name to the New York State Child Abuse Registry. In connection with criminal and child abuse background checks, as required by applicable regulations, all Drivers and Driver Assistants shall be fingerprinted, and such fingerprinting shall be at the Contractor's sole cost and expense.
4. The Contractor shall maintain records concerning the Drivers' and Driver Assistants' qualifications and clearances with respect to the matters described in sections (1) through (3) above.
  - g. A list of all certified Drivers and license numbers, license class and endorsements, license expiration date, and a list of all their accidents and violations incurred in the past three (3) years shall be retained by the Contractor and provided to the County or the Agent on request. Such list shall be updated upon each and every change.
  - h. A written driving record from the New York State Department of Motor Vehicles must be secured by the Contractor and retained at all times in the Drivers' files.
  - i. At all times during the term of this Agreement, all Drivers shall be at least twenty-one (21) years of age, and Driver Assistants shall be at least eighteen (18) years of age.
  - j. All Drivers and Driver Assistants shall be examined by a physician prior to operating/attending a Vehicle in performance of Services hereunder. An examination to determine the physical condition of each Driver and Driver Assistant shall be reported by the physician on a form prescribed by the Commissioner of Education which complies with the requirements of Article 19-A of the VTL and NYCRR Section 156.3 of the regulations of the Commissioner of Education. Physicals shall include a standard Mantoux Skin Test, and a chest x-ray if indicated, for tuberculosis (a Tine Test is not acceptable). In no instance shall the interval between a Driver's or a Driver Assistant's physical examinations exceed thirteen (13) months. The Contractor shall provide a copy of Sections 6-11 and 6-12 of the regulations under Article 19-A of the VTL, to all physicians used for employees' physicals. Proof

- of compliance with the foregoing with respect to each Driver and Driver Assistant shall be maintained in the individual Drivers' and Driver Assistants' files.
- k. The Contractor shall ensure that it receives periodic reports from the local police department and/or State and/or Federal law enforcement agencies concerning the lack of convictions of Drivers and Driver Assistants for felonies or child or other abuses. Such reports shall be received by the Contractor no less than annually.
  - l. Notwithstanding anything to the contrary express or implied herein, the County or the Agent reserves the right to reject or request replacement of Drivers or Driver Assistants who are provided by the Contractor without being limited to considerations of social and driving records.
  - m. The Contractor shall register the appropriate department of the County with the NYS Department of Motor Vehicles' Driver Certification Unit as a contract holder.
  - n. All Driver and/or Driver Assistant records described in this section shall be maintained by the Contractor and shall be made available for inspection by the County or the Agent, and/or copies of such records shall be made and submitted to the County or the Agent within ten (10) days of receiving a request therefore, except for those items where a sooner response is required by this Agreement.
  - o. The Contractor shall ensure that each Driver and each Driver Assistant providing Services under this Agreement are certified in CPR and First Aid. Such certification shall be at the sole cost and expense of the Contractor.
  - p. Grounds for Removal of Driver and/or Driver Assistant from Performance of Services:
    - 1. For the avoidance of doubt, under the following circumstances the Driver and/or the Driver Assistant shall be removed from performing Services under this Agreement:
      - i. Each time a Driver is found guilty of committing a moving violation of the VTL while transporting Passengers hereunder.
      - ii. Each time a Driver and/or Driver Assistant is found to have used corporal punishment on a Passenger, or in any other manner mistreated a Passenger.



- iii. Each time that a Passenger is left unattended on a Vehicle.
- iv. Each time a Passenger has been delivered to an incorrect or unauthorized drop-off location or destination Facility.
- v. Each time a sleeping Passenger is found to be on a Vehicle after a "post trip" inspection should have been conducted (i.e. the "post-trip" inspection was not properly conducted as required herein).
- vi. Each time there is a failure to deliver a Passenger to the correct drop-off location or destination Facility as scheduled (with allowances for traffic, weather or other unavoidable conditions).
- vii. Each time a Driver fails to maintain complete control of a Vehicle and/or operates a Vehicle in an unsafe manner.
- viii. Each time a Driver operates a Vehicle under the influence of a controlled substance.

VII. Performance of Services

- a. The Contractor represents that the Contractor is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Services. The Contractor shall use the Contractor's best efforts to perform the Services such that the results are satisfactory to the County. The Contractor shall be solely responsible for determining the method, details and means of performing the Services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- b. The Contractor may, at the Contractor's own expense, employ or engage the services of such employees, subcontractors and/or partners as the Contractor deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and

regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.

- c. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.

#### VIII. Independent Contractor

- a. It is expressly agreed that the relationship of the Contractor and its Assistants to the County shall be that of Independent Contractors. The Contractor and its Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor and its Assistants, in accordance with their status as Independent Contractors, covenant and agree that they will conduct themselves in accordance with such status, that neither the Contractor, nor its Assistants, shall hold themselves out as, nor claim to be, officers or employees of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. The Contractor warrants and represents that it is in the business of offering the same or similar Services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Contractor and the County agree that the Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its Services available to the public.
- c. The Contractor or its Assistants shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. The Contractor acknowledges and agrees that neither the Contractor, nor its Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
- e. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its

Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Contractor's form of business organization, and with respect to the Assistants, including payroll deductions, worker's compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for Services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.

- f. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or its Assistants' Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor shall comply with Federal and State Laws as supplemented in the Department of Labor regulations and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.

#### IX. Liquidated Damages

- a. In view of the difficulty the County and Passengers shall suffer by reason of defaults in the performance of the Services required hereunder on the part of the Contractor and its employees, staff and personnel, the following monetary sums are hereby agreed upon, fixed and determined by the parties hereto as "Liquidated Damages" that the parties agree fairly represent the damage the County will suffer by reason of such violations of this Agreement and not by the way of penalty, and such Liquidated Damages may be assessed upon the findings of the Agent that a provision of this Agreement has been violated.
- b. It is the intent of the County to provide Passengers with safe and effective Services at all times and, in addition, to work cooperatively and reasonably with responsible

Contractors. The County and the Agent shall at all times act fairly and shall consider unusual circumstances concerning, among other things, break-downs or delays when considering whether Liquidated Damages should be imposed. In this regard, if it is determined that an act or omission concerns a technical matter and does not place a Passenger in danger or risk liability to the County, a "warning" for a first offense may be issued. In the event that a Contractor is to be notified of an act or omission, such notification will be made within forty-eight (48) hours of the finding of such act or omission. Appeals for disputes arising as to whether a violation has occurred and/or the assessment Liquidated Damages shall be arbitrated by the County, whose decision shall be final and binding.

- c. Liquidated Damages may be assessed for every Vehicle, for every day, and for every instance of the violation in the monetary amounts as noted in the following:
  1. The full cost of the applicable Vehicle for a day shall be deducted from subsequent payments due the Contractor for each day on which the following violations of this Agreement occur:
    - i. Each time there is a failure to provide Services on a day on which Facilities are required to be open in accordance with the official calendar or subsequent changes thereto (with allowances for weather conditions).
    - ii. Each time there is a failure to conform to the arrival and dismissal schedules and session times of the Facilities, as such information is provided by the County or the Agent.
    - iii. Each time there is a failure to adhere to any special schedules or shortened and lengthened schedules of the Facilities.
    - iv. Each time there is a failure to provide all of the Vehicles and Services needed to do all of the work contracted for.
    - v. Each time there is a failure to comply with the applicable regulations of the New York State Departments of Education, Transportation and Motor Vehicles as well as with any and all laws and regulations of any agency of the federal government, State of New York, County or local regulations applicable hereto.

- vi. Each day on which a Vehicle is operated using recapped or regrooved tires.
- vii. Each time there is a failure to comply with the Vehicle, Driver and/or Driver Assistants requirements as set forth herein.
- viii. Each time there is a failure of any Vehicle to have a current and effective New York State DOT certificate, if required.
- ix. Each time there is an assignment of any Driver and/or Driver Assistant to perform Services hereunder, who has been disqualified by the State, County or Agent in this or any other jurisdiction.
- x. Each time a Driver is found guilty of committing a moving violation of the VTL while transporting Passengers hereunder.
- xi. Each time a Driver allows a Passenger to enter or leave the Vehicle while it is in motion.
- xii. Each time a Driver and/or Driver Assistant is found to have used corporal punishment on a Passenger, or in any other manner mistreated a Passenger.
- xiii. Each time a Passenger is left unattended on a Vehicle.
- xiv. Each time a Passenger has been delivered to an incorrect or unauthorized drop-off location or Facility.
- xv. Each time a sleeping Passenger is found to be on a Vehicle after a "post-trip" inspection should have been conducted (i.e. the "post-trip" inspection was not properly conducted as required herein).
- xvi. Each time there is a failure to deliver a Passenger to the correct drop-off location or Facility at the time scheduled (with allowances for traffic, weather or other unavoidable conditions).
- xvii. Each time an unauthorized individual is transported by the Driver and/or Driver Assistant when a Vehicle is being utilized for Services hereunder, whether or not same is approved or known by the Contractor.

- xviii. Each time there is a failure to follow procedures for reporting incidents, accidents and/or emergencies as set forth herein.
- xix. Each time there is a failure to report immediately to the Facility administration and the County or Agent any incident involving physical harm to a Passenger, and/or each time there is a failure to follow procedures for reporting incidents, accidents and/or emergencies as set forth herein
- xx. Each time a Driver operates a Vehicle in service hereunder when he/she has not received the proper training, instructions and/or courses as specified herein within the specified time periods.
- xxi. Each time there is a failure by the Contractor to provide, as required hereunder, the required medical certificate, fingerprint record, driving record (abstract), Child Abuse Registry clearance, reference letters, applications for employment and other data when requested by the County or the Agent as provided herein.
- xxii. Each time a Driver and/or Driver Assistant allows a Passenger to continue an unsafe or dangerous act while on a Vehicle.
- xxiii. Each time there is a failure by the Contractor to service each designated pickup or drop-off on a Route.
- xxiv. Each time there is a failure to utilize a Vehicle that meets the standards and requirements set forth herein and all applicable State and local laws and regulations. For the avoidance of doubt, this includes a failure to provide the Appropriate Safety Apparatus for each Passenger.
- xxv. Each time a Driver fails to maintain complete control of a Vehicle and/or operates a Vehicle in an unsafe manner.
- xxvi. Each time a Driver operates a Vehicle with under the influence of a controlled substance.
- xxvii. Each time there is a failure to provide a Driver Assistant. Such assessment shall be made with respect to each Vehicle on which there is not a Driver

Assistant, and such assessment shall be made even if a Driver Assistant is on a Vehicle one way.

2. One-half the cost of the applicable Vehicle for a day may be deducted from subsequent payments due the Contractor for each day on which the following violations occur:
  - i. Each time there is a failure by the Contractor to dispatch spare Vehicles and/or provide road service within the time frames herein provided.
  - ii. Each time the Contractor provides Services with a Vehicle that does not have an operable two-way radio communications set or mobile/cellular phone.
  - iii. Each time there is a failure by the Driver and/or Driver Assistant to properly complete the daily Attendance Logs or a failure of the Contractor to deliver attendance information to the County or the Agent in the form and format required and within the time parameters set forth herein.
  - iv. Each time there is a failure of the Driver to wait for a Passenger at the pick-up point until three (3) minutes after the scheduled pick-up time
  - v. Each time there is a failure of a Driver to be familiar with the VTL, regulations of the Commissioner of Motor Vehicles or other laws or regulations pertaining to Passengers transported hereunder.
  - vi. Each time there is a failure by the Contractor to provide new Services to a Passenger within the time parameters provided herein, or otherwise agreed to with the County or the Agent.
  - vii. Each time there is a failure by the Contractor to comply with County or Agent authorized changes to a Route including additions or deletions of stops. This includes additions or deletions to Runs or Routes.
  - viii. Each time a Driver and/or Driver Assistant makes an unauthorized stop or smokes on a Vehicle, in a Facility or on Facility grounds or eats or drinks any liquid on a Vehicle while Passengers are on board. This provision shall apply whether or not Passengers are present at the time of the infraction.

- ix. Each time a Vehicle is not equipped with a fire extinguisher, safety kit, and seat belt cutter.
  - x. Each time there is a failure by the Contractor to ensure that the Vehicle interior and exterior are both clean.
  - xi. Each time there is a failure by the Contractor to provide information to the County and/or the Agent as, and in the time parameters prescribed hereunder.
  - xii. Each time a Passenger's head or arm are outside the Vehicle's window and the Driver or Driver Assistant fails to take immediate appropriate corrective action to correct the situation.
3. In the event that appropriate communications arrangements as discussed in this Agreement, including two-way communications between Vehicles and the Dispatcher and/or FAX equipment, are not made available by the Contractor, and in the event that information is not passed between the parties as a result, the failure to receive the necessary information will not be considered a reason for the failure to perform an obligation on the part of the Contractor.
4. Nothing herein shall limit the right of the County to declare the Contractor in default of this agreement in advance of, in lieu of, or in addition to the assessment of Liquidated Damages.

X. Insurance and Indemnification Requirements

- a. Indemnification: The Contractor shall at all times defend, indemnify and hold the County and its officers and employees harmless and free and clear of any and all liability arising from any act of omission or commission by the Contractor, its officers or employees with respect to this Agreement and any of the terms thereof. The liability of the Contractor under this Agreement is absolute and is not dependent upon any question of negligence on its part.
- b. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.



1. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
  - i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
  - ii. Abuse and Molestation coverage must be included.
  - iii. The County shall be included as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured.
2. Business Automobile Liability with limits of at least \$1,000,000 each accident.
  - i. Business Automobile Liability coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
  - ii. Oneida County shall be included as an additional insured on the Business Automobile Policy. Coverage for the additional insured shall apply on a primary and non-contributing basis.
3. Workers' Compensation and Employer's Liability coverage shall be at New York State Statutory Limits.
4. Commercial Umbrella/Excess Liability coverage in the amount of \$5,000,000.
  - i. Oneida County shall be included as an additional insured. Coverage for the additional insured shall be on a primary and non-contributing basis.
5. Prior to the start of any work, the Contractor shall provide certificates of insurance to the County of Oneida. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL policy and Business Automobile Liability Policy. These certificates and the insurance policies above shall contain a provision that

coverage afforded under the policies shall not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County of Oneida.

XI. Financial

a. Voucher Requirements and Documentation

1. The Contractor must bill using Oneida County vouchers for each Passenger or each Vehicle Route being transported as applicable.
2. The Contractor shall submit weekly Attendance Logs at the conclusion of each month. Each Attendance Log shall be signed by the Driver. The County or the Agent may promulgate the form to be used for such Attendance Log. Regardless of whether a required form is promulgated, each Attendance Log will show, as a minimum, the following information:
  - i. Month and year;
  - ii. Vehicle and Route number;
  - iii. Name of the Driver and Driver Assistant;
  - iv. Facility served;
  - v. Days each Passenger was transported to his/her Facility, and days each Passenger was transported from such facility;
  - vi. The address of each Passenger picked up and the address of the Facility; and
  - vii. The time the first Passenger was picked up and the time the last Passenger is dropped off.
3. The sheets giving the above information shall be sent to the Agent, as instructed by the Agent no later than the close of the first week of the following month.
4. All vouchers with respect to Services shall be presented not later than forty-five (45) days after close of the month during which such Services were performed.

Vouchers not presented within such time frame or submitted in the proper format may not be paid.

b. Compensation

1. The Contractor shall be compensated pursuant to the Rate Schedules attached as Appendix C.
2. Total compensation to be paid by the County to the Contractor for services performed under this Agreement shall not exceed nine million five hundred thousand dollars (\$9,500,000).

XII. Miscellaneous

- a. The Contractor shall not assign, transfer or subcontract, wholly or partially, this Agreement, or any of its rights or obligations arising out of or under such contract, to any person, firm, association or corporation, without the prior written consent of the County, which consent may withheld for any reason.
- b. The Contractor is solely responsible for paying all of its business expenses related to furnishing the Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.
- c. All fuel will be supplied by the Contractor.
- d. Neither the Contractor, nor its Assistants, shall be required to attend or undergo any training by the County other than those trainings specific to performance of the Services described herein. The Contractor shall be fully responsible for all training necessary to maintain any licenses or certifications to perform the Services described herein, and shall be solely responsible for the cost of the same.

XIII. Choice of Venue

If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of Competent Jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York.

XIV. Advice of Counsel

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

XV. Entire Agreement

- a. The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel and supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Appendix A (Driver/Driver Assistant Confidentiality Agreement), Appendix B (Driver Attendance Log), Appendix C (Rate Schedules), and the Standard Oneida County Conditions Addendum.
- b. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS THEREOF, the parties have hereunto set their hand on the date respectively stated.

COUNTY OF ONEIDA

BY: \_\_\_\_\_  
Anthony J. Picente, Jr., County Executive

DATE: \_\_\_\_\_

AUBURN LIMOUSINES, INC.

BY: Warren Vanderpool, Jr. CEO  
Warren Vanderpool, Jr., CEO

DATE: 6-13-19

Approved

\_\_\_\_\_  
Maryangela Scalzo, Assistant County Attorney

## Appendix A

### Driver/Driver Assistant Confidentiality Agreement

The undersigned confirms that the Transportation Contractor by whom he/she is employed has instructed him/her as follows:

A. Neither Drivers nor Driver Assistants will discuss or disclose any confidential information concerning the passengers with any other party without prior written consent of the parent, a supervisor and the County or Agent. For the purposes of this paragraph, confidential information includes, but is not be limited to:

1. The names of passengers, the Facilities any passenger attends; and
2. Information received for the purpose of increasing awareness of a behavioral problem or medical condition, which information is needed to assure the safety and welfare of a passenger ("safety/welfare information"). Notwithstanding the foregoing, in the event a parent or caregiver provides safety/welfare information to a Driver or Driver Assistant, such information will be immediately communicated by the Driver and/or Driver Assistant to the dispatcher, and by the dispatcher to the Agent.

B. The Social Services Law obligates of each Driver and Driver Assistant to immediately report any mistreatment of a passenger. Also a report is required be made when a Driver and/or Driver Assistant has reasonable cause to suspect that a child is an abused or maltreated child. In such cases, the report shall be made to the Driver/Driver Assistant's immediate supervisor. Thereafter the Driver/Monitor shall not disclose such information to anyone, including the child's parent.

C. Disclosure of information by a Driver/Driver Assistant, except as specified in this document, may result in immediate dismissal.



Transporter: \_\_\_\_\_

# Oneida County

Week Ending: \_\_\_\_\_

School/Program Name: \_\_\_\_\_

Route #: \_\_\_\_\_

Run #: \_\_\_\_\_

Leo Pater: \_\_\_\_\_

Driver Name (Print): \_\_\_\_\_

Driver Assistant Name (Print): \_\_\_\_\_

Attendance Symbols:  $\checkmark$  = Present  $\checkmark$  = Absent  $N$  = No Show  $C$  = Conference  $H$  = Holiday  $S$  = Snow Day  $---$  = Not Scheduled

## Ontario Middle-Child/PM-Child

Program Address	Monday		Tuesday		Wednesday		Thursday		Friday	
	P/U Time	Monday	P/U Time	Tuesday	P/U Time	Wednesday	P/U Time	Thursday	P/U Time	Friday
Child's Name/Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time

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

Driver Assistant Signature: \_\_\_\_\_



APPENDIX C

Upstate Cerebral Palsy  
130 Brookley Road  
Rome, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$460.00	\$430.00	N/A	N/A	N/A
Round Trip	N/A	N/A	\$460.00	\$430.00	\$95.00

Upstate Cerebral Palsy  
2601 Oneida Street  
Sauquoit, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$460.00	\$430.00	N/A	N/A	N/A
Round Trip	N/A	N/A	\$460.00	\$430.00	\$95.00

Upstate Cerebral Palsy  
5176 State Route 233  
Westmoreland, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$460.00	\$430.00	N/A	N/A	N/A
Round Trip	N/A	N/A	\$460.00	\$430.00	\$95.00

Upstate Cerebral Palsy (Appletree)  
 8595 Westmoreland Road  
 Whitesboro, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$460.00	\$430.00	N/A	N/A	N/A
Round Trip	N/A	N/A	\$460.00	\$430.00	\$95.00

Upstate Cerebral Palsy at Willard Pryor (Oneida)  
205 East Avenue  
Oneida, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$460.00	\$430.00	N/A	N/A	N/A
Round Trip	N/A	N/A	\$460.00	\$430.00	\$95.00

## Wheelchair Vehicle

Includes all Facilities for Oneida County Preschool Special  
Education Children

Category	Cost of Wheelchair Vehicle and Driver Assistant per day	One on One Monitor
Vehicle- Full Day	\$495.00	N/A
Round Trip	\$495.00	\$95.00

## STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS. AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a



criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

##### 5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records



shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS,  
F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 • Fax: (315) 266-6138 • Email: [publichealth@ocgov.net](mailto:publichealth@ocgov.net)

June 7, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-279  
HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

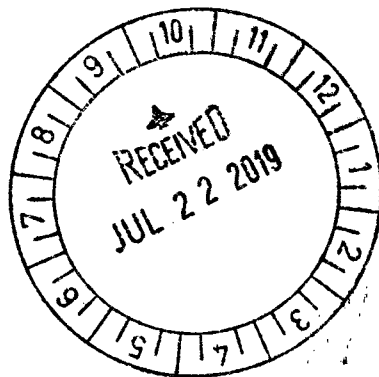
Attached are two (2) copies of a Memorandum of Understanding (MOU) between the County of Oneida, through its Health Department, and the City of Utica establishing a collaborative relationship in identifying opportunities to pursue lead hazard remediation and to assist families in remediating hazardous lead. The shared goal of this endeavor is in reducing lead exposure to children.

This MOU will be in effect beginning April 1, 2019 and will remain in effect until March 31, 2022. This MOU supports programs mandated by Public Health Law.

Sincerely,

Phyllis D. Ellis, BSN, MS, F.A.C.H.E.  
Director of Health

Attachments  
CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente, Jr.  
County Executive  
Date 7-19-19

Oneida Co. Department: Public Health

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

Name & Address of Vendor: City of Utica  
1 Kennedy Plaza  
Utica, NY 13502

Title of Activity or Service: Memorandum of Understanding to coordinate identification and remediation of Lead Hazards

Proposed Dates of Operation: April 1, 2019 to March 31, 2022

Population/Number to be Served: At-risk families with children in Utica

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Provide coordinated services for the identification and remediation of Lead Hazards.
- 2) **Program/Service Objectives and Outcomes:** Through this partnership and collaboration, the program aims to increase success in lowering lead levels in at-risk children and families.
- 3) **Program Design and Staffing:** N/A

Total Funding Requested: \$.00

Account A4015

Oneida County Dept. Funding Recommendation: \$0.00

Proposed Funding Sources (Federal \$/ State \$/County \$): No funding needed

Cost Per Client Served: N/A

Past Performance Data: N/A

**O.C. Department Staff Comments:** This MOU is intended to facilitate coordination and collaboration between the City of Utica and the Oneida County.

Memorandum of Understanding between Oneida County through its Health Department and the City of Utica through its Codes and Fire Departments

**THIS MEMORANDUM OF UNDERSTANDING (“MOU”)** by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York with its principal office located at 800 Park Avenue, Utica, New York 13501, through its Health Department located at 185 Genesee Street, Utica, New York 13501, hereinafter collectively referred to as the “County,” and the City of Utica, a municipal corporation organized and existing under the laws of the State of New York with its principal office located at 1 Kennedy Plaza, Utica, New York 13502, through its Codes Department located at 1 Kennedy Plaza, Utica, New York 13502, and Fire Department located at 552 Bleecker Street, Utica, New York 13501, hereinafter collectively referred to as the “City of Utica.”

**WHEREAS**, the County and the City of Utica wish to reduce the risks and effects to children associated with the exposure to lead by strengthening the partnership between the parties; and

**WHEREAS**, such collaboration between the County and the City of Utica shall ensure additional opportunities to identify lead hazards and pursue remediation and assist families in remediating hazardous lead to prevent or reduce lead exposure to their children; and

**WHEREAS**, zip codes 13501 and 13502 within the City of Utica have been deemed by the New York State Commissioner of Health “areas of high risk” as defined by New York State Public Health Law §1370(2); and

**WHEREAS**, the County, through its Childhood Lead Poisoning Primary Prevention and Lead Poisoning Prevention Programs, hereinafter collectively referred to as “LPPP,” perform outreach, education and engagement to assist families and property owners in remediating conditions conducive to lead poisoning in the areas of high risk, hereinafter called “Target Areas;” and

**WHEREAS**, it is desirable for the parties to create a methodology that will maximize the use of existing local resources to provide for the inspection of all applicable dwelling units in the Target Areas to reduce the number of units with conditions conducive to lead poisoning to protect the health of children in an efficient and effective manner; and

**WHEREAS**, the City of Utica has a rental unit registration process and conducts rental occupancy permit inspections through its Fire Department personnel in housing units, and building inspections and codes violation complaint inspections through its Codes Department; and

**WHEREAS**, the City of Utica’s Codes and Fire Departments have in its employ employees with the requisite education, experience and credentials as determined by the New York State Department of State to act as Codes Enforcement Officers and Codes Compliance Technicians to conduct New York State Property Maintenance Codes and fire inspection activities in the City of Utica and who have the authority to issue legal Notice and Orders to property owners upon findings of codes violations; and



**WHEREAS**, during State Property Maintenance Codes and fire inspection activities, the City of Utica's Codes and Fire Department personnel may observe conditions conducive to lead poisoning and is willing to inform the County of such observations; and

**WHEREAS**, the County, upon notification from the City of Utica, shall perform outreach and engagement with the property owner and/or tenants through its LPPP; and

**WHEREAS**, the desired outcomes from the collaboration between the County and City of Utica include a reduction in the number of substandard housing units with conditions conducive to lead poisoning in the Target Areas, an increase in the number of lead-safe housing units available for rental in the Target Areas and a decrease in the number of children exposed to conditions conducive to lead poisoning.

**NOW THEREFORE, the parties hereto intend to be legally bound and hereby agree as follows:**

**1. TERM**

The terms and conditions of this MOU shall be effective April 1, 2019 and shall continue through March 31, 2022.

**2. SCOPE OF SERVICES**

- A. The City of Utica shall maintain qualified staff in the titles of Codes Enforcement Officers ("Officers") and Codes Compliance Technicians ("Technicians") as defined by the New York State Department of State.
- B. The City of Utica shall maintain all appropriate licensures and certifications for its Officers and Technicians during the term of this MOU and shall provide copies of such licensures and certifications to the County upon request or upon audit by the New York State Department of Health.
- C. The City of Utica shall maintain Officers through its Codes Department and/or Officers or Technicians through its Fire Department to conduct dwelling inspections in the Target Areas. The determination as to whether the Codes or Fire Department or what combination of qualified staff conducts dwelling inspections is in the City of Utica's sole discretion.
- D. The County, through its LPPP, shall provide training in identifying conditions conducive to lead poisoning for Officers and Technicians at such times and dates as the parties may agree and arrange.
- E. When, during a dwelling inspection in the Target Area, an Officer or Technician observes conditions conducive to lead poisoning, the Officer or Technician shall provide notice to

the County utilizing the LPPP Referral Form ("Referral") attached hereto as Exhibit A. The completed Referral shall be sent, via email to the following:

**environmentalhealth@ocgov.net**

- F. It is agreed and understood that nothing in this MOU shall prohibit the Officers and Technicians from performing their official enforcement duties, including citing property owners for conditions conducive to lead poisoning which also violate the New York State Property Maintenance Codes.
- G. The City of Utica shall make its Officers and Technicians available upon reasonable notice to present testimony before an administrative hearing officer.
- H. The County shall make its inspectors or other technicians available upon reasonable notice for City-initiated enforcement proceedings.
- I. Each party shall provide regular updates to the other on all enforcement proceedings undertaken when such enforcement proceedings originated with a referral from the other.
- J. The liaisons for this MOU shall be:

For the County: Daniel W. Gilmore  
Environmental Health Division  
(315) 798-5064

For the City of Utica: David Farina  
Codes Department  
(315) 792-0163

### **3. PERFORMANCE OF SERVICES**

- A. The City of Utica represents that it is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the services described in this MOU. The City of Utica shall be solely responsible for determining the method, details and means of performing the services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- B. The City of Utica may, at its own expense, employ or engage the services of such employees, subcontractors and/or partners as the City of Utica deems necessary to perform the services (collectively, the "Assistants"). The Assistants are not and shall not

be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The City of Utica shall be responsible and shall remain liable for the performance of services by the Assistants in a manner satisfactory to the County and in compliance with any and all applicable federal, state or local laws and regulations. The City of Utica shall expressly advise the Assistants of the terms of this MOU.

- C. The City of Utica acknowledges and agrees that the City of Utica and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.
- D. The City of Utica shall inform the County within twenty-four (24) hours if it is unable or unwilling to perform the services described in this MOU.

#### **4. INDEPENDENT CONTRACTOR STATUS**

The County and the City of Utica agree that this MOU does not create a principal-agent relationship of any type between the parties and neither the City of Utica nor its Assistants shall foster any belief on the part of third parties that such a relationship exists.

#### **5. CONFIDENTIALITY**

The County and the City of Utica shall hold in strict confidence all parents', clients', and property owners' records and disclose information and data in such records only to persons or entities as authorized or required by law or pursuant to a court order, or by written consent of the parents, clients, property owners or their representatives.

#### **6. INDEMNIFICATION**

- a. The City of Utica understands and agrees that the County, its directors, officers, employees and agents shall not be liable for any of the City of Utica's torts or other acts or omissions, or those by the City of Utica's directors, officers, members, employees or Assistants. The City of Utica understands and agrees that they County's insurance policies do not extend to or protect the City of Utica, nor the City of Utica's directors, officers, members, staff or Assistants. The City of Utica understands and agrees that the County will not provide any legal defense for the City of Utica or any such person(s) in the event of any claim against any or all of them. The City of Utica shall indemnify and hold the County, its directors, officers, employees and agents harmless from all liability, including but not limited to, the costs of defense from the torts or other acts or omissions of the City of Utica, its employees, directors, officers or Assistants in any way connected with the activity of the City of Utica in performance of the services described in this MOU.

- b. The County understands and agrees that the City, its directors, officers, employees and agents shall not be liable for any of the County's torts or other acts or omissions, or those by the County's directors, officers, members, employees or Assistants. The County understands and agrees that the City's insurance policies do not extend to or protect the County, nor the county's directors, officers, members, staff or Assistants. The County understands and agrees that the City will not provide any legal defense for the County or any such person(s) in the event of any claim against any or all of them. The County shall indemnify and hold the City, its directors, officers, employees and agents harmless from all liability, including but not limited to, the costs of defense from the torts or other acts or omissions of the County, its employees, directors, officers or Assistants in any way connected with the activity of the County in performance of the services described in this MOU.

## **7. TERMINATION**

This MOU may be terminated at any time by either party giving to the other at least thirty (30) days prior written notice of termination.

## **8. ENTIRE AGREEMENT**

- A. The terms of this MOU, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel or supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this MOU. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto.
- B. No waiver, alterations or modifications of any provisions of this MOU shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, this MOU has been duly executed and signed by:

**ONEIDA COUNTY**

\_\_\_\_\_  
Anthony J. Picente, Jr., County Executive

\_\_\_\_\_  
Date

**CITY OF UTICA**

\_\_\_\_\_  
Robert M. Palmieri, Mayor

\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_  
Maryangela Scalzo, Assistant County Attorney

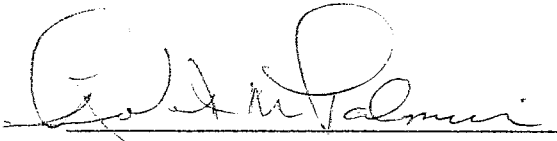
IN WITNESS WHEREOF, this MOU has been duly executed and signed by:

ONEIDA COUNTY

\_\_\_\_\_  
Anthony J. Picente, Jr., County Executive

\_\_\_\_\_  
Date

CITY OF UTICA

  
\_\_\_\_\_  
Robert M. Palmieri, Mayor

6/10/19  
\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_  
Maryangeia Scalzo, Assistant County Attorney

## STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a



criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records



shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
  
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138

June 1, 2019

FN 20 19-280

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Under section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, municipalities are mandated to provide payment for transportation services rendered to preschool aged children classified as disabled.

Attached are two (2) copies of an Agreement between Oneida County through its Health Department and Birnie Bus Service, Inc. for the provision of transportation services for the period of September 1, 2019 through August 31, 2022.

This program is mandated by New York State and it is anticipated the cost will not exceed \$4,000,000.00 for the term of this agreement. Oneida County is responsible for 40.5 % of the expenses and the remaining 59.5% is reimbursed by New York State.

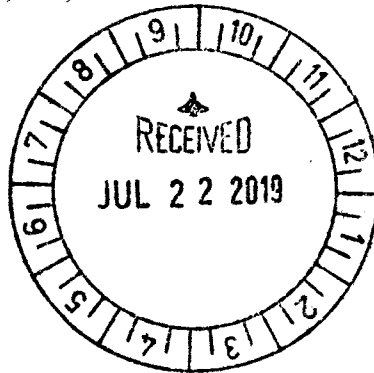
If this meets with your approval, please forward to the Board of Legislators for further action.

Sincerely,

*Phyllis D. Ellis (PB)*

Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health

CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive  
Date 7-23-19

Oneida Co. Department: Health

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other New

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** Birnie Bus Service, Inc.  
248 Otis Street  
Rome, New York 13440

**Title of Activity or Service:** Transportations Service for preschool students classified with disabilities

**Proposed Dates of Operation:** September 1, 2019 to August 31, 2022 with two consecutive one-year options for extension

**Client Population/Number to be Served:** Preschool students classified with disabilities

**Summary Statements**

- 1) **Narrative Description of Proposed Services** This service provides transportation for preschool students classified with disabilities in accordance with Section 4410 of Education law and other acts and amendments.
- 2) **Program/Service Objectives and Outcomes:** Provision of bus service transportation for eligible students to access delivery of preschool educational services as required NYS Education law
- 3) **Program Design and Staffing:** NA

**Total Funding Requested:** \$4,000,000 **Account #A2960.4956**

**Oneida County Dept. Funding Recommendation:** \$4,000,000

**Proposed Funding Sources (Federal \$/ State \$/County \$):** County \$ 1,620,000  
State \$ 2,380,000

**Cost Per Client Served:** NA

**Past Performance Data:** NA

**O.C. Department Staff Comments:**

**Agreement between Oneida County and  
Birnie Bus Service, Inc.**

THIS Agreement, made and entered into by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with offices located at 800 Park Avenue, Utica New York 13501, hereinafter referred to as the "County," and Birnie Bus Service, Inc., a domestic business corporation with its offices located at 248 Otis Street, Rome, New York 13440 hereinafter referred to as the "Contractor."

**WHEREAS**, pursuant to Sections 4406 and 4410 of the New York State Education Laws, Section 236 of the Family Court Act, and other applicable acts and amendments, the County must provide transportation for certain children with special needs who are receiving services in connection with the County's preschool special education programs; and

**WHEREAS**, the County has issued a Request for Bids, Bid Reference no. 2038 for the provision of Preschool Transportation Services for Preschool Children with Disabilities, and the Contractor has submitted its proposal to provide the necessary services; and

**WHEREAS**, the County desires to accept the Contractor's proposal and avail itself of the Contractor's services; and

**WHEREAS**, the Contractor is willing and able to perform the services required by this Agreement;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

I. Definitions

Whenever in this Agreement, Route plans or billing documents relating to this Agreement, the following terms, phrases, pronouns or abbreviations are used, the intent and meaning shall be interpreted as follows:

- a. "ADA" shall mean the Americans with Disabilities Act of 1990, as that act may be amended from time to time.
- b. "Agent" shall mean the transportation management services provider designated by the County to coordinate, oversee and monitor transportation services on its behalf. For clarity and the avoidance of doubt, any actions that the County is permitted to take, and/or any requests that the County may make hereunder, may be taken or made directly by the Agent. The Contractor shall be required to comply with such request made and/or such action taken by the Agent as if such action is taken or the



request is made by the County. Failure by the Contractor to comply with requests the Agent may make, or interference with actions the Agent may take hereunder, shall be deemed breaches of the Contractor's duty to the County.

- c. "Children with Special Needs" shall mean those children, ages 0-5 years, whom the County has determined are eligible for transportation at public expense. These children shall hereinafter be referred to as "Passengers."
- d. "Client Assistance" shall mean to guide, direct and/or provide physical assistance to the Passengers if needed and as necessary to carry out the trip's purpose. This will include, but not necessarily be limited to, assisting a Passenger in the fastening of seat belts, assisting a Passenger in and out of a car seat, and assisting a Passenger on and off the vehicle. Such other Client Assistance consistent with a Passenger's needs and the Trip's purpose shall be rendered at the Agent's instruction.
- e. "Combined Routing" shall mean the process by which, only at the Agent's instruction, the Contractor shall combine Passengers attending two (2) or more Facilities, regardless if the Facility is governed by this Agreement, onto one (1) Route. Such combinations may consist of placing such Passengers on the same Run or of placing Runs to separate locations and at distinct times of the day on the same Route. This may also include the transportation of Passengers to individual therapy or other special sessions, or to primary destination facilities on an irregular or infrequent basis. In addition, "Combined Routing may include Runs arranged independently by or on behalf of County departments other than the Department of Health.

Further, if two (2) facilities are at a sufficient proximity that the normal driving time between them is fifteen (15) minutes or less at the time of day that the trip normally shall be made, the Agent may instruct the Contractor to combine trips to and/or from such facilities onto a single Run. In the event that each facility is serviced by a different contractor, the County or the Agent shall determine, in its sole discretion, which contractor shall perform the Run.

- f. "Continuous Midday Trip" a Continuous Midday Trip is one on which Passengers are both delivered to and picked up from the same site (or two contiguous sites) and on which all the following conditions are satisfied:
  - 1. Each Trip has a bell time that corresponds to the definition of a midday trip; and

2. The bell times for the arrival and departure portions of the Trip are within fifteen (15) minutes of one another; and
  3. If two sites are involved, the two sites are at a sufficient proximity that the normal driving time between them is fifteen (15) minutes or less at the time of day that the Trip can be added to a midday vehicle (as specified in the definition of "Combined Routing").
- g. "Curb –to-Curb Transport" shall mean that the Vehicle shall pick-up and drop-off each Passenger at a point as close to the entry of the Passenger's pick-up and drop-off location as safety will permit. At the Facility, the pick-up and drop-off shall be made where instructed by such Facility; at all other places the pick-up and drop-off shall be "right-hand" only so that no Passenger crosses the street to enter the Vehicle. In connection with the foregoing, without the Agent's prior approval, Drivers or Driver Assistants shall not meet a Passenger at the entry to his or her pick-up or drop-off location and escort him or her to the Vehicle or from the Vehicle to the entry of his or her pick-up or drop-off location.
  - h. "Driver" shall mean any person who operates a Vehicle used in connection with the services, and, unless otherwise specified, shall include a regularly scheduled driver, a substitute driver or a spare driver.
  - i. "Driver Assistant" or "Escort" shall mean a person, other than the Driver, assigned to a Vehicle used in connection with the services, to assist Passengers and the Driver. The Driver Assistant is a person who may be staff or a volunteer or special personnel such as nurses, provided by a parent or a Facility to accompany a Passenger on a Vehicle to ensure that the Passenger received needed services or resources. The Driver Assistant shall be a person assigned by the Contractor. Escorts shall be assigned at the instruction of the County or the Agent. There will be a Driver Assistant on every Vehicle.
  - j. "Facility" shall mean the destination point of a Run at which services are provided to a Passenger. As the context requires, these terms shall also mean the organization providing the service.
  - k. "Full Day Vehicle" a Full Day Vehicle is one which performs three (3) or more Trips during a single day.

- l. "Loaded Run" shall mean the operation of a Vehicle, with respect to a Run to a Facility or Facilities, from the point at which the first Passenger is picked up through the Facility bell time at the end of the Run, or, with respect to a Run from a Facility or Facilities, from the Facility's bell time at the beginning of a Run to the point at which the last Passenger is dropped off.
- m. "Notice" shall mean a written notice. Notice shall be served upon the Contractor either personally or by leaving the notice at the Contractor's last known business address, or by leaving the notice with the Contractor's agent in charge of providing the services, or addressed to the Contractor at the place of business given in the bid documents and deposited in a postpaid wrapper in any post box regularly maintained by the United States Postal Service. Notice shall be deemed given on the date delivered in person or when mailed.
- n. "Round Trip" a Round Trip typically consists of one morning Trip to and one afternoon Trip from a Facility or Facilities on which the same Passengers are delivered to and picked up from a Facility or Facilities. As used herein, however, the definition is expanded to include any pair of Trips to or from a destination(s) (which may or may not include the same Facility or Passengers).
- o. "Route" shall mean the combination of all Runs that a Vehicle executes throughout the day. A Route may be structured to require the pick-up and drop-off at more than one destination locations during the day. Final determination regarding Routes and the number of Passengers assigned to each Route shall be made by the County or its Agent.
- p. "Route Segments," "Runs" or "Trips" shall mean a contiguous series of Passenger pick-up points to bring the Passengers to a Facility or the series of Passenger drop-off points to take them home from a Facility. Final determination regarding Runs and the number of Passengers assigned to each shall be made by the Agent or the County.
- q. "Safety Apparatus" shall mean any device used in conjunction with safety belts, designed for use in motor vehicles to restrain, seat or position Passengers, and which meet the applicable Federal Motor Vehicle Safety Standards set out in 49 CFR 571.213. An "Appropriate safety Apparatus" shall mean a Safety Apparatus system for which the Passenger meets the size and weight recommendation of the

manufacturer of such system. It is the Contractor's obligation to maintain a current knowledge of such law(s) and to train its transportation staff in the application and use of the required Safety Apparatus. This definition does not refer to any restraint or system of restraints used for disciplinary measures. The use of the same for the purpose of discipline alone is expressly forbidden. Notwithstanding anything to the contrary contained in any law, no item of "Safety Apparatus" shall have been recalled and no item shall be more than six (6) years old, and shall be in accordance with Standard No. 213 (Child Restraint Systems) of the Federal Motor Vehicle Standards.

- r. "Services" shall mean utilization of appropriate Vehicles for the transportation of the number of Passengers, assigned by the County or the Agent, to and from the places at which the contractor is instructed by the Agent to pick-up and/or drop-off those Passengers at destination locations where the Passengers are authorized to receive their special services.
- s. "Stand-alone Trip" In the event a Vehicle can only be utilized for single "Trip" (i.e. it cannot be linked with other trips) half of the Round Trip price for the Vehicle shall be charged by the Contractor.
- t. "Technical Specifications" shall mean the section of this Agreement dealing with technical requirements of the Services to be performed under this Agreement, including materials, equipment services, workmanship, qualifications and licensing.
- u. "Vehicle" as the context requires, shall mean a bus, van, or passenger car which meets or exceeds the Technical Specifications herein, and which is capable of seating the number of Passengers assigned to each Route Segment. Vehicles shall include spare or replacement equipment. The Vehicles shall provide Curb-to-Curb Transport. All Vehicles used in the performance of this Agreement shall be authorized by the County or the Agent.

## II. Term

- a. This Agreement shall commence September 1, 2019 and continue through August 31, 2022.
- b. The County shall have two (2) separate and consecutive options to extend this Agreement for additional periods of one (1) year each on all of the terms and

conditions contained in this Agreement. Each such option shall be at the sole and exclusive right of the County. Each option shall be exercised in writing and such option shall commence upon the expiration of the immediately preceding contract period.

### III. Scope

- a. Pursuant to the provisions of Sections 4406 and 4410 of the Education Laws of 1989, Section 235 of the Family Court Act, and other applicable acts and amendments, the Oneida County Department of Health requires transportation for certain Children with Special Needs who are receiving services in connection with the County's Preschool and Early Intervention Programs. These children will be age 0-5.
- b. This service will be provided to pre-school age children designated by the County or its Agent, and only to such children, and shall consist of regular Routes and Runs, although additions and deletions to the Trips may be required periodically.
- c. Transportation provided to the Passengers shall be provided on weekdays, and at least three (3) business days prior notice of Run scheduling change and/or additional Passengers to be added to existing Runs will be given. However, under special circumstances (such as those when specific equipment not otherwise required herein, is needed) efforts will be made to provide at least five (5) days prior notice.
- d. No Run shall exceed fifty (50) miles, and without the prior consent of the County, no Run shall exceed seventy-five (75) minutes. However, in exceptional circumstances of time, distance, weather, or load factors, such as a single Vehicle being used to transport Passengers to two (2) separate schools, the County or the Agent shall have the option, at its sole discretion, of approving an extension for the time of a Run not to exceed ninety (90) minutes.
- e. It is understood that the County may make use of other types of transportation. The form of transportation to be utilized shall be determined by the County or the Agent. In this respect, nothing in this Agreement shall be construed so as to imply that the County will make exclusive use of sedan, van or bus services in connection with the transportation of individuals serviced by the County.

- f. At the County's sole discretion, and at the instruction of the County or the Agent, transportation shall be provided from a defined point of origin to a transfer point rather than to an actual Facility destination.
- g. Vehicles transporting multiple Passengers may be requested to drop some Passengers off at interim points without additional payment. By way of example, but without limitation, this type of Trip might include a single Vehicle providing service to Passengers attending two (2) separate Facilities.

#### IV. Technical Specifications

##### a. Service Requirements:

1. The overall service area for the Service is Oneida County, New York, except as may be specified in individual Routes. Some Services may be rendered between sites within the County and sites outside of the County.
2. The Contractor shall render the Services in a safe, efficient and courteous manner. Such courtesy shall apply to the Passengers, parents, and the staff of the Facilities. In this regard, the Contractor shall institute the specific procedures for the reporting of accidents and incidents as the Agent directs. The Contractor shall report all such matters on the forms promulgated by the Agent. In addition, the Passengers, parents and/or Facility staff members may report complaints and incidents to the County or the Agent. In the event that such matters are reported, the Contractor shall cooperate fully and diligently in the resolution of such matters. In the event that the County or the Agent require the reassignment of a Driver or Driver Assistant as part of such complaint resolution, such reassignment shall be made with due dispatch. Upon request by the County or Agent, the Contractor shall provide a full written explanation of any incident or complaint.
3. The Contractor shall be notified of special service requirements of Passengers receiving the Services. Such requirements may include providing Vehicles that are capable of transporting special equipment, an adult caregiver, and similar special requirements. The Contractor shall have Vehicles available to meet these needs on prior notice which is reasonable under the circumstances.

4. As set out in the Section herein below entitled "Equipment Requirements," some Passengers may require an Appropriate Safety Apparatus in the nature of seat belts, harnesses and/or car seats or booster seats (for Passengers over forty (40) pounds). The Contractor shall provide such equipment.
5. During the term of this Agreement the Contractor shall provide the Drivers and Driver Assistants with safety training and training in the appropriate matter of managing the Preschool and Early Intervention Passengers in accordance with Section VI(d) of this Agreement. The Agent may attend and/or oversee such training sessions. The Contractor shall notify the Agent of the time, date and location scheduled for such training sessions.
6. The Contractor is not expected to provide service exclusively on behalf of the County and Vehicles not then in use in connection with the provision of Services hereunder may be used by the Contractor at the Contractor's sole discretion.
7. While a Vehicle is being used to render Services hereunder, the Contractor shall not commingle one or more County Passengers with other passengers without the prior written approval of the County. Such approval, if applied for, may be granted or denied for an entire class of Trips or on a case by case basis.
8. From time to time, when it is feasible based on destination and bell time, and in the best interest of the County to do so, the County or the Agent may instruct the Contractor or approve the Contractor's request to commingle one or more Passengers who are transported in accordance with another County's Preschool Program. In the event such instruction or permission is given, the County reserves the right to withdraw the authorization in the event that the need to transport additional Passengers added to the County's program would cause an additional cost to the County.
9. The County retains the right and option to determine whether Passengers who might otherwise be transported pursuant to this Agreement might be assigned to public transit, either County-operated vehicles or private (volunteer) transport or to other forms of transportation contracted for by the County, where such alternate assignment is deemed by the County to be feasible and in the best interest of the County.
10. In no event shall the Contractor accept any instructions concerning changes to Routes or Runs or institute such changes, including instruction to add Passengers

to, or delete Passengers from any Route or Run, without an instruction from the Agent, which instruction shall be made on a form promulgated by the Agent.

11. The Contractor shall be responsible for contacting the parents, caregivers, and/or guardians of Passengers to be transported and confirming the transportation arrangements immediately upon being notified of the Trip requirements. In connection with this:

- i. Such confirmation shall include the estimated time of pick-up and drop-off.
- ii. At least five (5) days before the commencement of Services for the Summer and/or Fall program sessions, the Contractor shall perform a dry-run of the pick-ups and drop-offs with respect to each Run, and shall ensure that the Driver and Driver Assistant introduce themselves to the Passenger's parent, caregiver and/or guardian.
- iii. With respect to Passengers authorized for Services after the completion of the pre-Services dry-runs, and/or in the event that changes in a Passenger's transportation arrangements approved by the Agent occur, the Contractor shall provide prior notification to parents, caregivers and/or guardians concerning the Services starting dates and approximate time for pick-up and drop-off in accordance with a procedure approved by the County or Agent.
- iv. In the event that such change alters the pick-up or drop-off time of other Passengers, the Contractor shall notify the parents, caregivers and/or guardians of the new pick-up and drop-off times.
- v. As set out in Section III(c) above, at least three (3) business days' notice of Run scheduling and/or additional Passengers to be added to existing Runs shall be given. However, under special circumstances (such as those in which specific equipment not otherwise required herein, is needed) efforts shall be made to provide at least five (5) days prior notice. The Contractor shall commence Services to the Passengers within such time period.

12. All Vehicles shall have a Driver Assistant on board at all times.

13. The Contractor shall have a FAX service available at its place of business so as to enable the forwarding of printed material related to the Services to be provided



under this Agreement between the Contractor, the County and the Agent. In connection with this, the Contractor shall designate a telephone number to be dedicated to this purpose at sufficient and specific times.

b. Equipment Requirements:

1. No Vehicle used in connection with the Services shall be more than ten (10) years old.
2. All vehicles used in the performance of the Services shall comply with the applicable requirements of the New York State Department of Motor Vehicles, Department of Transportation, and the Vehicle and Traffic Law (VTL) of the State of New York, as well as County and local statutes, rules and regulations governing or pertaining to the transportation of Passengers on a bus, van or passenger vehicle.
3. All Vehicles used by the Contractor must be inspected and registered as required for the applicable Vehicle providing the specific Services described herein, and such inspections shall be maintained as current, and each Vehicle shall display a current inspection and registration sticker at all times. The Contractor shall supply Vehicles meeting federal, state and local requirements as of the date of the commencement of Services. Upon request by the County or the Agent, the Contractor shall provide the Agent with a list of VIN numbers, registration numbers and dates, and inspection dates, with respect to Vehicles to be used in connection with the Services (including any spare or substitute Vehicles).
4. As set out in Section IV (a)(4) above, Vehicles shall have suitable Safety Apparatus for the assigned Passengers to be transported. The Safety Apparatus shall be those suitable for preschool handicapped children, and shall include those Safety Apparatus mentioned in Section IV (a)(4). The Contractor shall be responsible for ensuring that the Drivers and Drivers Assistants are trained in the use of car seats and other Safety Apparatus.
5. With respect to wheelchair vehicles, lifts must include a manual override feature. In addition, there shall be an interlock feature that prevents the operation of the lift unless the emergency brake is set.

6. All Vehicles used in the performance of the Services must be equipped with a seat belt cutter, a standard first-aid kit, at least (three) 3 flares and/or reflectors, and a fire extinguisher which complies with all applicable rules and regulations for that type of Vehicle. In addition to the foregoing, all wheelchair vehicles shall be equipped with a fire blanket.
7. The Contractor understands that the intent of the Services is to meet the needs of the Passengers transported. As a result, on instruction from the Agent, additional required equipment shall be carried by and/or installed on a vehicle(s).
8. Re-grooved or recapped tires of any type are not acceptable in the performance of the Services, and shall not be used.
9. Snow tires shall be installed on all Vehicles requiring them on the earlier of the first snow fall or November 1. The snow tires shall remain on those Vehicles until March 1st or such later date as reasonable prudence requires.
10. The Agent shall have the right to inspect each Vehicle providing Services and all maintenance records concerning those Vehicles. Such inspection may take place at the Contractor's yard or at Facilities. The Contractor shall instruct its Drivers and Driver Assistants to cooperate with the Agent in connection with Field-Site inspections. As requested by the Agent, the Contractor shall provide the Agent with copies of the maintenance records for each Vehicle.
11. No Vehicle used to provide Services shall display any advertisement, political or otherwise, without the written authorization of the County.
12. The Contractor shall install and maintain an FM mobile two-way radio, mobile phone or other means of communication acceptable to the County and/or Agent in all Vehicles used to furnish Services hereunder. In the event that a mobile two-way radio is used, a copy of the Contractor's FCC radio license number as proof of authority to operate the radio shall be supplied prior to the commencement of the Services hereunder. In the event a mobile phone is used, under no circumstances shall the Vehicle be moving when the mobile phone is in use.

V. Operations and Procedures

a. Route Planning and Adjustments

1. The Agent shall be responsible for Route planning and shall provide such Route plans to the Contractor.
2. During the term of this Agreement, adjustments to the Runs and Routes may be necessary based on the most current Passenger populations.
3. Throughout the term of this Agreement the County and the Agent shall evaluate the need for either an increase or decrease in the number of Runs or Vehicles based on transportation service coordination opportunities among Facilities providing services to the County's Preschool / Early Intervention children, and where possible, with programs providing services to other counties' preschool / Early Intervention children. Route adjustments may be made by either of the following:
  - i. Commingling: From time to time, when it is feasible based on destination and bell time, and in the best interest of the County to do so, the Agent may instruct the Contractor to commingle, or approve the Contractor's request to commingle one or more passengers who are transported in accordance with another county's Preschool Program. In the event such instruction or permission is given, the County reserves the right to withdraw the authorization in the event that the need to transport additional Passengers added to the Oneida County program would cause an additional cost to the County.
  - ii. Vehicle (Route) Optimization: The maximization of a Vehicle's potential usage (or minimizing Vehicle idle time) throughout the day by increasing the number of Runs being assigned to a given Vehicle (Route). This is done by taking into consideration Vehicle idle time, Vehicle capacity, and distance traveled (including non- Loaded Vehicle Hours).
4. When Passengers are added or deleted in an existing Facility, the County or the Agent shall have final approval of all Routes as they shall be configured after such changes have taken effect. If, in the judgement of the Contractor, a Vehicle must be added to accommodate an additional Passenger, then the Contractor must apply in writing to the Agent for the new Vehicle and receive written, dated

approval before payment will be made for such additional Vehicle. The County reserves the right to increase or decrease the number of Vehicles and to alter or modify any transportation schedules at its discretion.

5. If the most efficient Run or Route requires a certain size Vehicle, but if the Contractor uses a different size Vehicle, or more Vehicles than authorized, the payment shall be made only for the authorized size Vehicle, and the authorized number of Vehicles.
6. If a new or additional Facility is opened or added, and that new or additional Facility is within the reasonable proximity of an existing Facility serviced by the Contractor, this Agreement shall be deemed to include that new or additional Facility, and the fees applicable to that existing Facility shall apply.
7. If a new or additional Facility is opened or added that is not within a reasonable proximity of an existing Facility serviced by the Contractor, the County may seek one or more bids for the transportation of Passengers to the new Facility.

b. Passengers:

1. The Contractor shall provide transportation to all individuals authorized by the County, during the times, and for the purpose authorized in writing by the County.
2. Vehicles used in connection with the Services hereunder shall be restricted to the transportation of specified approved Passengers. In connection with this:
  - i. Only individuals authorized by the County or the Agent shall be permitted to ride on the Vehicles while they are being used in connection with the Services hereunder. For the avoidance of doubt, children of Drivers and other persons not acting in an official capacity are not permitted to ride aboard the Vehicles at any time without the prior consent and/or instruction of the Agent.
  - ii. Commingling of passengers being transported in connection with programs similar to the Services described herein, whether on behalf of any private or public program provider or jurisdiction other than the County, shall not be permitted without the prior written approval of the Agent.

3. As additional Passengers enter the Oneida County Preschool /Early Intervention Program, they shall be transported by the Contractor if the Passenger enters a Facility or Route covered by this Agreement.
4. All Passengers riding on the Vehicles are to board and be discharged at designated stops only. Other stops are prohibited.
5. Procedures if a Passenger, caregiver or parent is not at the appropriate pick-up or drop-off point:
  - i. The Driver shall radio the Contractor's dispatcher ("Dispatcher") about the parent or caregiver not being at home (or at the scheduled drop-off location) to receive the Passenger, and shall remain on site until instructed by the Dispatcher.
  - ii. The Dispatcher shall then contact the Agent concerning the parent/caregiver not being at the site. The Agent and the Dispatcher shall confirm with each other information concerning alternate pick-up or drop-off locations.
  - iii. The Dispatcher shall telephone the pick-up or drop-off location and, if there is no answer, shall then call alternate pick-up or drop-off sites at telephone numbers previously provided to the Agent and the Contractor. If a Passenger is dropped off at an alternate drop-off location, the Driver shall make proper documentation of that alternate drop-off.
  - iv. Subject to a (1), above, if other Passengers remain to be dropped off, the Dispatcher shall instruct the Driver to continue on the Route, and if phone contact with the parent or caregiver, or with the alternate site is made, the Dispatcher shall immediately notify the Agent, and shall then instruct the Driver to return to the drop-off location or alternate location at the conclusion of the Run. Subject to a (5), below, if no alternate drop-off site can be secured, the Driver shall return the Passenger to the Facility; however, if the Facility cannot or will not accept the Passenger, the Driver shall take the Passenger to the Contractor's terminal for the parent or caregiver to pick-up. After a reasonable time, not to exceed one (1) hour, in consultation with the County and/or the Agent, the Contractor shall contact the appropriate service described in section C (5), below.

- v. In the event that notwithstanding the above measures, an appropriate person to receive the Passenger cannot be located, on the instruction of the County or the Agent, the Contractor shall contact the Child Protective Division of the Oneida County Department of Social Services or such other agency as may be instructed.
- vi. The Contractor shall complete and submit to the Agent an incident report in the form designated by the Agent.

6. Absences:

- i. Facility staff, the County (or the Agent), caretakers and/or parents, as and if applicable, shall be responsible for notifying the Contractor at least two (2) hours before a scheduled pick-up time, if a Passenger is not going to the Facility or returning from the Facility on a particular day(s).
- ii. If prior notice (as defined in Paragraph 6 (i) above) is given to the Contractor (or the Contractor should otherwise have known) that all Passengers on a given Trip would not be attending the site involved, then no payment is due to the Contractor for that day for that portion of the billing unit. If no such prior notice is given, the Contractor shall be paid one-half of the normal rate for the applicable Vehicle. Note that the non-appearance of a Passenger (or Passengers) for a Trip to a site constitutes prior notice that the Trip from the site performed exclusively for that Passenger (or Passengers) shall not be required for that day.

7. No-Shows:

- i. If a Vehicle arrives at the designated pick-up point and the Passenger is not ready for pick-up within three (3) minutes of the scheduled pick-up, then the Passenger shall be deemed to be a "no-show."
- ii. If a Passenger is a no-show, the Driver shall notify the Dispatcher immediately, and the Dispatcher shall notify the Agent before the end of the day.

- iii. The Contractor and the Agent shall maintain a record of the number of times a Passenger is a no-show, and the Contractor shall comply with policies promulgated by the Agent from time to time concerning no-shows.
- iv. If a Passenger is a no-show on three (3) consecutive days, the Contractor shall notify the County or Agent of the fact, and thereafter shall not return to pick up that Passenger until notified by the County or Agent.
- v. The Contractor and the Agent shall maintain telephone lines at all hours of dispatching and operation so as to enable the Agent and the Contractor to receive calls canceling scheduled Trips. During hours in which dispatching and operations are not being conducted, the Contractor shall either maintain an answering machine at the Contractor's premises, or employ an answering service, in order to ensure that calls canceling Trips can be received and acted on so as to avoid no-shows. In most situations, Trips must be canceled no less than two (2) hours before the scheduled pick-up time. In the event that the Trip is not canceled in a timely manner, the Passenger shall be considered a no-show.

8. The Contractor shall provide a sufficient number of appropriate Vehicles to meet the Service demands of the County. Provision of sufficient and appropriate Vehicles shall be determined by the Contractor's ability to provide on time service.

9. "On-Time Service" shall be defined as service within a ten (10) minute period prior to the scheduled pick-up time and drop-off time; provided that the Contractor shall not have the Passengers at the Facility earlier than five (5) minutes before classes begin.

10. The Route Number (or other identifying designation) shall be clearly displayed on the Driver's right-hand side of the vehicle.

11. Passenger Volume/Peak Loads: It is understood that the number of Passengers shown as requiring transportation may be amended at any time or times, and that it is the nature of the program to be serviced pursuant to this Agreement that the volume of Passengers may increase or decrease at any time.

c. Emergency Drills:

1. Vehicles shall meet all requirements of Section 3623 of the New York State Education Law and the regulations promulgated thereunder regarding emergency drills, including, but not limited to practice and instruction in the location, use and operation of the emergency door, fire extinguisher, first aid equipment and windows as a means of escape in case of fire or accident. Further, each Passenger transported shall be drilled in emergency procedures. Such instruction shall be given by the Contractor as required by law. A minimum of three (3) such emergency drills shall be held on all vehicles used in connection with the Services. The first shall be conducted during the first week of the fall session, the second between November 1st and December 31st, and the third between March 1st and April 30th. In the event that a Vehicle is to be used in connection with Services during a summer session, an additional emergency drill shall be conducted during the first week of that summer session.
2. No emergency drills or training of the Passengers shall be conducted while Vehicles are in Route.
3. In order to comply with the schedules of the various Facilities, the Contractor shall provide, at no additional cost to the County, that all Vehicles, Drivers and Driver Assistants shall be available to conduct emergency drills at designated Facilities at a designated time other than regularly scheduled Route times, for the purpose of completing the drills.
4. The Contractor shall verify to the Agent, on forms designated by the Agent, that each Vehicle, Driver, and Driver Assistant has complied with the emergency drill requirements. The verification shall include the date, time and Route number of each Vehicle.

d. Driver and Driver Assistant Duties:

1. It shall be the duty of a Driver Assistant to assist the Driver in the supervision of Passengers for the duration of each Run. For this purpose, the Driver Assistant shall sit in the appropriate place in order to fulfill his or her supervisory responsibilities.
2. It shall be the responsibility of the Driver and/or Driver Assistant to assist Passengers in embarking and disembarking safely from Vehicles.



3. The Driver and the Driver Assistant shall be able to properly read and understand a road map. The Driver Assistant must be able to assist the Driver with verbal directions.
4. All Drivers and Driver Assistants shall present a neat appearance and must maintain a polite, professional and courteous attitude toward the public, Facility personnel, parents and Passengers.
5. Each Driver and Driver Assistant shall wear an appropriate ID badge at all times that they are on duty. The ID badge shall be in the form and format promulgated by the Agent from time to time, or approved by the Agent in writing.
6. All Drivers and Driver Assistants (including substitute Drivers and substitute Driver Assistants) shall be responsible for current knowledge of approved Routes and approved changes to the Routes and for performing their Routes as designated. In every event in which a Route change occurs, the Driver and the Driver Assistant (including substitute Drivers and substitute Driver Assistants) shall each be responsible for acquiring from the Dispatcher (or other designated Contractor official), at the earliest possible moment, updated Driver directions.
7. Drivers who are permitted to take Vehicles home, whether overnight or at midday (between Runs), shall in every event check in with the Dispatcher prior to the start of each Run, to ascertain whether there are any Route changes. Such check-in may be made by phone or radio.
8. Drivers and Driver Assistants shall not smoke on Vehicles or in Facilities or on Facility grounds at any time. Drivers and Driver Assistants shall not eat or drink any liquid on the Vehicle, be under the influence of a controlled substance or medication, or perform any act, or conduct themselves in any manner that may impair the safe operation of a Vehicle, while such Vehicle is transporting Passengers.
9. Drivers or Driver Assistants shall not disembark from the Vehicle when Passengers are inside except to assist a Passenger embarking or disembarking or in case of emergencies; and in such case before leaving his/her seat, the Driver shall stop the motor, leave the transmission in park, set the auxiliary brake, and remove the ignition key. Notwithstanding this, on wheelchair vehicles the motor

must remain on in order that the lift will operate. Therefore, on such Vehicles, the Driver or the Driver Assistant may leave the Vehicle while the motor is running, but only to operate the lift and assist the wheelchair Passenger on or off the Vehicle.

10. Prior to the start of any Run, all Drivers shall perform a "pre-trip inspection" of the Vehicle in accordance with the procedure established by the Contractor and approved by the County or the Agent.
11. All Drivers and Driver Assistants shall perform a "post-trip" inspection of their Vehicle in accordance with the procedure established by the Agent. The "post-trip" procedure must be implemented at every Facility after every trip subsequent to unloading Passengers, to ensure that there are no sleeping Passengers or articles left on the Vehicle. Such a "post-trip" inspection shall also be performed before the Vehicle is left at the Contractor's yard.
12. All Drivers and Driver Assistants are required to secure the Passengers into their assigned safety restraints. The Contractor shall ensure that all Drivers and Driver Assistants are instructed in the proper use and operation of such Safety Apparatus.
13. No Vehicle shall be operated while a Passenger is standing. In the event of a breach of this provision the Driver shall be deemed to be operating the Vehicle in an unsafe manner.
14. A Driver or Driver Assistant shall not fill the Vehicle's gas tank while Passengers are on the Vehicle. A breach of this provision shall be deemed to be operating the Vehicle in an unsafe manner.
15. A Driver shall not make a right turn at a red light while Passengers are aboard the Vehicle. A breach of this provision shall be deemed to be operating the Vehicle in an unsafe manner.
16. Drivers shall admit and discharge only Passengers authorized by the Agent and only at designated pick-up or destination points. There shall be no unauthorized stops while Passengers are on the Vehicle.

17. Drivers and/or Driver Assistants shall release a Passenger only to persons authorized to receive that Passenger. In dropping off at the appropriate Facility, this means releasing the Passenger only to a person or persons designated by the Facility; in dropping of the Passenger at his/her childcare location, this means releasing the Passenger only to the caregiver or to a person authorized by the caregiver to receive the Passenger.
18. All Drivers shall operate Vehicles at a rate of speed no greater than five miles under the posted speed limit.
19. Each Driver and Driver Assistant shall be responsible for the complete control of his/her Vehicle and the Passengers being transported therein. It shall be the responsibility of the Driver to maintain good order on Vehicles. Notwithstanding this, in no event shall any Driver or Driver Assistant, in the performance of their duties, treat any Passenger roughly.
20. Drivers and Driver Assistants shall not permit their Passengers to have heads or arms out of open windows. In the event a Driver or Driver Assistant observes such activity, he/she shall immediately take appropriate corrective measures.
21. Any violations of good conduct and proper behavior on the part of the Passengers shall be handled without the use of force or fear. All such incidents shall be reported to the Facility to which the Passenger is being transported as well as to the Agent in accordance with procedures promulgated by the County or the Agent.
22. All Drivers and Driver Assistants shall immediately report to their supervisors any unusual incident that occurs or is observed by them during the course of providing Services hereunder, and/or any accident that occurs while transporting Passengers to or from destination Facilities. In the event of an incident, the report shall be made no later than the completion of the Run during which such incident occurs. In the case of an accident, such report shall be made immediately by means of the telecommunications equipment on the Vehicle, and the Dispatcher shall follow the procedure set out in Section c (23) below and any additional or substitute procedure promulgated by the County or the Agent. The Contractor shall be required to submit a written report to the County or Agent on a form prescribed by the County which complies with the requirements of Article 19-A of the VTL and 8 NYCRR § 156.3 of the Regulations for the

Commissioner of Education, if applicable, and in a format mutually agreed upon by the County or Agent and the Contractor. This statement must be in writing and signed by the Driver (and/or Driver Assistant) and a supervisor.

23. In connection with the foregoing, and in accordance with Section 413, Subdivision 1 of the Social Services Law, it shall be the obligation of each Driver and Driver Assistant to immediately report any mistreatment of a Passenger, to the Contractor and to the County or the Agent. In addition, such a report shall be made when a Driver and/or Driver Assistant has reasonable cause to suspect that a Passenger is an abused or maltreated child. The failure to promptly report such an incident shall be grounds for the removal of a Driver and/or Driver Assistant from the performance of the Services.
24. The Contractor shall instruct Drivers and Driver Assistants that in the event that they are requested to transport a Passenger's medication to or from Facilities, they are to comply. Such medication shall be carried in a sealed container, and must be in the possession of the Driver or Driver Assistant at all times during transit and kept in a location that is not accessible to any Passenger. Upon conclusion of the Trip the Driver or Driver Assistant shall deliver the medication to the appropriate staff member at the Facility and shall note the date and that Passenger's name. Under no circumstances shall medication be administered to any Passenger by a Driver or Driver Assistant.
25. Drivers and Driver Assistants shall comply with the requirements of the master plan for procedures and communications in the event of snow or severe weather concerns, emergency days, destination Facility closings, early dismissals, caregivers not at home, alternate drop-offs, or Vehicle emergencies. The Contractor shall be familiar with the County's "Parent Handbook," and shall adhere to the procedures specified in that document.
26. As an alert to the possibility that a Run might be excessive in either mileage or in time, Drivers and/or Driver Assistants must notify their supervisor when the regular riding time for any Passenger exceeds seventy-five (75) minutes (or ninety (90) minutes subject to a fifteen (15) minute tolerance based on circumstances such as unusual traffic and weather conditions). The Contractor shall immediately notify the Agent of such occurrences.

e. Accidents:

1. Notwithstanding any law, statute, or policy that defines an “accident” as involving financial loss in any specified amount, the following procedure, and any substitute or replacement procedure, shall apply to any accident involving a Vehicle transporting Passengers hereunder, regardless of whether the accident has resulted in financial loss (i.e. damages) to any party. The County or Agent shall provide the Contractor with accident and emergency procedures to be followed by Drivers, Driver Assistants and Contractor’s staff. The Contractor shall promptly communicate all accident related information to the County and Agent, parents or caregivers, and destination Facilities. For all accidents occurring while Passengers are on board, or in connection with Passengers boarding or leaving a Vehicle, and all other accidents or incidents involving Routes, the following procedures shall be followed:
  - i. In any instance in which a vehicular accident occurs while Passengers are on board, regardless of the severity or whether apparent injuries have occurred, the contractor shall ensure that the police are summoned to the scene, and the Driver and Driver Assistant shall remain at the scene until the police instruct otherwise.
  - ii. When the severity or nature of the accident requires or when emergency services are required for Passengers and/or the Driver, Driver Assistant, or passengers of another vehicle, the dispatcher shall contact 911 and request ambulance service.
  - iii. The Contractor shall immediately notify first the Agent and then the destination Facility, reporting to each the location and extent of the accident together with the names of the Passengers involved, and shall provide a description of the accident/injuries.
  - iv. The Contractor shall provide all accident information, as requested by the County or Agent, to those caregivers, destination Facilities and agencies authorized by the County.
  - v. The Contractor shall secure a copy of the police report concerning the accident at the earliest possible time, and shall provide a copy of same to the Agent. In addition, the Contractor shall prepare accident/emergency reports for the applicable of the New York State Department of Motor Vehicles, New

York State Department of Transportation, New York State Department of Education, the County and Agent within twenty-four (24) hours, utilizing approved State and/or County forms.

f. Material to be Carried on Vehicles:

The Contractor shall provide all Drivers with the following: map-books of Oneida County and adjacent counties; Route sheets with Passenger names, addresses, phone numbers and emergency addresses and phone numbers; appropriate forms for noting whether scheduled Passengers have been present on the Run (“Driver Attendance Logs”); and “left/right sheets” with specific Route locations and times from first pick-up to the last scheduled drop-off. All Drivers and Routes shall receive revisions to map-books and directions as Agent- approved changes occur. The foregoing material shall be present on the Vehicles at all times. On request, the Contractor shall provide copies of the above mentioned materials to the Agent for its approval and records.

g. Confidentiality:

1. Neither Drivers, Driver Assistants, nor any other member of the Contractor’s staff shall discuss or disclose any confidential information concerning the Passengers with any other party without prior written consent of the parent, a supervisor and the County or Agent. For the purposes of this paragraph, confidential information shall include, but not be limited to:
  - i. The names of Passengers, the Facilities any Passenger attends; and
  - ii. Information received for the purpose of increasing awareness of a behavioral problem or medical condition, which information is needed to assure the safety and welfare of a Passenger (“safety/welfare information”). Notwithstanding the foregoing, in the event a parent or caregiver provides safety/welfare information to a Driver or Driver Assistant, such information will be immediately communicated by the Driver and/or Driver Assistant to the Dispatcher, and by the Dispatcher to the Agent.
  - iii. The Contractor shall ensure that each Driver and Driver Assistant complies with the confidentiality requirements set out in the HIPAA regulations, as those regulations may be modified from time-to-time.

- iv. No less than once each month, the Contractor shall search the three (3) Medicaid exclusion databases to ensure that no member of its staff who is responsible for accounting and/or invoicing for Contractor's Services is included on such list.
  - v. Appendix A to this Agreement is a Driver/Driver Assistant Confidentiality Agreement. The Contractor shall instruct every Driver and Driver Assistant who performs Services for the County in the confidentiality requirements, and shall ensure that all such Drivers and Driver Assistants sign a copy of the Driver/Driver Assistant Confidentiality Agreement. The signed copy of such agreement shall be placed in the Driver's or Driver Assistant's file.
- h. Record Keeping:
- 1. All Drivers and Driver Assistants shall cooperate in any record keeping systems established by the County or the Agent. All Drivers and Driver Assistants shall be required to complete transportation forms regarding Passengers, attendance, and all other forms as shall be stipulated by the Agent from time to time during the term of this Agreement. To assure the accuracy and currency of such records, recording shall occur at the beginning or completion of each Run.
  - 2. The County requires prompt notice of any extended Passenger absences from scheduled Runs. For the purpose of this paragraph, "extended absences" shall be absences of five (5) or more consecutive days. The Contractor shall cooperate with the Agent in establishing a procedure for the taking of attendance on each Run, and for reporting extended absences promptly. The Agent has promulgated a form on which the Contractor shall notify the Agent of extended absences. Such form shall be provided to the Contractor by the Agent prior to the commencement of Services.
  - 3. Drivers and/or Driver Assistants shall maintain a Driver Attendance Log on a daily basis. The County may promulgate the form of the Driver Attendance Log and designate the information that is to be provided on it. The County may alter and/or redesign the Driver Attendance Log from time-to-time so as to record information that the County is required and/or desires to gather for the purpose of Medicaid Reimbursement or for any other reason. The Driver Attendance Log

shall be signed by the Driver and the Driver Assistant and provided to their supervisor on a weekly basis for submission to the County.

4. If the Driver or Driver Assistant knows or suspects that a Passenger has moved, or that a Passenger no longer requires transportation, this information shall be included on the attendance records, and the Contractor shall promptly notify the Agent in accordance with the procedure established by the Agent.
5. All invoices with respect to the Services shall be accompanied by a monthly claim voucher in a form and format promulgated by the County. Each such voucher shall include a completed Driver Attendance Log in the form annexed hereto as Appendix B.

#### VI. Personnel Requirements

- a. Before providing any Services to the County, each Driver shall have a Class B (with an S endorsement) or C (with an N1 endorsement) NYS CDL license (depending on the Vehicle to be driven) with a P endorsement. A list of all certified Drivers and license numbers, license class and endorsements, license expiration date, and a list of all their accidents and violations incurred in the past three (3) years will be retained by the Contractors and provided to the County upon request. Such a list shall be updated upon each and every change.
- b. In accordance with 18, NYCRR § 505.10 (Transportation for Medical Care and Services) of the New York State Department of Health Rules and Regulations, Contractors that provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such contractors must be qualified under Article 19 of the VTL and all other regulatory requirements. Such contractors and their drivers must comply with all requirements of the New York State Department of Transportation and the New York State Department of Motor Vehicles or have a statement in writing from the appropriate Department or Departments verifying that the contractors or their drivers are exempt from such requirements. The Contractor shall comply with the foregoing on behalf of itself and the Drivers.
- c. Drivers shall receive the amount of behind the wheel defensive training as required by applicable statute and/or regulation, and such training shall include classroom instruction.



- d. Drivers and Driver Assistants shall comply with the requirements of and receive such training as is required by Section 19 (a) of the VTL or other regulations. By way of example, but not in limitation, in accordance with 8 NYCRR 156.3 (b) (5) (iii), all Drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1st and the first day of school and between December 1st and March 1st of each school year. In addition, in accordance with the New York State Education Department regulations and Section 1229-e of the VTL, Drivers and Driver Assistants providing Services shall be required to attend not less than two (2) training sessions per year specifically concerning understanding of and attention to the special needs of preschool handicapped children. The Contractor shall ensure the attendance of all Drivers and Driver Assistants at the required refresher courses and/or training sessions at no cost to the County, and shall provide the Agent with an acknowledgement of attendance at such session(s) on request. The Contractor may employ a person or firm to provide such training, and if this is done, the Contractor shall ensure the attendance of all Drivers and Driver Assistants at no cost to the County.
- e. In accordance with the provisions of New York State Social Services Law (“SSL”) §424-a, the Contractors shall clear all Drivers and Driver Assistants through the New York State Central Registry for Child Abuse and Maltreatment (the “Registry”). In order to facilitate this clearance, the Contractor and each Driver and Driver Assistant must complete the form to be provided by the Registry. §424-a of the SSL provides for a fee to be charged in connection with such clearance. §424-a further provides that an employer may charge this fee back to the employee. Such fees shall be the Contractors sole responsibility. The Contractors shall maintain a record of submissions and clearances.
- f. The Contractors shall ensure that the Drivers and Driver Assistants provide the County with safe transportation. In connection with this, the Contractor shall ensure that the Drivers and Driver Assistants meet the following minimum qualifications:
1. No moving violations during the past twelve (12) months.
  2. There is no more than one (1) moving violation during the past five (5) years.
  3. Under no condition shall an applicant be accepted as a Driver or Driver Assistant if he or she (a) has been convicted of a felony; or (b) has been convicted of a

drug or alcohol offense; or (c) if there has been a finding of child abuse/maltreatment based on a submission of the individual's name to the New York State Child Abuse Registry. In connection with criminal and child abuse background checks, as required by applicable regulations, all Drivers and Driver Assistants shall be fingerprinted, and such fingerprinting shall be at the Contractor's sole cost and expense.

4. The Contractor shall maintain records concerning the Drivers' and Driver Assistants' qualifications and clearances with respect to the matters described in sections (1) through (3) above.
  - g. A list of all certified Drivers and license numbers, license class and endorsements, license expiration date, and a list of all their accidents and violations incurred in the past three (3) years shall be retained by the Contractor and provided to the County or the Agent on request. Such list shall be updated upon each and every change.
  - h. A written driving record from the New York State Department of Motor Vehicles must be secured by the Contractor and retained at all times in the Drivers' files.
  - i. At all times during the term of this Agreement, all Drivers shall be at least twenty-one (21) years of age, and Driver Assistants shall be at least eighteen (18) years of age.
  - j. All Drivers and Driver Assistants shall be examined by a physician prior to operating/attending a Vehicle in performance of Services hereunder. An examination to determine the physical condition of each Driver and Driver Assistant shall be reported by the physician on a form prescribed by the Commissioner of Education which complies with the requirements of Article 19-A of the VTL and NYCRR Section 156.3 of the regulations of the Commissioner of Education. Physicals shall include a standard Mantoux Skin Test, and a chest x-ray if indicated, for tuberculosis (a Tine Test is not acceptable). In no instance shall the interval between a Driver's or a Driver Assistant's physical examinations exceed thirteen (13) months. The Contractor shall provide a copy of Sections 6-11 and 6-12 of the regulations under Article 19-A of the VTL, to all physicians used for employees' physicals. Proof of compliance with the foregoing with respect to each Driver and Driver Assistant shall be maintained in the individual Drivers' and Driver Assistants' files.

- k. The Contractor shall ensure that it receives periodic reports from the local police department and/or State and/or Federal law enforcement agencies concerning the lack of convictions of Drivers and Driver Assistants for felonies or child or other abuses. Such reports shall be received by the Contractor no less than annually.
- l. Notwithstanding anything to the contrary express or implied herein, the County or the Agent reserves the right to reject or request replacement of Drivers or Driver Assistants who are provided by the Contractor without being limited to considerations of social and driving records.
- m. The Contractor shall register the appropriate department of the County with the NYS Department of Motor Vehicles' Driver Certification Unit as a contract holder.
- n. All Driver and/or Driver Assistant records described in this section shall be maintained by the Contractor and shall be made available for inspection by the County or the Agent, and/or copies of such records shall be made and submitted to the County or the Agent within ten (10) days of receiving a request therefore, except for those items where a sooner response is required by this Agreement.
- o. The Contractor shall ensure that each Driver and each Driver Assistant providing Services under this Agreement are certified in CPR and First Aid. Such certification shall be at the sole cost and expense of the Contractor.
- p. Grounds for Removal of Driver and/or Driver Assistant from Performance of Services:
  - 1. For the avoidance of doubt, under the following circumstances the Driver and/or the Driver Assistant shall be removed from performing Services under this Agreement:
    - i. Each time a Driver is found guilty of committing a moving violation of the VTL while transporting Passengers hereunder.
    - ii. Each time a Driver and/or Driver Assistant is found to have used corporal punishment on a Passenger, or in any other manner mistreated a Passenger.
    - iii. Each time that a Passenger is left unattended on a Vehicle.

- iv. Each time a Passenger has been delivered to an incorrect or unauthorized drop-off location or destination Facility.
- v. Each time a sleeping Passenger is found to be on a Vehicle after a "post trip" inspection should have been conducted (i.e. the "post-trip" inspection was not properly conducted as required herein).
- vi. Each time there is a failure to deliver a Passenger to the correct drop-off location or destination Facility as scheduled (with allowances for traffic, weather or other unavoidable conditions).
- vii. Each time a Driver fails to maintain complete control of a Vehicle and/or operates a Vehicle in an unsafe manner.
- viii. Each time a Driver operates a Vehicle under the influence of a controlled substance.

VII. Performance of Services

- a. The Contractor represents that the Contractor is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Services. The Contractor shall use the Contractor's best efforts to perform the Services such that the results are satisfactory to the County. The Contractor shall be solely responsible for determining the method, details and means of performing the Services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- b. The Contractor may, at the Contractor's own expense, employ or engage the services of such employees, subcontractors and/or partners as the Contractor deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.

- c. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.

#### VIII. Independent Contractor

- a. It is expressly agreed that the relationship of the Contractor and its Assistants to the County shall be that of Independent Contractors. The Contractor and its Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor and its Assistants, in accordance with their status as Independent Contractors, covenant and agree that they will conduct themselves in accordance with such status, that neither the Contractor, nor its Assistants, shall hold themselves out as, nor claim to be, officers or employees of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. The Contractor warrants and represents that it is in the business of offering the same or similar Services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Contractor and the County agree that the Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its Services available to the public.
- c. The Contractor or its Assistants shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. The Contractor acknowledges and agrees that neither the Contractor, nor its Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
- e. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Contractor's form of business organization, and with respect to the Assistants, including payroll deductions,

worker's compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for Services rendered for State or Federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.

- f. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or its Assistants' Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- h. The Contractor shall comply with Federal and State Laws as supplemented in the Department of Labor regulations and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.

#### IX. Liquidated Damages

- a. In view of the difficulty the County and Passengers shall suffer by reason of defaults in the performance of the Services required hereunder on the part of the Contractor and its employees, staff and personnel, the following monetary sums are hereby agreed upon, fixed and determined by the parties hereto as "Liquidated Damages" that the parties agree fairly represent the damage the County will suffer by reason of such violations of this Agreement and not by the way of penalty, and such Liquidated Damages may be assessed upon the findings of the Agent that a provision of this Agreement has been violated.
- b. It is the intent of the County to provide Passengers with safe and effective Services at all times and, in addition, to work cooperatively and reasonably with responsible Contractors. The County and the Agent shall at all times act fairly and shall consider unusual circumstances concerning, among other things, break-downs or delays when considering whether Liquidated Damages should be imposed. In this regard, if

it is determined that an act or omission concerns a technical matter and does not place a Passenger in danger or risk liability to the County, a “warning” for a first offense may be issued. In the event that a Contractor is to be notified of an act or omission, such notification will be made within forty-eight (48) hours of the finding of such act or omission. Appeals for disputes arising as to whether a violation has occurred and/or the assessment Liquidated Damages shall be arbitrated by the County, whose decision shall be final and binding.

- c. Liquidated Damages may be assessed for every Vehicle, for every day, and for every instance of the violation in the monetary amounts as noted in the following:
  1. The full cost of the applicable Vehicle for a day shall be deducted from subsequent payments due the Contractor for each day on which the following violations of this Agreement occur:
    - i. Each time there is a failure to provide Services on a day on which Facilities are required to be open in accordance with the official calendar or subsequent changes thereto (with allowances for weather conditions).
    - ii. Each time there is a failure to conform to the arrival and dismissal schedules and session times of the Facilities, as such information is provided by the County or the Agent.
    - iii. Each time there is a failure to adhere to any special schedules or shortened and lengthened schedules of the Facilities.
    - iv. Each time there is a failure to provide all of the Vehicles and Services needed to do all of the work contracted for.
    - v. Each time there is a failure to comply with the applicable regulations of the New York State Departments of Education, Transportation and Motor Vehicles as well as with any and all laws and regulations of any agency of the federal government, State of New York, County or local regulations applicable hereto.
    - vi. Each day on which a Vehicle is operated using recapped or regrooved tires.

- vii. Each time there is a failure to comply with the Vehicle, Driver and/or Driver Assistants requirements as set forth herein.
- viii. Each time there is a failure of any Vehicle to have a current and effective New York State DOT certificate, if required.
- ix. Each time there is an assignment of any Driver and/or Driver Assistant to perform Services hereunder, who has been disqualified by the State, County or Agent in this or any other jurisdiction.
- x. Each time a Driver is found guilty of committing a moving violation of the VTL while transporting Passengers hereunder.
- xi. Each time a Driver allows a Passenger to enter or leave the Vehicle while it is in motion.
- xii. Each time a Driver and/or Driver Assistant is found to have used corporal punishment on a Passenger, or in any other manner mistreated a Passenger.
- xiii. Each time a Passenger is left unattended on a Vehicle.
- xiv. Each time a Passenger has been delivered to an incorrect or unauthorized drop-off location or Facility.
- xv. Each time a sleeping Passenger is found to be on a Vehicle after a "post-trip" inspection should have been conducted (i.e. the "post-trip" inspection was not properly conducted as required herein).
- xvi. Each time there is a failure to deliver a Passenger to the correct drop-off location or Facility at the time scheduled (with allowances for traffic, weather or other unavoidable conditions).
- xvii. Each time an unauthorized individual is transported by the Driver and/or Driver Assistant when a Vehicle is being utilized for Services hereunder, whether or not same is approved or known by the Contractor.
- xviii. Each time there is a failure to follow procedures for reporting incidents, accidents and/or emergencies as set forth herein.



- xix. Each time there is a failure to report immediately to the Facility administration and the County or Agent any incident involving physical harm to a Passenger, and/or each time there is a failure to follow procedures for reporting incidents, accidents and/or emergencies as set forth herein
- xx. Each time a Driver operates a Vehicle in service hereunder when he/she has not received the proper training, instructions and/or courses as specified herein within the specified time periods.
- xxi. Each time there is a failure by the Contractor to provide, as required hereunder, the required medical certificate, fingerprint record, driving record (abstract), Child Abuse Registry clearance, reference letters, applications for employment and other data when requested by the County or the Agent as provided herein.
- xxii. Each time a Driver and/or Driver Assistant allows a Passenger to continue an unsafe or dangerous act while on a Vehicle.
- xxiii. Each time there is a failure by the Contractor to service each designated pickup or drop-off on a Route.
- xxiv. Each time there is a failure to utilize a Vehicle that meets the standards and requirements set forth herein and all applicable State and local laws and regulations. For the avoidance of doubt, this includes a failure to provide the Appropriate Safety Apparatus for each Passenger.
- xxv. Each time a Driver fails to maintain complete control of a Vehicle and/or operates a Vehicle in an unsafe manner.
- xxvi. Each time a Driver operates a Vehicle with under the influence of a controlled substance.
- xxvii. Each time there is a failure to provide a Driver Assistant. Such assessment shall be made with respect to each Vehicle on which there is not a Driver Assistant, and such assessment shall be made even if a Driver Assistant is on a Vehicle one way.

2. One-half the cost of the applicable Vehicle for a day may be deducted from subsequent payments due the Contractor for each day on which the following violations occur:
  - i. Each time there is a failure by the Contractor to dispatch spare Vehicles and/or provide road service within the time frames herein provided.
  - ii. Each time the Contractor provides Services with a Vehicle that does not have an operable two-way radio communications set or mobile/cellular phone.
  - iii. Each time there is a failure by the Driver and/or Driver Assistant to properly complete the daily Attendance Logs or a failure of the Contractor to deliver attendance information to the County or the Agent in the form and format required and within the time parameters set forth herein.
  - iv. Each time there is a failure of the Driver to wait for a Passenger at the pick-up point until three (3) minutes after the scheduled pick-up time
  - v. Each time there is a failure of a Driver to be familiar with the VTL, regulations of the Commissioner of Motor Vehicles or other laws or regulations pertaining to Passengers transported hereunder.
  - vi. Each time there is a failure by the Contractor to provide new Services to a Passenger within the time parameters provided herein, or otherwise agreed to with the County or the Agent.
  - vii. Each time there is a failure by the Contractor to comply with County or Agent authorized changes to a Route including additions or deletions of stops. This includes additions or deletions to Runs or Routes.
  - viii. Each time a Driver and/or Driver Assistant makes an unauthorized stop or smokes on a Vehicle, in a Facility or on Facility grounds or eats or drinks any liquid on a Vehicle while Passengers are on board. This provision shall apply whether or not Passengers are present at the time of the infraction.
  - ix. Each time a Vehicle is not equipped with a fire extinguisher, safety kit, and seat belt cutter.

- x. Each time there is a failure by the Contractor to ensure that the Vehicle interior and exterior are both clean.
  - xi. Each time there is a failure by the Contractor to provide information to the County and/or the Agent as, and in the time parameters prescribed hereunder.
  - xii. Each time a Passenger's head or arm are outside the Vehicle's window and the Driver or Driver Assistant fails to take immediate appropriate corrective action to correct the situation.
3. In the event that appropriate communications arrangements as discussed in this Agreement, including two-way communications between Vehicles and the Dispatcher and/or FAX equipment, are not made available by the Contractor, and in the event that information is not passed between the parties as a result, the failure to receive the necessary information will not be considered a reason for the failure to perform an obligation on the part of the Contractor.
4. Nothing herein shall limit the right of the County to declare the Contractor in default of this agreement in advance of, in lieu of, or in addition to the assessment of Liquidated Damages.

X. Insurance and Indemnification Requirements

- a. Indemnification: The Contractor shall at all times defend, indemnify and hold the County and its officers and employees harmless and free and clear of any and all liability arising from any act of omission or commission by the Contractor, its officers or employees with respect to this Agreement and any of the terms thereof. The liability of the Contractor under this Agreement is absolute and is not dependent upon any question of negligence on its part.
- b. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
  - 1. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

- i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
  - ii. Abuse and Molestation coverage must be included.
  - iii. The County shall be included as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured.
2. Business Automobile Liability with limits of at least \$1,000,000 each accident.
  - i. Business Automobile Liability coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
  - ii. Oneida County shall be included as an additional insured on the Business Automobile Policy. Coverage for the additional insured shall apply on a primary and non-contributing basis.
3. Workers' Compensation and Employer's Liability coverage shall be at New York State Statutory Limits.
4. Commercial Umbrella/Excess Liability coverage in the amount of \$5,000,000.
  - i. Oneida County shall be included as an additional insured. Coverage for the additional insured shall be on a primary and non-contributing basis.
5. Prior to the start of any work, the Contractor shall provide certificates of insurance to the County of Oneida. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL policy and Business Automobile Liability Policy. These certificates and the insurance policies above shall contain a provision that coverage afforded under the policies shall not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County of Oneida.

XI. Financial

a. Voucher Requirements and Documentation

1. The Contractor must bill using Oneida County vouchers for each Passenger or each Vehicle Route being transported as applicable.
2. The Contractor shall submit weekly Attendance Logs at the conclusion of each month. Each Attendance Log shall be signed by the Driver. The County or the Agent may promulgate the form to be used for such Attendance Log. Regardless of whether a required form is promulgated, each Attendance Log will show, as a minimum, the following information:
  - i. Month and year;
  - ii. Vehicle and Route number;
  - iii. Name of the Driver and Driver Assistant;
  - iv. Facility served;
  - v. Days each Passenger was transported to his/her Facility, and days each Passenger was transported from such facility;
  - vi. The address of each Passenger picked up and the address of the Facility; and
  - vii. The time the first Passenger was picked up and the time the last Passenger is dropped off.
3. The sheets giving the above information shall be sent to the Agent, as instructed by the Agent no later than the close of the first week of the following month.
4. All vouchers with respect to Services shall be presented not later than forty-five (45) days after close of the month during which such Services were performed. Vouchers not presented within such time frame or submitted in the proper format may not be paid.

b. Compensation

1. The Contractor shall be compensated pursuant to the Rate Schedules attached as Appendix C .
2. Total compensation to paid by the County to the Contractor for services performed under this Agreement shall not exceed four million dollars (\$4,000,000).

XII. Miscellaneous

- a. The Contractor shall not assign, transfer or subcontract, wholly or partially, this Agreement, or any of its rights or obligations arising out of or under such contract, to any person, firm, association or corporation, without the prior written consent of the County, which consent may withheld for any reason.
- b. The Contractor is solely responsible for paying all of its business expenses related to furnishing the Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.
- c. All fuel will be supplied by the Contractor.
- d. Neither the Contractor, nor its Assistants, shall be required to attend or undergo any training by the County other than those trainings specific to performance of the Services described herein. The Contractor shall be fully responsible for all training necessary to maintain any licenses or certifications to perform the Services described herein, and shall be solely responsible for the cost of the same.

XIII. Choice of Venue

If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of Competent Jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York.

XIV. Advice of Counsel

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

XV. Entire Agreement

- a. The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel and supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Appendix A (Driver/Driver Assistant Confidentiality Agreement), Appendix B (Driver Attendance Log), Appendix C (Rate Schedules), and the Standard Oneida County Conditions Addendum.
- b. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

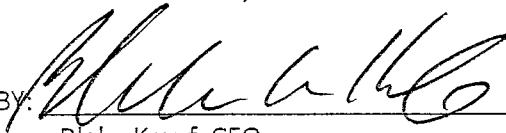
IN WITNESS THEREOF, the parties have hereunto set their hand on the date respectively stated.

**COUNTY OF ONEIDA**

BY: \_\_\_\_\_  
Anthony J. Picente, Jr., County Executive

DATE: \_\_\_\_\_

**BIRNIE BUS SERVICE, INC.**

BY:  \_\_\_\_\_  
Blake Krapf, CEO

DATE: 6/19/19

Approved

\_\_\_\_\_  
Maryangela Scalzo, Assistant County Attorney



## Appendix A

### Driver/Driver Assistant Confidentiality Agreement

The undersigned confirms that the Transportation Contractor by whom he/she is employed has instructed him/her as follows:

A. Neither Drivers nor Driver Assistants will discuss or disclose any confidential information concerning the passengers with any other party without prior written consent of the parent, a supervisor and the County or Agent. For the purposes of this paragraph, confidential information includes, but is not be limited to:

1. The names of passengers, the Facilities any passenger attends; and
2. Information received for the purpose of increasing awareness of a behavioral problem or medical condition, which information is needed to assure the safety and welfare of a passenger ("safety/welfare information"). Notwithstanding the foregoing, in the event a parent or caregiver provides safety/welfare information to a Driver or Driver Assistant, such information will be immediately communicated by the Driver and/or Driver Assistant to the dispatcher, and by the dispatcher to the Agent.

B. The Social Services Law obligates of each Driver and Driver Assistant to immediately report any mistreatment of a passenger. Also a report is required be made when a Driver and/or Driver Assistant has reasonable cause to suspect that a child is an abused or maltreated child. In such cases, the report shall be made to the Driver/Driver Assistant's immediate supervisor. Thereafter the Driver/Monitor shall not disclose such information to anyone, including the child's parent.

C. Disclosure of information by a Driver/Driver Assistant, except as specified in this document, may result in immediate dismissal.

## STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
  - 3) Any available drug counseling, rehabilitation, and employee assistance program; and
  - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
- D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
- 1) Abide by the terms of the statement; and
  - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:
- Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
  - i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
  - ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County



available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter “OGS”) website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the “use of tobacco” shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



**Appendix B**

**Oneida County**

Transporter: \_\_\_\_\_ Week Ending: \_\_\_\_\_  
 School/Program Name: \_\_\_\_\_ Lic. Plate: \_\_\_\_\_  
 Driver Name (Print): \_\_\_\_\_ Route #: \_\_\_\_\_ Run #: \_\_\_\_\_ Driver Assistant Name (Print): \_\_\_\_\_

**In-Route (AM-In/Midday-In)**

Attendance Symbols: *N* = Present *A* = Absent *N* = No-Show *C* = Conference *H* = Holiday *S* = Snow Day *---* = Not Scheduled

Child's Name/Address	Trip Origin					Trip Destination				
	Monday	Tuesday	Wednesday	Thursday	Friday	Monday	Tuesday	Wednesday	Thursday	Friday
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Different Address	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol	Symbol
Different Address	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time	P/U Time
Program Address	D/O Time—Monday	D/O Time—Tuesday	D/O Time—Wednesday	D/O Time—Thursday	D/O Time—Friday	D/O Time—Monday	D/O Time—Tuesday	D/O Time—Wednesday	D/O Time—Thursday	D/O Time—Friday

Driver Signature: \_\_\_\_\_ Driver Assistant Signature: \_\_\_\_\_

# Oneida County

Transporter: \_\_\_\_\_ Week Ending: \_\_\_\_\_  
 School/Program Name: \_\_\_\_\_ Lic. Plate: \_\_\_\_\_  
 Driver Name (Print): \_\_\_\_\_ Route #: \_\_\_\_\_ Run #: \_\_\_\_\_ Driver Assistant Name (Print): \_\_\_\_\_

## One-Route (Midday-Out/PM-Out)

*Attendance Symbols: ✓ = Present    A = Absent    N = No-Show    C = Conference    H = Holiday    S = Snow Day    — = Not Scheduled*

Program Address	Monday		Tuesday		Wednesday		Thursday		Friday	
	P/U Time	D/O Time	P/U Time	D/O Time	P/U Time	D/O Time	P/U Time	D/O Time	P/U Time	D/O Time
Child's Name/Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time
Different Address	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time	Symbol	D/O Time

Driver Signature: \_\_\_\_\_ Driver Assistant Signature: \_\_\_\_\_  
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## APPENDIX C

Forever Growing at Clough Elementary  
409 Bell Road  
Rome, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$494.85	\$413.25	N/A	N/A	N/A
Round Trip	N/A	N/A	\$445.60	\$346.00	\$79.00

New York State School for the Deaf  
 401 Turin Street  
 Rome, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$446.40	\$442.25	N/A	N/A	N/A
Round Trip	N/A	N/A	\$414.00	\$400.75	\$83.00

Destination Point 1: Upstate Cerebral Palsy  
1601 Armory Drive  
Utica, New York

Destination Point 2: Jewish Community Center  
2310 Oneida Street  
Utica, New York

Category	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	Cost of Bus and Driver Assistant per day	Cost of Van and Driver Assistant per day	1 on 1 Driver Assistant (Van or Bus)
Vehicle-Full Day	\$526.20	\$431.10	N/A	N/A	N/A
Round Trip	N/A	N/A	\$443.35	\$366.60	\$87.80

# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138

July 25, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

FN 20 19-281

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of an Amendment to an agreement between Oneida County through its Health Department (OCHD) – Public Health Emergency Preparedness Program (PHEP) and Health Research, Inc. adding two months to the current Grant period. The two month extension period is applicable to the Opioid Crisis Funding portion of the grant only and allows counties more time to expend the funds to support its implementation activities.

Through the PHEP Grant, Opioid Crisis Funding in the amount of \$75,000 was provided to Oneida County, a designated as a “high burden area,” to accelerate and enhance current and proposed evidence-based activities intended to address the opioid overdose crisis. Some allowable activities include increasing access to Naloxone and Buprenorphine, building linkages to harm-reduction programs and other substance use disorder treatment, enhancing peer responder support and enhancing the quality and timeliness of local and syndromic surveillance data.

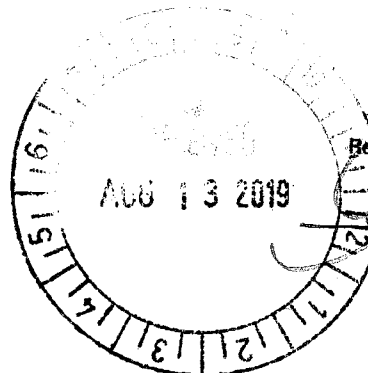
This Amendment is effective from July 1, 2018 through August 31, 2019. The total Grant amount remains \$333,665.00 which includes a reimbursable amount of \$133,665.00 and an additional \$200,000.00 in restricted funds which may be dispersed to the County by New York State in the event of a public health emergency.

If this Amendment meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

*Phyllis D. Ellis /PB*

Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health  
attachments  
CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*  
County Executive

Date 8-8-19



AMENDMENT #1

This Agreement, made this 17<sup>th</sup> day of June, 2019 by and between **HEALTH RESEARCH INC.**, hereinafter referred to as "HRI," a domestic not-for-profit corporation, and **ONEIDA COUNTY THROUGH THE HEALTH DEPARTMENT**, hereinafter referred to as "Contractor."

WHEREAS, heretofore on or about the 8<sup>th</sup> day of August, 2018, the parties hereto entered into a certain agreement regarding "Public Health Emergency Preparedness Program", HRI Contract Number **1577-12**; and,

WHEREAS it is now desired to amend that provision of such contract designated as "Contract End Date" and to attach Exhibit "D" Addition.

NOW THEREFORE, it is mutually agreed by both parties that "Contract End Date" of Agreement HRI Contract Number 1577-12 will be **8/31/19**. The extension period of 07/01/19 to 08/31/19 will be for Opioid Crisis expenditures only.

It is further agreed, by and between the parties hereto, that said Agreement in all portions thereof, as heretofore and herein amended, shall remain in full force and effect in accordance with the terms thereof.

IN WITNESS WHEREOF, the parties hereto have agreed and executed this amendment.

**HEALTH RESEARCH INC.**

**ONEIDA COUNTY THROUGH THE  
HEALTH DEPARTMENT**

Cheryl A. Mattox

Cheryl A. Mattox  
Executive Director

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



EXHIBIT D

ADDITION

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Disease Control and Prevention  
CDC Office of Financial Resources

1600 Clifton Road  
Atlanta, GA 30329

NOTICE OF AWARD  
AUTHORIZATION (Legislation/Regulations)  
SEC391(A)317(K)OPHS42U.S.C.SEC241A 247B

1. DATE ISSUED MMDD/YYYY 03/06/2019	1a. SUPERSEDES AWARD NOTICE dated 12/14/2018 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded
2. CFDA NO. 93.354 - Public Health Emergency Response: Cooperative Agreement for Emergency Response: Public Health Crisis Response	
3. ASSISTANCE TYPE Cooperative Agreement	
4. GRANT NO. 6 NU90TP921994-01-04 Formerly	5. TYPE OF AWARD Other
4a. FAIN NU90TP921994	5a. ACTION TYPE Post Award Amendment
6. PROJECT PERIOD From 09/01/2018 Through 08/31/2019	MM/DD/YYYY MM/DD/YYYY
7. BUDGET PERIOD From 09/01/2018 Through 08/31/2019	MM/DD/YYYY MM/DD/YYYY
8. TITLE OF PROJECT (OR PROGRAM) Public Health Crisis Response in New York State	

9a. GRANTEE NAME AND ADDRESS HEALTH RESEARCH, INC. 150 BROADWAY STE 560 MENANDS, NY 12204-2719	9b. GRANTEE PROJECT DIRECTOR Mr. MICHAEL PRIMEAU 800 North Pearl St., Room 322 HEALTH RESEARCH INC MENANDS, NY 12204 Phone: (518)474-2893
10a. GRANTEE AUTHORIZING OFFICIAL Mrs. Cheryl Mattox1 150 BROADWAY HEALTH RESEARCH, INC. ALBANY, NY 12204-2719	10b. FEDERAL PROJECT OFFICER Ms. Briana Barnes 1600 Clifton Rd NE Atlanta, GA 30329-4018 Phone: 404.901.7453

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m) 4,182,276.00	
II Total project costs including grant funds and all other financial participation <input type="checkbox"/>		b. Less Unobligated Balance From Prior Budget Periods 0.00	
a. Salaries and Wages 851,018.00		c. Less Cumulative Prior Award(s) This Budget Period 4,182,276.00	
b. Fringe Benefits 320,025.00		d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION 0.00	
c. Total Personnel Costs 1,171,043.00		13. Total Federal Funds Awarded to Date for Project Period 4,182,276.00	
d. Equipment 0.00		14. RECOMMENDED FUTURE SUPPORT (Subject to the availability of funds and satisfactory progress of the project):	
e. Supplies 191,021.00		YEAR	TOTAL DIRECT COSTS
f. Travel 50,815.00		a. 2	d. 5
g. Construction 0.00		b. 3	e. 6
h. Other 43,300.00		c. 4	f. 7
i. Contractual 2,445,250.00		15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
j. TOTAL DIRECT COSTS 3,901,229.00		a. DEDUCTION <input type="checkbox"/>	
k. INDIRECT COSTS 281,047.00		b. ADDITIONAL COSTS	
l. TOTAL APPROVED BUDGET 4,182,276.00		c. MATCHING	
m. Federal Share 4,182,276.00		d. OTHER RESEARCH (Add / Deduct Option)	
n. Non-Federal Share 0.00		e. OTHER (See REMARKS)	
REMARKS (Other Terms and Conditions Attached - <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No)		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARING AGENCY OF THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING: a. The grant program legislation. b. The grant program regulations. c. This award notice including terms and conditions, if any, noted below under REMARKS. d. Federal administrative requirements, and principles and audit requirements applicable to this grant. In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

GRANTS MANAGEMENT OFFICIAL:

Brownie Anderson-Rana, Grants Management Officer  
2950 Brandywine Rd  
Mallistop E01  
Atlanta, GA 30341-5509  
Phone: 770-488-2771

17. OBJ CLASS 41.51	18a. VENDOR CODE 1141402155A1	18b. EIN 141402155	19. DUNS 002436061	20. CONG. DIST. 20
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	AMT ACTION FIN ASST	APPROPRIATION
21. a. 8-939039R	b. 18NU90TP921994OPCE	c. TP	d. \$0.00	e. 75-1819-0952
22. a. 8-9390ATW	b. 18NU90TP921994OPOE	c. TP	d. \$0.00	e. 75-1819-0952
23. a. 8-9390AUA	b. 18NU90TP921994OPPS	c. TP	d. \$0.00	e. 75-1819-0952

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 2	DATE ISSUED 03/06/2019
GRANT NO. 6 NU90TP921994-01-04	

Direct Assistance

BUDGET CATEGORIES	PREVIOUS AMOUNT (A)	AMOUNT THIS ACTION (B)	TOTAL (A + B)
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00

## AWARD ATTACHMENTS

Health Research, Inc.

6 NU90TP921994-01-04

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1. T&C budget revision

The purpose of this amended Notice of Award is to approve the redirection request submitted by your organization dated February 28, 2019. Funds have been distributed as indicated in the approved budget of this Notice of Award.

The purpose of this amended Notice of Award is to approve submitted budget revision information.

Please be advised that recipient must exercise proper stewardship over Federal funds by ensuring that all costs charged to their cooperative agreement are allowable, allocable, and reasonable.

All the other terms and conditions issued with the original award remain in effect throughout the budget period unless otherwise changed, in writing, by the Grants Management Officer.

**PLEASE REFERENCE AWARD NUMBER ON ALL CORRESPONDENCE**

**GMS Contact:**

Julie Davis, Grants Management Specialist  
Centers for Disease Control and Prevention  
2960 Brandywine Rd Stanford E-01  
Atlanta, GA 30341  
Email: [xg6@cdc.gov](mailto:xg6@cdc.gov) Phone: 770-488-2936

1. DATE ISSUED MM/DD/YYYY 11/28/2018

1a. SUPERSEDES AWARD NOTICE dated 08/28/2018 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded

2. CFDA NO. 93.354 - Public Health Emergency Response: Cooperative Agreement for Emergency Response: Public Health Crisis Response

3. ASSISTANCE TYPE Cooperative Agreement

4. GRANT NO. 6 NU90TP921994-01-01 Formerly

5. TYPE OF AWARD Other

4a. FAIN NU90TP921994

5a. ACTION TYPE Post Award Amendment

6. PROJECT PERIOD MM/DD/YYYY From 09/01/2018 Through 08/31/2019

7. BUDGET PERIOD MM/DD/YYYY From 09/01/2018 Through 08/31/2019

8. TITLE OF PROJECT (OR PROGRAM) Public Health Crisis Response In New York State

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Disease Control and Prevention  
CDC Office of Financial Resources

1600 Clifton Road  
Atlanta, GA 30329

**NOTICE OF AWARD**  
AUTHORIZATION (Legislation/Regulations)  
SEC391(A)317(K)OPHS42U.S.C.SEC241A 247B

9a. GRANTEE NAME AND ADDRESS  
HEALTH RESEARCH, INC.  
150 BROADWAY STE 560  
MENANDS, NY 12204-2719

9b. GRANTEE PROJECT DIRECTOR  
Mr. Michael278443 Saglimbeni  
150 Broadway Ste 560  
Menands, NY 12204-2726  
Phone: 518-431-1200

10a. GRANTEE AUTHORIZING OFFICIAL  
Ms. Cheryl Mattox  
150 BROADWAY Suite 560  
MENANDS, NY 12204-2719  
Phone: 518-431-1200

10b. FEDERAL PROJECT OFFICER  
Ms. Mary Young  
1600 Clifton Rd NE  
Atlanta, GA 30329-4018  
Phone: 404.895.1995

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from Item 11m) 4,182,276.00	
II Total project costs including grant funds and all other financial participation <input type="checkbox"/> 1		b. Less Unobligated Balance From Prior Budget Periods 0.00	
a. Salaries and Wages	1,009,954.00	c. Less Cumulative Prior Award(s) This Budget Period 4,182,276.00	
b. Fringe Benefits	380,103.00	d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION 0.00	
c. Total Personnel Costs	1,390,057.00	13. Total Federal Funds Awarded to Date for Project Period 4,182,276.00	
d. Equipment	0.00	14. RECOMMENDED FUTURE SUPPORT	
e. Supplies	190,443.00	(Subject to the availability of funds and satisfactory progress of the project):	
f. Travel	50,615.00	YEAR	TOTAL DIRECT COSTS
g. Construction	0.00	a. 2	d. 5
h. Other	43,300.00	b. 3	e. 6
i. Contractual	2,174,250.00	c. 4	f. 7
j. TOTAL DIRECT COSTS	3,848,665.00	15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
k. INDIRECT COSTS	333,611.00	a. DEDUCTION	
l. TOTAL APPROVED BUDGET	4,182,276.00	b. ADDITIONAL COSTS	
m. Federal Share	4,182,276.00	c. MATCHING	
n. Non-Federal Share	0.00	d. OTHER RESEARCH (Add / Deduct Option)	
		e. OTHER (See REMARKS)	
		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
		a. The grant program legislation	
		b. The grant program regulations	
		c. This award notice including terms and conditions, if any, noted below under REMARKS.	
		d. Federal administrative requirements, cost principles and audit requirements applicable to this grant	
		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

REMARKS (Other Terms and Conditions Attached -  Yes  No)

GRANTS MANAGEMENT OFFICIAL:

Brownie Anderson-Rana, Grants Management Officer  
Centers for Disease Control and Prevention  
CDC/ ATSDR  
Atlanta, GA 30341  
Phone: 770-488-2771

17. OBJ CLASS 41.51	18a. VENDOR CODE 1141402155A1	18b. EIN 141402155	19. DUNS 002436061	20. CONG. DIST. 20
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	AMT ACTION FIN ASST	APPROPRIATION
21. a. 8-939039R	b. 18NU90TP921994OPCE	c. TP	d. \$0.00	e. 75-1819-0952
22. a. 8-9390ATW	b. 18NU90TP921994OPOE	c. TP	d. \$0.00	e. 75-1819-0952
23. a. 8-9390AJA	b. 18NU90TP921994OPPS	c. TP	d. \$0.00	e. 75-1819-0952

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 2	DATE ISSUED 11/28/2018
GRANT NO. 6 NU90TP921994-01-01	

Direct Assistance

BUDGET CATEGORIES	PREVIOUS AMOUNT (A)	AMOUNT THIS ACTION (B)	TOTAL (A + B)
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00

# AWARD ATTACHMENTS

Health Research, Inc.

6 NU90TP921994-01-01

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1. T&C TR response budget revision

The purpose of this amended Notice of Award is to approve the response to the Technical Review submitted by your organization October 1, 2018.

The purpose of this amended Notice of Award is to approve budget revision information submitted. Recipient must provide the following missing information:

- **Salaries:** Provide the names job descriptions of all staff noted as TBD in the budget. All vacant staff positions must be filled in a timely manner. Costs are proposed to support positions identified as "To Be Determined" (TBD), grant funds must match effort.

Please be advised that recipient must exercise proper stewardship over Federal funds by ensuring that all costs charged to their cooperative agreement are allowable, allocable, and reasonable.

All the other terms and conditions issued with the original award remain in effect throughout the budget period unless otherwise changed, in writing, by the Grants Management Officer.

**PLEASE REFERENCE AWARD NUMBER ON ALL CORRESPONDENCE**

**GMO Contact:**

Brownie Anderson-Rana, Grants Management Officer  
Centers for Disease Control and Prevention  
2960 Brandywine Rd Stanford E-01  
Atlanta, GA 30341  
Email: BAndersonRana@cdc.gov Phone: 770-488-2771

**GMS Contact:**

Julie Davis, Grants Management Specialist  
Centers for Disease Control and Prevention  
2960 Brandywine Rd Stanford E-01  
Atlanta, GA 30341  
Email: xxg6@cdc.gov Phone: 770-488-2936



1. DATE ISSUED MM/DD/YYYY: 08/29/2018  
 2. CFDA NO.: 93.354  
 3. ASSISTANCE TYPE: Cooperative Agreement

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 Centers for Disease Control and Prevention  
 CDC Office of Financial Resources

2920 Brandywine Road  
 Atlanta, GA 30341

**NOTICE OF AWARD**  
 AUTHORIZATION (Legislation/Regulations)  
 SEC391(A)317(K)OPPHS42U.S.C.SEC241A 247B

1a. SUPERSEDES AWARD NOTICE dated \_\_\_\_\_  
 except that any additions or restrictions previously imposed remain in effect unless specifically rescinded

4. GRANT NO. 1 NU90TP921994-01-00  
 Formerly

5. ACTION TYPE New

6. PROJECT PERIOD MM/DD/YYYY  
 From 09/01/2018 Through 08/31/2019

7. BUDGET PERIOD MM/DD/YYYY  
 From 09/01/2018 Through 08/31/2019

8. TITLE OF PROJECT (OR PROGRAM)  
 Public Health Crisis Response in New York State

9a. GRANTEE NAME AND ADDRESS  
 HEALTH RESEARCH, INC.  
 150 BROADWAY STE 560  
 MENANDS, NY 12204-2719

9b. GRANTEE PROJECT DIRECTOR  
 Mr. Michael 278443 Saglimbeni  
 150 Broadway Ste 560  
 Menands, NY 12204-2726  
 Phone: 518-431-1200

10a. GRANTEE AUTHORIZING OFFICIAL  
 Ms. Cheryl Mattox  
 150 BROADWAY Suite 560  
 MENANDS, NY 12204-2719  
 Phone: 518-431-1200

10b. FEDERAL PROJECT OFFICER  
 Ms. Juliann Hudak  
 1600 Clifton Rd NE  
 Atlanta, GA 30329-4018  
 Phone: 404.718.5638

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)

I Financial Assistance from the Federal Awarding Agency Only  I

II Total project costs including grant funds and all other financial participation

a. Salaries and Wages	1,021,664.00
b. Fringe Benefits	384,529.00
c. Total Personnel Costs	1,406,193.00
d. Equipment	152,961.00
e. Supplies	31,445.00
f. Travel	51,874.00
g. Construction	0.00
h. Other	51,320.00
i. Contractual	2,151,000.00
j. TOTAL DIRECT COSTS	3,844,793.00
k. INDIRECT COSTS	337,483.00
l. TOTAL APPROVED BUDGET	4,182,276.00
m. Federal Share	4,182,276.00
n. Non-Federal Share	0.00

12. AWARD COMPUTATION

a. Amount of Federal Financial Assistance (from item 11m)	4,182,276.00
b. Less Unobligated Balance From Prior Budget Periods	0.00
c. Less Cumulative Prior Award(s) This Budget Period	0.00
d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION	4,182,276.00
13. Total Federal Funds Awarded to Date for Project Period	4,182,276.00

14. RECOMMENDED FUTURE SUPPORT  
 (Subject to the availability of funds and satisfactory progress of the project):

YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS
a. 2		d. 5	
b. 3		e. 6	
c. 4		f. 7	

15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:

a. DEDUCTION  
 b. ADDITIONAL COSTS  
 c. MATCHING  
 d. OTHER RESEARCH (Add / Deduct Option)  
 e. OTHER (See REMARKS)

16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

a. The grant program legislation  
 b. The grant program regulations.  
 c. This award notice including terms and conditions, if any, noted below under REMARKS.  
 d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached -  Yes  No)

GRANTS MANAGEMENT OFFICIAL: Shicann Phillips

17. OBJ CLASS 41.51	18a. VENDOR CODE 1141402155A1	18b. EIN 141402155	19. DUNS 002436061	20. CONG. DIST. 20
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	AMT ACTION FIN ASST	APPROPRIATION
21. a. B-939039R	b. 18NU90TP921994OPCE	c. TP	d. \$3,735,576.00	e. 75-1819-0952
22. a. B-9390ATW	b. 18NU90TP921994OPOE	c. TP	d. \$200,000.00	e. 75-1819-0952
23. a. B-9390AUJ	b. 18NU90TP921994OPPS	c. TP	d. \$246,700.00	e. 75-1819-0952

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 2	DATE ISSUED 08/29/2018
GRANT NO. 1 NU90TP921994-01-00	

Direct Assistance

BUDGET CATEGORIES	PREVIOUS AMOUNT (A)	AMOUNT THIS ACTION (B)	TOTAL (A + B)
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
Total	\$0.00	\$0.00	\$0.00

## AWARD ATTACHMENTS

Health Research, Inc.

1 NU90TP921994-01-00

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1. New York Terms and Conditions TP921994
2. Health Research, Inc. CSELS Tech Review
3. Health Research, Inc. NCHHSTP Tech Review
4. Health Research, Inc. NCIPC Tech Review
5. Health Research, Inc. Tech Review Special

## AWARD INFORMATION

**Incorporation:** In addition to the federal laws, regulations, policies, and CDC General Terms and Conditions for Non-research awards at <https://www.cdc.gov/grants/federalregulationspolicies/index.html>, the Centers for Disease Control and Prevention (CDC) hereby incorporates Notice of Funding Opportunity (NOFO) number TP18-1802, entitled Cooperative Agreement for Emergency Response: Public Health Crisis Response – 2018 Opioid Crisis Cooperative Agreement, and application dated December 06, 2017, as may be amended, which are hereby made a part of this Non-research award, hereinafter referred to as the Notice of Award (NoA).

**Approved Funding:** Funding in the amount of \$4,182,276 is approved for the Year 01 budget period, which is September 1, 2018 through August 31, 2019. All future year funding will be based on satisfactory programmatic progress and the availability of funds.

The federal award amount is subject to adjustment based on total allowable costs incurred and/or the value of any third party in-kind contribution when applicable.

Note: Refer to the Payment Information section for Payment Management System (PMS) subaccount information.

**Financial Assistance Mechanism:** Cooperative Agreement

**Substantial Involvement by CDC:** This is a cooperative agreement and CDC will have substantial programmatic involvement after the award is made. Substantial involvement is in addition to all post-award monitoring, technical assistance, and performance reviews undertaken in the normal course of stewardship of federal funds.

CDC will provide substantial involvement beyond regular performance and financial monitoring during the project period. Substantial involvement means that applicants can expect federal programmatic partnership in carrying out the effort under the award. CDC will work in partnership with awardees to ensure the success of the cooperative agreement by:

- Providing cross-site and awardee-specific surveillance technical assistance such as providing tools to identify drug poisonings using ICD-9-CM, ICD-10, text searches and ICD-10-CM, if implemented during the award period;
- Providing technical assistance to revise annual work plans;
- Assisting in advancing program activities to achieve project outcomes;
- Providing scientific subject matter expertise and resources;
- Collaborating with awardees to develop evaluation plans that align with CDC evaluation activities; Providing technical assistance on awardee's evaluation and performance measurement plan; Providing technical assistance to define and operationalize performance measures;
- Facilitating the sharing of information among grantees;

- Participating in relevant meetings, committees, conference calls, and working groups related to the cooperative agreement requirements to achieve outcomes;
- Coordinating communication and program linkages
- Coordinating communication and program linkages with other CDC programs and Federal agencies, such as Centers for Medicare and Medicaid Services (CMS), Food and Drug Administration (FDA), the National Institutes of Health (NIH), the Substance Abuse and Mental Health Services Administration (SAMHSA), and the HHS Office of the National Coordinator for Health Information Technology (ONC)
- Translating and disseminating lessons learned through publications, meetings, surveillance measures and other means on promising and best practices to expand the evidence base.

CDC program staff will assist, coordinate, or participate in carrying out effort under the award, and recipients agree to the responsibilities therein, as detailed in the NOFO.

**Technical Review Statement Response Requirement:** The review comments on the strengths and weaknesses of the proposal are provided as part of this award. A response to the weaknesses in these statements must be submitted to and approved, in writing, by the Grants Management Specialist/Grants Management Officer (GMS/GMO) noted in the CDC Staff Contacts section of this NoA, no later than 30 days from the budget period start date. Failure to submit the required information by the due date, October 1, 2018, will cause delay in programmatic progress and will adversely affect the future funding of this project.

**Budget Revision Requirement:** By October 1, 2018 the recipient must submit a revised budget for the following:

**Salaries:** All vacant staff positions (Opioid Crisis Program Coordinator, Syndromic Surveillance Coordinator, Program Research Specialist, Evaluation Specialist, Program Research Specialist, Hourly Student/Epidemiologist, Project Coordinator/Manager, Buprenorphine Program Coordinator, EDs/Jail Technical Specialist, Health Program Administrator, Assistant Health Program Administrator, Data Manager/Epidemiologist, Program Aide, Opioid Program Coordinator, Research Scientist-Health Informatics, Evaluation Specialist) must be filled in a timely manner. All vacant staff positions must be filled in a timely manner. Costs are proposed to support positions identified as "To Be Determined" (TBD) at a 100% for a proposed 12 months. Grant funds must match the effort. To fund the position for a proposed 12 months would be considered forward funding and would therefore lead to an unobligated balance. Please notify OGS if the position has been filled since the submission of the application or if the position will be filled by the budget period start date of September 01, 2018. If the position remains vacant please notify OGS of the anticipated start date and reduce the proposed 12 months by to number of months it will take to fill the position and apply the difference to support current activities. If not, CDC may use these unobligated funds to offset subsequent year's funding.

**Travel Costs:** Dollars requested in the Travel category should be for recipient staff travel only.

In-state and Out-of-state travel costs to support the 2018 Opioid Overdose Crisis Cooperative Agreement Program, in the amount of \$ 20,030 for travel is pending the below items. Your submission is requested within 30 days of this award. The required travel items:

**For In-State Travel,** provide a narrative justification describing the travel staff members will perform. List proposed location for each travel request to be undertaken, who will be making the trips, and approximate dates. If mileage is to be paid, provide the number of miles and the cost per mile. If travel is by air, provide the estimated cost of airfare. If per diem/lodging is to be paid, indicate the number of days and amount of daily per diem, as well as the number of nights and estimated cost of lodging. Include the cost of ground transportation, when applicable.

**For Out-of-State Travel,** provide a narrative justification including the same information requested above. Include CDC meetings, conferences, and workshops, if required by CDC. Itemize Out-of-State Travel in the format described above for In-State Travel.

**NOTE:** The recipient organization must have current internal policies and procedures in place that clearly describe the process. Internal policies and procedures must be in compliance with the OMB circulars, GSA per diem regulations and 45 CFR Part 75.474. Additionally, the recipient is required to ensure All grant funds are properly tracked.

**Supplies:** \$2,686 An itemized list of all proposed supply expenditures must be provided along with method of calculation.

Failure to submit the required information in a timely manner may adversely affect the future funding of this project. If the information cannot be provided by the due date, you are required to contact the GMS/GMO identified in the CDC Staff Contacts section of this notice before the due date.

**Program Income:** Any program income generated under this grant or cooperative agreement will be used in accordance with the Addition alternative.

Note: The disposition of program income must have written prior approval from the GMO.

#### **FUNDING RESTRICTIONS AND LIMITATIONS**

##### **Financial Management Requirements and Exceptions**

1. This is one-time funding, and funds must be spent/expended within the performance and budget period. There is no provision for the payment of unliquidated obligations following the last day of the budget/performance period.
2. Recipients are required to coordinate activities funded under this guidance with all other CDC-funded and federally funded opioid prevention activities to ensure alignment and reduce duplication. Specifically, recipients are encouraged to coordinate plans as applicable with the single state agencies for substance use disorder services in their jurisdictions.
3. Public Health Crisis NOFO activities are structured within the six domains listed below. Recipients are expected to align budgets and work plans with respective domains outlined below. The Department of Health and Human Services and CDC will provide

ongoing oversight and monitoring of this cooperative agreement funding during the performance period.

#### **Direct Assistance**

Direct assistance (DA) is not available through this cooperative agreement.

Overlap in projects, budget items, or commitment of effort:

- Funds cannot be used for items covered by other federal sources.
- Funds cannot be used to match funding on other federal awards.

#### **Unallowable Costs**

- Research
- Purchase of naloxone
- Purchase of syringes
- Drug disposal programs (drop-boxes, bags or other devices, and/or take-back events) are not permissible under this funding opportunity
- Clinical care (except as allowed by law)
- Publicity and propaganda (lobbying)
  - o Funds cannot be used for the preparation, distribution, or use of any material (publicity/propaganda) or to pay the salary or expenses of grants, contract recipients, or agents that aim to support or defeat the enactment of legislation, regulation, administrative action, or executive order proposed or pending before a legislative body, beyond normal, recognized executive relationships. See Section VI. Revised Work Plan and Budget Narrative Submission for more information.

See [http://www.cdc.gov/grants/additional\\_requirements/index.htm#ar12](http://www.cdc.gov/grants/additional_requirements/index.htm#ar12) for detailed guidance on this prohibition and [http://www.cdc.gov/grants/documents/Anti-Lobbying\\_Restrictions\\_for\\_CDC\\_Grantees\\_July\\_2012.pdf](http://www.cdc.gov/grants/documents/Anti-Lobbying_Restrictions_for_CDC_Grantees_July_2012.pdf)

The direct and primary recipient in a cooperative agreement program must perform a substantial role in carrying out project outcomes and not merely serve as a conduit for an award to another party or provider who is ineligible.

Indirect costs are approved based on the Indirect Cost Rate Agreement dated May 12, 2017, which calculates indirect costs as follows, a Provisional is approved at a rate of 24.0% of the base, which includes, direct salaries and wages including all fringe benefits. The effective dates of this indirect cost rate are from April 1, 2018 to March 31, 2020. Cap on Salaries (Div. G, Title II, Sec. 203): None of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level II.

### **REPORTING REQUIREMENTS**

**Required Disclosures for Federal Awardee Performance and Integrity Information System (FAPIS):** Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information

related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services  
Corey D. Taylor, Grants Management Specialist  
Centers for Disease Control and Prevention  
OD, Environmental, Occupational Health & Injury Prevention Services Branch  
2960 Brandywine Rd  
Atlanta GA 30341  
Email: [WVE3@cdc.gov](mailto:WVE3@cdc.gov) (Include "Mandatory Grant Disclosures" in subject line)

AND

U.S. Department of Health and Human Services  
Office of the Inspector General  
ATTN: Mandatory Grant Disclosures, Intake Coordinator  
330 Independence Avenue, SW  
Cohen Building, Room 5527  
Washington, DC 20201

Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or  
Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov)

Recipients must include this mandatory disclosure requirement in all subawards and contracts under this award.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371. Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

CDC is required to report any termination of a federal award prior to the end of the period of performance due to material failure to comply with the terms and conditions of this award in the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS). (45 CFR 75.372(b)) CDC must also notify the recipient if the federal award is terminated for failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. (45 CFR 75.373(b))

**Additional Reporting Requirements:** Recipients must report fiscal and programmatic progress to determine if programs are meeting the timelines, goals, and objectives in their approved work plans.

Fiscal reports as defined in REDCap will be required on a monthly basis. CDC may adjust the frequency of these reports as necessary. For instance, jurisdictions functioning at the performance levels projected in approved work plans may move to quarterly reporting. Performance reports are required on a quarterly basis.

#### **PAYMENT INFORMATION**

*The HHS Office of the Inspector General (OIG) maintains a toll-free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste, or abuse under grants and*



cooperative agreements. Information also may be submitted by e-mail to [hhstips@oig.hhs.gov](mailto:hhstips@oig.hhs.gov) or by mail to Office of the Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous.

Corey D. Taylor, Grants Management Specialist  
Centers for Disease Control and Prevention, OFR, OD, Environmental, Occupational Health & Injury Prevention Services Branch  
2960 Brandywine Road, Mail Stop E01  
Atlanta, GA 30341-4146

**Payment Management System Subaccount:** Funds awarded in support of approved activities have been obligated in a newly established subaccount in the PMS, herein identified as the "P Account". Funds must be used in support of approved activities in the NOFO and the approved application. All award funds must be tracked and reported separately.

This award contains funding from multiple components. The grant document number identified at the bottom of Page 1 of the Notice of Award must be known in order to draw down funds.

Component: NCIPC
Document Number: 1 NU90TP921994OPCE

Component: CSELS
Document Number: 1 NU90TP921994OPOE

Component: NCHHSTP
Document Number: 1 NU90TP921994OPPS

#### **PROGRAM OR FUNDING SPECIFIC CLOSEOUT REQUIREMENTS**

The final programmatic report format required is the following.

**Final Performance Progress and Monitoring Report (PPMR):** This report should include the information specified in the NOFO and is submitted 90 days following the end of the period of performance via [www.grantsolutions.gov](http://www.grantsolutions.gov). At a minimum, the report will include the following:

- Statement of progress made toward the achievement of originally stated aims.
- Description of results (positive or negative) considered significant.
- List of publications resulting from the project, with plans, if any, for further publication.

Additional guidance may be provided by the GMS and found at:

<https://www.cdc.gov/grants/alreadyhavegrant/Reporting.html>

## **CDC Staff Contacts**

**Grants Management Specialist:** The GMS is the federal staff member responsible for the day-to-day management of grants and cooperative agreements. The GMS is the primary contact of recipients for business and administrative matters pertinent to grant awards.

### **GMS Contact:**

Corey D. Taylor, Grants Management Specialist  
Centers for Disease Control and Prevention  
Centers for Disease Control and Prevention OD, Environmental, Occupational Health & Injury  
Prevention Services Branch  
2960 Brandywine Rd  
Atlanta GA 30341  
Telephone: 770-488-2730  
Email: [WVE3@cdc.gov](mailto:WVE3@cdc.gov)

**Program/Project Officer:** The PO is the federal official responsible for monitoring the programmatic, scientific, and/or technical aspects of grants and cooperative agreements, as well as contributing to the effort of the award under cooperative agreements.

### **Programmatic Contact:**

Juliann Hudak, MPH  
Public Health Advisor  
Division of State and Local Readiness (DSLRL)  
Office of Public Health Preparedness and Response  
Centers for Disease Control and Prevention  
1600 Clifton Road, MS D-29  
Telephone: 470-270-0841  
E-Mail: [JHudak@cdc.gov](mailto:JHudak@cdc.gov)

**Grants Management Officer:** The GMO is the federal official responsible for the business and other non-programmatic aspects of grant awards. The GMO is the only official authorized to obligate federal funds and is responsible for signing the NoA, including revisions to the NoA that change the terms and conditions. The GMO serves as the counterpart to the business officer of the recipient organization.

### **GMO Contact:**

Shicann M. Phillips, Grants Management Officer  
Centers for Disease Control and Prevention  
OD/Environmental, Occupational Health & Injury Prevention Services Branch  
2960 Brandywine Road, MS: E-01  
Atlanta, Georgia 30341  
Telephone: 770-488-2809  
Email: [JBQ7@cdc.gov](mailto:JBQ7@cdc.gov)



**Contractor:**

Oneida County through the Health Department  
 185 Genesee St.  
 Adirondack Bank Building  
 Utica, NY 13501

**HRI Account Number(s):**  
 15-0941-01, 15-0686-06

**Contract Date:**  
 07/01/2018 - 08/31/2019

**HRI Contract Number:**  
 1577-12

**Payee's Reference #:**

\_\_\_\_\_  
**Contractor Project Director**

**Report for Period:** \_\_\_\_\_ to \_\_\_\_\_

Budget Items	Budget Amount	Cumulative Expenditures Prior Periods	Expenditures Current Period	Expenditures to Date	Balances
* Salary	\$50,267				
Fringe	\$27,496				
Supplies	\$11,521				
Travel	\$10,000				
* Equipment	\$4,000				
* Miscellaneous	\$21,361				
* Contractual	\$84,020				
* Admin/Indirect	\$0				
Restricted	\$125,000				
<b>Total Costs:</b>	<b>\$333,665</b>				

**Reimbursement Requested: \$**

**Expenditures under this contract may NOT exceed the maximum reimbursable amount of \$171,165.**

\* **NOTE:** Please attach REPORT OF EXPENDITURES to provide detail.

By signing this report, I hereby certify to the best of my knowledge and belief that the report is true, complete, and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)

**Approvals:**

HRI PI/Contract Manager: \_\_\_\_\_

Administration: \_\_\_\_\_

HRI: \_\_\_\_\_

**Contractor**

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

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

(Please Print)

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

**Email:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

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



# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

CHAD LAWRENCE  
Commissioner of Aviation

ANTHONY J. PICENTE, JR.  
County Executive

August 6, 2019

FN 20 19-292

Anthony J. Picente, Jr.  
Oneida County Executive 800 Park Avenue  
Utica, New York 13501  
RE: Lease Agreement — AX Enterprize

AIRPORT

## WAYS & MEANS

Dear Mr. Picente:

Please consider acceptance of this Lease Agreement between Oneida County, Department of Aviation and AX Enterprize, LLC.

The Lease Agreement provides for an initial term of five (5) years and provides \$266,040.00 of revenue during the initial period of the Lease. The Lease will automatically renew for an additional five-year term unless sooner terminated by one of the parties.

If you concur with this agreement, please forward this request to the Oneida County Board of Legislators for their consideration.

Sincerely,

Chad Lawrence  
Commissioner  
Oneida County Department of Aviation

Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 8-12-19

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:**

AX Enterprize, LLC  
4947 Commercial Drive  
Yorkville, NY 13495

**Title of Activity or Service:**

Lease Agreement for space in Building 100

**Proposed Dates of Operation:**

March 1, 2020 to February 28, 2025  
(Initial Term)

**Client Population/Number to be Served:** N/A

**Summary Statements**

- 1) Narrative Description of Proposed Services:  
This Lease Agreement will provide for lease 2,956 +/- of space in Building 100.
  
- 2) The total revenue generated from this Lease during the initial 5-year lease term will be \$266,040.00. The Lease provides for an automatic renewal period of 5 years.
  
- 3) Program Design and Staffing: N/A

**Total Funding Requested: \$266,040.00                      Account #: A5620**  
**(Revenue)**

**Oneida County Dept. Funding Recommendation: \$266,040.00 (Revenue)**

**Proposed Funding Sources (Federal \$/ State \$/County \$): THIS IS A REVENUE AGREEMENT**

**Cost Per Client Served: N/A**

**Past Performance Data: N/A**

**O.C. Department Staff Comments:**

# Griffiss International Airport



660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

**ANTHONY J. PICENTE, JR.**  
County Executive

**CHAD LAWRENCE**  
Commissioner of Aviation

## *LEASE AGREEMENT*

This LEASE AGREEMENT (hereafter referred to as the "Lease Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York, with its principal place of business located at 800 Park Avenue, Utica, NY 13501 (hereinafter referred to as "Landlord") and **AX ENTERPRIZE, LLC**, a limited liability company organized and existing under the laws of the State of New York with its principal place of business located at 4947 Commercial Drive, Yorkville, New York 13495 (hereinafter referred to as "Tenant").

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, and in consideration of the sum of \$1.00 lawful monies of the United States in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### **1. Description and Use.**

a. Landlord hereby rents to Tenant, and Tenant does hereby rent from Landlord, a total of 2,956 +/- square feet of office space within the building commonly referred to as "Building 100," situated at 592 Hangar Road, Rome, New York, as more particularly shown on **Exhibit A** annexed hereto, hereinafter referred to as "Demised Premises."

b. The Demised Premises shall be used by Tenant for the purpose of conduct of the business of Tenant.

c. Said use shall be conducted in compliance with applicable building and/or fire codes and Tenant shall comply with all the General Terms and Conditions annexed hereto as **Exhibit B**, which is hereby incorporated by reference.

### **2. Term.**

a. The Term of this Lease Agreement shall be for a period of five (5) years, commencing on March 1, 2020, or upon completion of the construction of the facilities should the completion be later than March 1, 2020, and ending on the last day of the sixtieth (60<sup>th</sup>) month of occupancy (the "Initial Term"), unless this Lease Agreement is sooner terminated in accordance herewith by either party providing sixty (60) days advance written notice.

b. This Lease Agreement shall automatically renew for an additional five (5) year period (the "Renewal Term"), unless Tenant provides Landlord written notice that it will not renew this Lease Agreement no less than sixty (60) days prior to the expiration of the Initial Term.

c. In the event the Tenant remains in possession of the Demised Premises after the expiration of the Initial Term or any Renewal Term, as the case may be, the Tenant shall be deemed to be occupying the Demised Premises as a Tenant from month-to-month, with the parties therefore subject to existing provisions of law and all of the conditions of this Lease Agreement insofar as they are applicable to a month-to-month tenancy until the Demised Premises are vacated by the Tenant or until the parties enter into a new agreement, whichever is sooner. Also, in this event, the Tenant hereby agrees that the rent to be charged during such month-to-month tenancy shall be increased by adding three percent (3%) to the base rent that was in effect during the immediately preceding twelve (12) months.

### **3. Base Rent.**

a. As and for the use of the Demised Premises, the Tenant shall pay Rent during the Initial Term of this Lease at a rate of \$18.00/sq. ft. per year, for a total annual Rent in the Initial Term of \$53,208.00, or \$4,434.00 per month.

b. Tenant hereby agrees that the rent to be charged during the Renewal Term shall be increased by adding three percent (3%) to the base rent that was in effect in the Initial Term. As and for or the use of the Demised Premises, the Tenant shall pay Rent during the Renewal Term of this Lease at an annual rate of \$54,804.24, or \$4,567.02 per month.

c. All monthly installment payments shall be due, in advance, on the 1<sup>st</sup> day of each and every month. The payment of Rent in monthly installments is for Tenant's convenience only and, in the event of Tenant's default, the Landlord shall have the right to accelerate payment and demand all sums due hereunder.

d. All such rental payments shall be made payable to the "County of Oneida" and remitted to 660 Hangar Road, Rome, NY 13441, or to such other address or addresses as the Landlord may, from time to time, designate. In the event any retroactive rental payments are due hereunder, payment of same shall be made on the first day of the next succeeding month.

### **4. Security Deposit.**

Tenant shall **NOT** be required to post a Security Deposit with the Landlord for the faithful performance of the terms and conditions of this Lease Agreement.

### **5. Insurance and Indemnification.**

a. During the term of the Lease Agreement, including all renewals, Tenant shall maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State where the property is located. The Insurance carrier must have at least an A- (excellent) rating by A. M. Best.

i. Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.

1) The CGL coverage shall include a General Aggregate Limit and such General Aggregate shall apply separately to each location.

2) CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.

3) County and all other parties required of the County shall be included as additional insureds. Coverage for the additional insureds shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured's.

ii. Aviation Commercial General Liability (ACGL) coverage with limits of Insurance of not less than \$10,000,000 each occurrence and \$10,000,000 Products/Completed Operations Aggregate limit.

- 1) Each Aircraft Limit of \$10,000,000;  
Each Loss Limit of \$10,000,000

2) County and all other parties required of the County, shall be included as additional insureds. Coverage for the additional insureds shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured's.

iii. Commercial Umbrella

- 1) Umbrella limits must be at least \$5,000,000.

2) Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.

3) Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured.

iv. Workers' Compensation and Employer's Liability

- 1) Statutory limits apply.

b. **Waiver of Subrogation.** Tenant waives all rights against Landlord and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, workers' compensation and employer's liability insurance maintained per requirements stated above.

c. **Certificates of Insurance.** Prior to occupancy, the Tenant shall provide a certificate of insurance to the Landlord. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Tenant's CGL Policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Landlord.

**d. Indemnification.**

i. Tenant further agrees to hold Landlord harmless from all claims and losses by reason of an accident or damage (including death) to any person or property happening on or about the Demised Premises arising from acts or omissions of Tenant or Tenant's agents, employees, or invitees; to the extent allowed by law, Tenant shall indemnify and hold Landlord harmless against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the Demised Premises or based upon any violation of any statute, ordinance, building code, or regulation, and the defense of any such claims or actions, resulting from the acts or omissions of Tenant or Tenant's agents, employees, or invitees.



ii. In the event that any claim in writing is asserted by a third party, which may entitle the Landlord to indemnification, Landlord shall give notice thereof to Tenant, which notice shall be accompanied by a copy of the statement of the claim. Following the notice, Landlord shall have the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If Tenant shall fail timely to defend, contest or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event Landlord decides to participate in the proceeding or defense, Landlord shall have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days' notice to Tenant, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto shall cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

iii. The indemnification provisions of this paragraph shall survive the expiration or termination of the Lease.

#### 6. General Terms and Conditions.

This Lease is subject to the General Terms and Conditions, annexed hereto and marked as **Exhibit B**, which is hereby incorporated by reference.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement which shall become effective as of the date first above written.

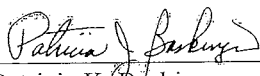
County of Oneida

AX Enterprize, LLC

By:

\_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

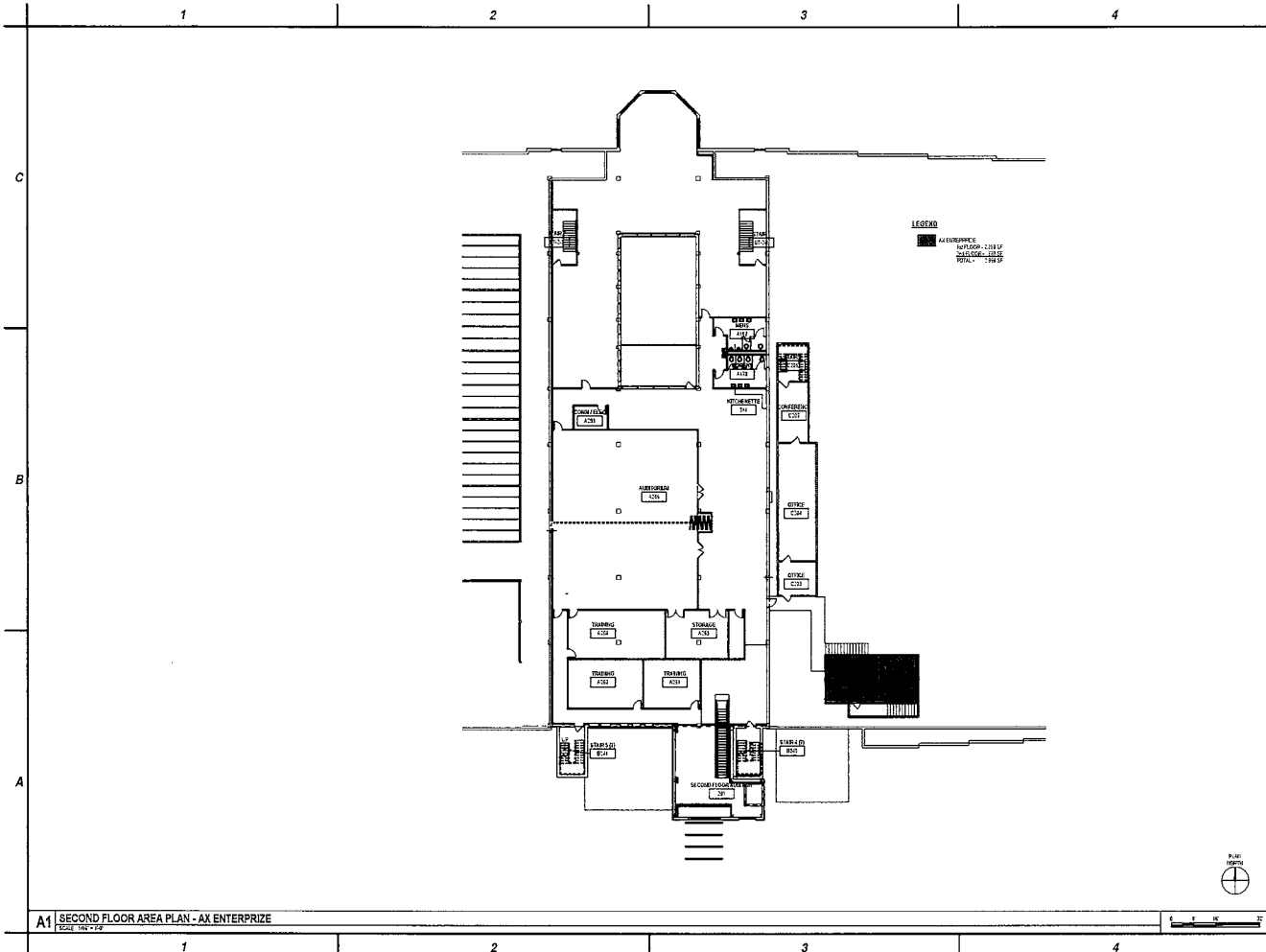
By:

  
\_\_\_\_\_  
Patricia K. Baskinger  
Chief Executive Officer

Approved:

  
\_\_\_\_\_  
Amanda Lynn Cortese  
Special Assistant County Attorney

# **Exhibit A**



A1 SECOND FLOOR AREA PLAN - AX ENTERPRIZE  
SCALE 1/8" = 1'-0"



C&S Architects, Engineers & Landscape Architects, PLLC  
460 C&A Eileen Collins Blvd.  
Syosset, New York 11732  
Phone: 315-455-2000  
Fax: 315-455-0987  
www.candsc.com



**GRIFFISS INTERNATIONAL AIRPORT  
HANGAR BUILDING 100  
RENOVATIONS  
ROME, NEW YORK**

MARK	DATE	DESCRIPTION
		REVISIONS
		PROJECT NO: 16342100
		DATE: MAY 2015
		DRAWN BY: A. M. BRUCE
		DESIGNED BY: -
		CHECKED BY: -

SECOND FLOOR  
AREA PLAN  
AX ENTERPRIZE

AP-C-102



# **Exhibit B**

## EXHIBIT B - GENERAL TERMS AND CONDITIONS

**1. Late Charge.** If any sum due from Tenant is not actually received by Landlord within fifteen (15) days of the date due, then Tenant shall pay a late charge of five percent (5%) of the amount due, in addition to any reasonable attorneys' fees, collection expenses, or interest incurred by Tenant's failure to make timely payments. Landlord shall have the right, but not the obligation, to provide Tenant with monthly or annual invoices for Rent payments; a timely payment of Rent is due regardless of the issuance of such invoices, or lack thereof.

**2. Proration of Rent.** In the event that the Term of this Lease Agreement begins or terminates on any date other than the first day or last day of a calendar month, the applicable Rent and charges for that month shall be paid for that month on a pro rata basis according to the number of days in that month during which the Demised Premises was enjoyed by Tenant.

**3. Delivery of Rent.** Rent checks shall be made payable to "County of Oneida" and shall be mailed or delivered to: 660 Hangar Road, Rome, NY 13441, or to such other place or places as Landlord may, from time to time, designate, in writing.

**4. Security Deposit.** The Security Deposit, if any, shall be returned to Tenant upon expiration or termination of this Lease Agreement after Tenant has vacated the Premises, provided that Tenant has fully and faithfully carried out all of the terms and provisions of this Lease Agreement, including but not limited to the prompt payment of Rent and any other sums due Landlord. No interest shall be payable by Landlord to Tenant on account of such Security Deposit. Landlord shall have the right, but not the obligation, to apply all or any part of such Security Deposit to cure any default of Tenant, and if Landlord does so, Tenant shall upon demand by Landlord, deposit with Landlord the amount necessary for Landlord to have at all times on hand the full amount of the Security Deposit required under this Lease Agreement, and if Tenant fails to restore such Security Deposit to the full deposit amount within three (3) days after receipt of such demand, such failure shall constitute a material breach of the Lease Agreement.

**5. Permitted Uses; Prohibited Uses.**

a. The Demised Premises shall be used by the Tenant only for the purposes identified in the Lease Agreement, and for no other use. Painting, other than minor touch up of an aircraft, is prohibited within the Demised Premises unless otherwise approved by Landlord and the local fire marshal. Storage of non-aviation items in the Demised Premises is not allowed. Kerosene or gas-fired heaters or any type of open-flame heaters or devices are prohibited in the Demised Premises.

b. In that the Demised Premises are located at the Griffiss International Airport, Tenant shall not use the Demised Premises in a manner that would violate the rules and regulations of the Federal Aviation Administration or the Griffiss International Airport (hereinafter referred to as "Airport"). Tenant acknowledges that Tenant has conducted Tenant's own investigation and has determined that the Demised Premises are suitable for Tenant's intended use.

c. Tenant will not make or permit any use of the Demised Premises that would be (1) offensive so as to constitute a nuisance; (2) unlawful under any federal, state, or county code, ordinance, or regulation; (3) injurious to any person or property; (4) prohibited by a New York standard form fire insurance policy; or (5) which may increase or cause the Landlord to incur liability under any laws relating to the use and storage of hazardous materials.

**6. Ingress and Egress.** Tenant shall have reasonable right of ingress and egress across Landlord's adjoining property in common with others in order to obtain access to the Demised Premises. The ramp areas and taxi-lanes adjacent to the Demised Premises shall be and are deemed to be right-of-way and

common areas to which the Tenant shall have non-exclusive access to and use of for the Term of this Lease Agreement and any renewals thereof.

**7. Utilities and Services.** Landlord shall be responsible for providing all utilities and services, including without limitation, electricity, water, gas and sewer services furnished to the Demised Premises, without contribution or apportionment from the Tenant. The Landlord shall not be liable for any interruption or delay in such utility services unless such delay or interruption is caused by the Landlord's negligence or willful misconduct.

**8. Casualty.** In the event that the Demised Premises or the means of access thereto, shall be damaged by fire or any other cause, the Rent payable hereunder shall not abate, provided that the Demised Premises are not rendered unusable by such damage. If the Demised Premises are rendered unusable as determined by Rome City Fire or Codes personnel and Landlord elects to repair the same, the Rent shall abate for the period during which such repairs are being made, provided the damage was not caused by the acts or omissions of Tenant or Tenant's employees, agents or invitees. If Tenant or Tenant's employees, agents, or invitees caused such damage, the Rent shall not abate. If the Demised Premises are rendered unusable and Landlord elects not to repair the same, this Lease Agreement shall be terminable at the option of either party.

**9. Environmental Obligations and Indemnity.**

a. Tenant shall not permit the Demised Premises to be contaminated with any environmental hazard and Tenant shall not store hazardous waste or materials, contaminants, or flammable materials, except that the Tenant may maintain only limited amounts of hazardous or flammable materials in approved storage containers on or about the Demised Premises required for the normal course of conducting Tenants business. Aviation fuels, gasoline and other like products will be stored in designated locations and storage facilities and will comply with all Federal, State and Local laws, environmental compliance laws and regulations and comply with local fire codes. Tenant shall indemnify, protect, and hold Landlord harmless from any environmental damage resulting from Tenant's use of the Demised Premises, and, if such environmental damage resulting from Tenant's use of the Demised Premises is discovered, Tenant shall promptly undertake and pursue diligently appropriate steps to repair the damage. Furthermore, Tenant shall notify Landlord, in writing, of any incident or occurrence which results in environmental damage within twenty-four (24) hours after such incident or occurrence or following the discovery of same.

b. The environmental indemnification provisions of this paragraph shall survive the expiration or termination of the Lease.

**10. Obligations of Landlord.** Landlord will maintain the structural components of the Demised Premises, including hangar doors and hangar door mechanisms, and Landlord will provide normal building maintenance without additional cost to Tenant. Tenant shall have at all times the reasonable right of ingress to and egress from the Demised Premises over and across the Landlord's adjoining premises, in common with others. To ensure this right, Landlord shall make all reasonable efforts to keep areas adjacent to the Demised Premises free and clear of all hazards and obstructions, natural or man-made.

**11. Obligations of Tenant.**

a. **Storage.** The Demised Premises shall be used only as described in this Lease Agreement.

b. **Maintenance and Repair.** Tenant shall maintain the Demised Premises in a neat and orderly condition, and shall keep all areas clean and clear of oil, grease or toxic chemicals. Tenant shall maintain only limited amounts of hazardous or flammable materials in approved storage containers within or about the Demised Premises. No boxes, crates, rubbish, paper or other litter shall be permitted to accumulate within or about the Demised Premises.

**c. Damage.** Tenant shall be responsible for all damage to the Demised Premises caused by use or negligence of Tenant, or Tenant's agents, employees, or invitees. Tenant shall be responsible for all damage to property, real or personal, located on or about the Demised Premises caused by the use or negligence of Tenant, or Tenant's agents, employees, or invitees. Landlord reserves the right to make such repairs, at Tenant's expense, which shall be deemed "additional rent" and shall become due and payable as part of Tenant's next monthly Rent payment. Tenant shall make no structural, electrical, or other modification to the Demised Premises without first obtaining Landlord's written permission and obtaining any permits, if required.

**d. Tenant's Personal Property.** All personal property placed or moved into the Demised Premises shall be at the risk of Tenant or owner thereof, and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from any act of negligence of any other tenant or occupant at the Airport. Tenant agrees and understands that Tenant is responsible for the proper securing of personal property and shall further indemnify and hold Landlord harmless for any damage or liability caused by improper securing of personal property. Landlord shall not be responsible for any loss from theft, vandalism, or act of God, and all personal property stored upon the Demised Premises is at Tenant's sole risk.

**e. Compliance with Laws.** Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by federal, state, or local government agencies or by Landlord. Tenant shall be responsible for obtaining and complying with all governmental permits required for Tenant's use and occupancy of the Demised Premises, if any. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all federal, state and local laws, ordinances, rules and regulations protecting the environment. Tenant agrees to keep itself reasonably informed of future changes in the existing environmental laws. Tenant agrees to cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

**f. Fire Extinguisher.** Tenant shall maintain at all times, in the Demised Premises, a minimum of two (2) approved twenty (20) pound dry chemical portable fire extinguishers suitable for use on Class "A", "B", and "C" fires with a current inspection certificate from an approved fire equipment company affixed.

**g. Surrender upon Termination.** On the expiration or termination of the Lease Agreement, Tenant shall immediately surrender possession of the Demised Premises and shall remove aircraft and all other property therein, leaving the Demised Premises in the same condition as when received, ordinary wear and tear excepted. Tenant shall be liable for any and all damage to the Demised Premises caused by the use or negligence of Tenant or Tenant's agents, employees, or invitees, including, but not limited to, damage to doors or interior walls by being bent or broken or damage to floors due to fuel or oil spillage. If Tenant fails to remove such items from the Demised Premises and to repair such damage upon vacating the premises, then Landlord may remove the items and repair the damages, and Tenant shall promptly pay the costs and expenses of such removal and repairs upon proper demand by Landlord.

**h. Compliance with All Resolutions, Rules, Regulations, and Standards.** Tenant acknowledges that Landlord operates an airport, and resolutions, rules, regulations, and standards must be adopted by Landlord and modified from time to time in order to promote the orderly operation and development of the Airport. Therefore, Tenant agrees to be bound by all terms and provisions of any resolutions, rules, regulations, and standards that may from time to time be adopted by Landlord, provided that such resolutions, rules, regulations, and standards do not increase the Rent to be paid by Tenant. The parties agree that Tenant's use of the Demised Premises and any rights conferred to Tenant in this Lease Agreement shall be subject to Landlord's minimum standards, as amended from time to time, Tenant shall be given advance notice of any proposed change or addition to such rules, regulations, and standards, and Tenant shall be given an opportunity to be heard thereon. All the terms, conditions, and covenants of this Lease Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties.

**i. Signs.** Tenant shall not erect or post any signs without the Landlord's written permission.



**j. Covenant of Continuous Operations and Not to Abandon or Vacate.** Tenant hereby covenants that during the Term, the Tenant will continue its operations for the entire length of the Lease and not cease operations, and further covenants not to abandon, to continuously occupy, and not to vacate the Demised Premises prior to the expiration of the Term without a Surrender Agreement with the Landlord in place. Abandonment and/or vacation of the Demised Premises shall be defined to include but not be limited to the cessation of operations, or abandonment of Tenant-owned or third party-owned property at the Demised Premises unattended, or removal of substantial portions of Tenant's property from the Demised Premises, other than in the normal course of Tenant's business. The Tenant acknowledges that any failure to so continuously operate, and/or any abandonment or vacation of the Demised Premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to continuously operate its business in the Demised Premises and/or return to its business in the Demised Premises, and the Tenant hereby consents to such injunction or order, in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which causes expense to the Landlord, including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of the Term.

**k. Personnel Badging Requirement.** Tenant acknowledges that any personnel employed, contracted, visiting or conducting business with the Tenant that require airport movement area access require the appropriate badging or badged escort for entry onto the movement area. Badging of personnel must be coordinated through the Oneida County Department of Aviation Administrative offices. There is a fee for the badging process, and payment of said fee is the sole responsibility of the Tenant separate and apart from payment under this Lease Agreement.

**12. Nondiscrimination.** Notwithstanding any other provision of this Lease Agreement, during the Term of this Lease Agreement, Tenant for itself, its heirs, personal representatives, successors in interest, and/or assigns, as the case may be, as part of the consideration for this Lease Agreement, does hereby covenant and agree that:

**a.** No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Demised Premises on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

**b.** In the construction of any improvements on, over, or under the Demised Premises, and the furnishing of services therein or thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

**c.** Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such regulations may be amended.

**d.** In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease Agreement and to reenter and repossess the Demised Premises and hold the premises as if this Lease Agreement had never been made or issued. The provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, have been followed and completed, including the exercise or expiration of appeal rights.

**13. Reservation of Rights by Landlord.**

**a. Development.** Landlord reserves the right to further develop and improve the Airport as Landlord sees fit, without interference or hindrance, but taking into consideration the desires and views of Tenant, and for purposes of developing and improving the Airport, Landlord reserves the right upon reasonable notice to enter upon the Demised Premises and make improvements to same. Landlord shall

make every effort to minimize the disruption of normal Airport usage during periods of repair or further development of the Airport.

**b. Relocation.** Landlord reserves the right upon thirty (30) days written notice to relocate Tenant to a similar size facility in other areas of the Airport at Landlord's sole expense.

**c. National Emergency.** Landlord further reserves the right, during time of war or national emergency, to lease the landing area or common areas of the Airport to the United States Government or the State of New York for military use or for natural disaster relief operations, and if such a lease is executed with the federal or state government, the terms of this Lease Agreement which are inconsistent with the lease to the government shall be temporarily suspended and rent shall be abated accordingly during the tenancy by the government.

#### **14. Right of Access and Inspection.**

**a.** Landlord will retain a key for access to the Demised Premises. Tenant will not change locks without prior notice and agreement of Landlord.

**b.** Landlord shall have the right to make reasonable inspections of the Demised Premises between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, exclusive of federal holidays. Landlord shall have the right at any other time to enter the Demised Premises for security, fire, other emergencies, or making repairs.

**15. Assurance Agreements.** This Lease Agreement is subordinate to the provisions of any and all existing and future agreements between the Landlord and the State of New York or the United States of America relative to the operation, maintenance, or development of the Airport, the execution of which may be required as a condition precedent to the expenditure of funds for the development of the Airport, or any part thereof.

**16. Federal Aviation Administration Requirements.** In the event that the Federal Aviation Administration (FAA) or its successors require modification or change in this Lease Agreement as a condition precedent to (1) the granting of funds for the improvement of the Airport, or (2) as a condition precedent to compliance with FAA regulations or standards, Tenant agrees to consent to such amendments, modifications, or changes to this Lease Agreement as may be reasonably required to either obtain such funds or comply with such regulations or standards. However, in no event shall Tenant be required pursuant to this paragraph to agree to a reduction in size of the Demised Premises, or a change in the authorized use to which Tenant has put the Demised Premises without an adjustment in Rent.

**17. Airspace.** As a condition of this Lease Agreement, Landlord reserves unto itself, its successors, and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Demised Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, or operating on the Airport. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Demised Premises to such a height in compliance with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Demised Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

**18. No Grant of Exclusive Right or Privilege.** Notwithstanding anything contained in this Lease Agreement that may be, or may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease Agreement are non-exclusive, and Landlord reserves the right to grant similar privileges to another tenant or other tenants on other parts of the Airport. Nothing in this Lease Agreement shall be construed as granting an exclusive right or privilege other than the right of Tenant to

possess and to peacefully enjoy the use of the Demised Premises in accordance with this Lease Agreement.

**19. Sublease.**

a. Tenant shall not enter into any sub-agreement or sub-lease of the Demised Premises or assign its rights under this Lease Agreement without prior written approval of Landlord. Tenant shall not either voluntarily, or by operation of law, assign, or transfer the leasehold interest granted by this Lease Agreement or any interest therein, and shall not sublet the Demised Premises or any part thereof, or any right or privilege appurtenant thereto, nor allow the sale or transfer of a majority interest or majority ownership of Tenant, without first obtaining the written consent of the Landlord. The consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment, subletting, or encumbrance. Any such subsequent assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default of this Lease Agreement.

b. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or Guarantor, if any, from any obligations and/or liabilities of Tenant or Guarantor, if any, to pay the Rent and to perform all other obligations required of Tenant by this Lease Agreement. The acceptance of the Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease Agreement. In the event of a default by any assignee or subtenant of Tenant in the performance of any of the terms of this Lease Agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against an assignee or subtenant.

**20. Condition of Premises.** Tenant shall accept, and has accepted, the Demised Premises in its present condition, AS IS, without any liability or obligation on the part of either Landlord or Tenant to make any alterations, improvements or repairs of any kind on or about the Demised Premises.

**21. Disclaimer of Warranty and Responsibility for Securing Aircraft.** Tenant accepts all facilities on the Premises on an "as is" basis. Landlord hereby disclaims, and Tenant accepts such disclaimer, of any warranty, either express or implied of the condition, use, or fitness of the tie-down rings, ropes, chains, or other apparatus used to secure airplanes, and Tenant assumes full responsibility to furnish any equipment necessary to properly secure Tenant's aircraft. Tenant agrees and understands that Tenant is responsible for the proper tie down or securing of aircraft inside or outside of the Demised Premises and shall further indemnify and hold harmless the Landlord for any damage or liability caused by improper tie down or securing. Landlord shall not be liable for any loss from theft, vandalism or act of God, and all aircraft are stored or parked on the Demised Premises or Airport at Tenant's sole risk.

**22. Alterations; Liens.**

a. Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Demised Premises without the prior written approval of Landlord. All fixtures installed or additions and improvements made to the Demised Premises shall become Landlord's property and shall, at the election of the Landlord, remain in the Demised Premises at the expiration or termination of this Lease Agreement without compensation or payment to Tenant. Tenant shall not suffer or permit any lien to be filed against the Demised Premises or any part of Landlord's interest, by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the Demised Premises or any part thereof under Tenant. If any such lien is filed against the Demised Premises or Landlord's interest, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, and shall incur all charges in procuring the release of such lien.

b. Tenant agrees to pay all lawful and valid liens affecting Landlord's fee title to the Demised Premises placed against Tenant by its contractors, subcontractors, mechanics, laborers, material men, and other items of like character, and indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and reasonable attorneys' fees incurred in the defense of any suit in

discharging the Demised Premises or any part thereof from any such liens, or lawful and valid judgments, or encumbrances caused by Tenant.

c. Tenant shall not have any authority to create any liens for labor or material in the Rent interest owned by Landlord or Landlord's interest in the Demised Premises by any persons contracting with Tenant for the destruction or removal of any facilities or other improvements or for the construction, erection, installation, alteration, or repair of any facilities or other improvements on or about the Demised Premises. All materialmen, contractors, subcontractors, mechanics, and laborers, are hereby charged with notice that they must look only to Tenant and to Tenant's interests in the property in the Demised Premises to secure the payment of any bill for work done or materials furnished at the request or instruction of Tenant.

**23. Events of Default by Tenant.** The occurrence of any of the following shall constitute an event of default under this Lease Agreement:

a. Tenant fails to pay any part or all the money due Landlord under this Lease Agreement, and such non-payment continues for a period of thirty (30) days after written notice;

b. Tenant fails to perform or breaches any term, covenant, or provision of this Lease Agreement, and such non-performance or breach is not cured within thirty (30) days after written notice of the default from Landlord is delivered to Tenant;

c. Tenant is the subject a voluntary or involuntary petition for bankruptcy protection (including a petition for reorganization or an agreement), Tenant makes a general or other assignment for the benefit of creditors, or Tenant's assets or operations become subject to the control of a court-appointed receiver;

d. Landlord determines that Tenant is not in compliance with the terms of this Lease Agreement on a routine or consistent basis.

e. The failure of Tenant to comply with any terms or conditions of the Lease or to the General Terms and Conditions set forth herein shall be considered a material breach and default of this Lease Agreement.

**24. Remedies on Default by Tenant.** In the event of any default of this Lease Agreement by Tenant, Landlord shall have the right, at its earliest option, to pursue any one or more of the following remedies, in addition or in place of the remedies otherwise provided herein or by statute, without notice and demand whatsoever to Tenant or Guarantor, if any:

a. Landlord shall have the right to terminate this Lease Agreement and to enter upon and take possession of the Demised Premises and to remove the aircraft and any other property of Tenant from the Demised Premises without being deemed guilty of trespass, breach of peace or forcible entry and detainer and without prejudice to any other remedy for possession or arrearage in Rent, and Tenant expressly waives the service of any notice. Tenant agrees to pay Landlord on demand the amount of all loss or damage which Landlord may suffer by reason of such termination, including the expenses of retaking, re-renting the Demised Premises, and loss of Rent through the inability to re-let the Demised Premises.

b. Landlord shall have the right to enter upon and take possession of the Demised Premises, and re-let the Demised Premises and receive the Rents therefore without thereby terminating or avoiding this Lease Agreement. Tenant agrees to pay Landlord on the due date of each month thereafter sums equivalent to the monthly Rent payable under this Lease Agreement, less the avails of re-letting, if any.

c. Exercise by Landlord of either or both of the rights specified above shall not prejudice Landlord's right to pursue any other legal remedy available to Landlord in law or equity, including, but not limited to, court costs and attorneys' fees for bringing legal action against Tenant. All of the foregoing rights, remedies, powers, and elections of Landlord are cumulative, and pursuit of any of the foregoing shall not preclude other remedies provided by law, nor shall such pursuit constitute a forfeiture or waiver of any rent due to Landlord or of any damages occurring to Landlord by reason of the violation of any of the provisions of this Lease Agreement. Forbearance by Landlord to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default.

d. Tenant agrees that no assent, express or implied, by Landlord to any breach of this Lease Agreement by Tenant shall be deemed to be a waiver of any succeeding breach by Tenant.

e. All sums due under this Lease Agreement shall be paid by Tenant to Landlord without any setoff or counterclaim whatsoever and all past due sums shall bear interest at the maximum legal rate per annum. The subsequent acceptance of Rents under this Lease Agreement by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease Agreement, other than the failure to pay the particular Rents so accepted, regardless of Landlord's knowledge of such preceding default at the time of accepting the Rents.

**25. Landlord's Lien.** Tenant hereby gives and grants to Landlord a lien upon, and pledges as collateral to the Landlord in case of default, all fixtures, chattels and personal property of every kind and description now or hereafter to be placed, installed, or stored by Tenant at the Airport, and Tenant agrees that in the event of any failure on the part of Tenant to comply with each and every one of the covenants and obligations hereof, or in the event of any default continuing for sixty (60) days of any specified rent, Landlord may take possession of and sell the same in any manner provided by law and may credit the net proceeds upon an indebtedness due, or damage sustained by Landlord without prejudice to further claims thereafter to arise under the terms of this Lease Agreement.

**26. Notices.** All notices to the parties shall be sent or delivered to that party at the address first written for that party in this Lease Agreement, or at such other address as may, from time to time, be designated by such party. All notices shall be in writing and shall be either personally to the other party in hand with proof of delivery or by certified mail, return receipt requested, and postage prepaid. Notices sent or delivered by mail in accordance with this paragraph shall be deemed to have been given five (5) business days after the date of mailing, and all other notices delivered by any other means with proof of delivery, such as hand delivery or express delivery, shall be deemed to have been given when received.

**27. Miscellaneous Provisions.**

a. **Successors Bound.** This Lease Agreement shall not be effective or binding on any party until fully executed. All of the covenants, conditions and obligations of this Lease Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, successors, and assigns of the parties, as the case may be.

b. **Joinder by Guarantor; Personal Guarantee.** By joining in the execution of this Lease Agreement, Guarantor, if any, hereby unconditionally guarantees performance of each and every obligation of Tenant created in this Lease Agreement. Guarantor waives any requirement of notice of non-payment or non-performance, proof, or demand, as a condition for liability by Guarantor. Guarantor expressly agrees that the validity of this Lease Agreement and the obligations of this personal guarantee shall in no way be terminated, affected, or impaired by reason of assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of this Lease Agreement, or by Landlord granting any indulgence or giving of additional time to Tenant for the performance of any of the obligations of this Lease Agreement. This personal guarantee shall remain in full force and effect as to any amendment, modification, renewal, extension, or otherwise, of this Lease Agreement. Landlord need not pursue any remedies against Tenant before enforcing this personal guarantee against Guarantor. If there is more than one person or entity signing this Lease Agreement as Guarantor, the obligations imposed by this Lease Agreement on Guarantor shall be joint and several.

c. **Construction of Agreement.** Words of any gender used in this Lease Agreement shall be construed to include any other gender, and words in singular number shall be held to include the plural, and vice versa, when the sense requires. The headings or captions for paragraphs or subparagraphs in this Lease Agreement are for convenience only and are not a part of this Lease Agreement and do not in any way limit or expand the terms and provisions of this Lease Agreement.

d. **Judicial Interpretation.** If any provision of this Lease Agreement becomes subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply

the presumption or rule of construction that the terms of this Lease Agreement be more strictly construed against the party which itself or through its counsel prepared the same, because all parties have participated in the preparation of the final form of this Lease Agreement through review and negotiation of terms, and therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

**e. Severability.** In the event that any provision of this Lease Agreement is determined to be invalid, illegal, or unenforceable for any reason, then the parties shall negotiate in good faith and agree on such amendments or modifications to this Lease Agreement, or such other appropriate actions, that will to the maximum extent practicable in light of such determination, give effect to the intentions of the parties as reflected in this Lease Agreement, and all other provisions of this Lease Agreement, as amended, modified, or otherwise, shall remain in full force and effect, but if, after good faith negotiations, the parties fail to reach an agreement regarding the invalid, illegal, or unenforceable provisions, then the parties agree that such provisions shall be severed from this Lease Agreement and such severance shall not invalidate any other provision of this Lease Agreement or this Lease Agreement itself.

**f. Joint Obligations.** If there is more than one person or entity signing this Lease Agreement as Tenant, the obligations imposed by this Lease Agreement on Tenant shall be joint and several.

**g. Entire Agreement.** This Lease Agreement contains the entire agreement between the parties, and no prior or independent agreements or understandings between the parties pertaining to the renting of the Demised Premises shall be effective for any purpose. Tenant acknowledges that any representations, statements, or negotiations made by Landlord or by any of Landlord's staff, employees, counsel, or any other agent, do not suffice to legally bind Landlord, unless such representations have been reduced to writing and fully executed by all of the parties.

**h. Written Modifications.** No provision of this Lease Agreement may be changed or modified except by an agreement in writing executed by all of the parties or their successors in interest with the same formality as the original agreement.

**i. Venue; Law.** Venue for all court proceedings to enforce or interpret this Lease Agreement or determine the liabilities and obligations of the parties shall be in Oneida County, New York, and such proceedings shall be governed by the laws of the State of New York.

**j. Subordination.** Upon request of Landlord, Tenant will in writing subordinate Tenant's rights under this Lease Agreement to the lien of any mortgage or deed of trust, to any lender, bank, insurance company or lending institution, or the requirements of any grant for funding that may be sought by Landlord.

**k. Relationship of Parties.** Tenant shall never at any time during the term of this Lease Agreement become the agent of Landlord, and Landlord shall not be responsible for the acts or omissions of Tenant or Tenant's agents. Nothing in this Lease Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between the parties other than the relationship of landlord and tenant.

**l. Attorneys' Fees.** It is understood and agreed between the parties hereto that in the event of any litigation between the parties, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the losing party.









# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.  
County Executive

CHAD LAWRENCE  
Commissioner

July 3, 2019

Anthony J. Picente, Jr  
Oneida County Executive  
800 Park Avenue  
Utica, NY 13501

FN 20 19-283  
AIRPORT

Re: Design Agreement, Electronic & Optic Labs Building 100

## WAYS & MEANS

Dear County Executive Picente,

Please consider acceptance of a consultant agreement with C&S Engineers in the amount of \$148,000.

The project includes the preliminary design of the Electronic & Optic Labs in Building 100 as specified and provided by Rome LAB.

The cost of this agreement will be paid from capital Account H-589.

If you concur, please sign and send back to the Department of Aviation for distribution.

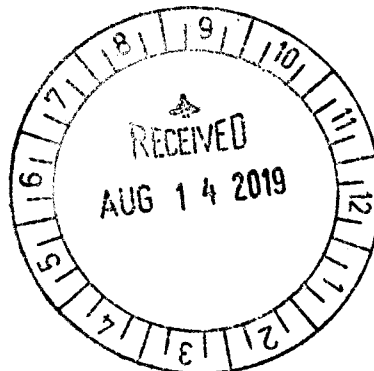
Thank you for your assistance in this matter.

Chad Lawrence  
Commissioner of Aviation

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 8-13-19



Competing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u>  X  </u>

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:**

C&S Engineers, Inc.  
499 Col. Eileen Collins Blvd  
Syracuse, NY 13212

**Title of Activity or Service:**

Consultant Agreement for design of the  
Electronic Optic Labs in Building 100

**Proposed Dates of Operation:**

**Client Population/Number to be Served:** N/A

**Summary Statements**

1) Narrative Description of Proposed Services:

**This is a contract for Design of the Electronic Optic Labs in Building 100 at Griffiss International Airport. The agreement is in the amount of \$148,000.00.**

2) Program/Service Objectives and Outcomes:

**Accomplishment of the design of the Electronic Optic Lab**

3) Program Design and Staffing: N/A

**Total Funding Requested: \$148,000.00      Account #: H-5.89**

**Oneida County Dept. Funding Recommendation:**

**Proposed Funding Sources : State \$ 0      County \$148,000**

**O.C. Department Staff Comments:**

**LUMP SUM  
CONSULTANT AGREEMENT  
FOR  
DESIGN  
OF  
ELECTRONIC AND OPTIC LABS IN BUILDING 100  
AT  
GRIFFISS INTERNATIONAL AIRPORT  
ROME, NEW YORK**

**ONEIDA COUNTY CONTRACT NO: XXXXXXXXXXXXX**  
H19589CS D01

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# LUMP SUM CONSULTANT AGREEMENT

FOR

DESIGN

**PROJECT: DESIGN ELECTRONIC AND OPTIC LABS IN BUILDING 100  
Griffiss International Airport**

This Agreement, made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2019, is by and between the County of Oneida, a New York municipal corporation, having an address at 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the "SPONSOR"), and C & S Engineers, Inc., a New York business corporation having its principal offices at 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212 (hereinafter referred to as the "CONSULTANT").

**WITNESSETH:** That the SPONSOR and the CONSULTANT, for and in consideration of the mutual obligations set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

## ARTICLE 1—DESCRIPTION OF SERVICES TO BE PERFORMED

The SPONSOR hereby retains the CONSULTANT because of its ability and reputation, and the CONSULTANT accepts such retention, to perform for the SPONSOR the services of the Project more particularly described in Schedule(s) "A", which is attached hereto and made a part hereof (the "Basic Services"). The SPONSOR's resolution or other authorization for retaining the CONSULTANT is attached hereto and made a part hereof as Schedule "E". The SPONSOR has completed or will complete a "Certification for Selection of Consultant" in connection with the execution of this Agreement, a copy of which is attached hereto and made a part hereof as Schedule "D".

## ARTICLE 2—PROVISION FOR PAYMENT -- TIME FOR PERFORMANCE

The SPONSOR shall pay to the CONSULTANT, and the CONSULTANT shall accept, as full compensation for the performance by the CONSULTANT of the Basic Services a lump sum fee of \$ **148,000.00**, which covers salaries of employees assigned to the Project, all indirect costs, all direct expenses, and profit. The maximum fee under this Agreement cannot be exceeded for any reason, unless Additional Services are authorized and performed in accordance with the provisions of Article 11 of this Agreement.

Partial payments of the lump sum fee shall be made monthly on account. The portion of the fee billed for the CONSULTANT's Basic Services will be based upon the CONSULTANT's estimate of the proportion of the total Basic Services actually completed and expenses actually incurred at the time of billing. Payment of the final invoice will be made upon the substantial completion of the Basic Services covered by the lump sum fee.

If the SPONSOR fails to make any payment due the CONSULTANT for services and expenses within forty-five (45) days after receipt of the CONSULTANT's invoice therefor, then the CONSULTANT may, after giving seven (7) days' notice to the SPONSOR, suspend services under this Agreement until the invoice is paid. Upon payment in full by the SPONSOR, the CONSULTANT shall resume performance or furnishing of services under

this Agreement, and the time schedule and compensation set forth in Schedule(s) "B" hereto shall be equitably adjusted to compensate for the period of suspension.

Execution of this Agreement by the SPONSOR and the CONSULTANT constitutes the SPONSOR's written authorization to the CONSULTANT to proceed as of the above-written date with the performance of Basic Services as set forth in Schedule(s) "A". The time for completion of the Basic Services under this Agreement, subject to the provisions of Articles 11, 12, and 22 hereof, shall be as recorded in Schedule(s) "A".

#### **ARTICLE 3—STANDARD OF CARE, STANDARD PRACTICES, AND REQUIREMENTS**

The standard of care for all engineering and related services performed or furnished by the CONSULTANT under this Agreement shall be the care and skill ordinarily used by members of the CONSULTANT's profession practicing under similar conditions at the same time and in the same locality. Before beginning to perform or furnish any service hereunder, the CONSULTANT shall ascertain the standard practices of the SPONSOR, the NYS DOT, and the FAA, if any, for projects of a type similar to this Project. Where the CONSULTANT deems it practicable to do so, the services to be provided or furnished under this Agreement shall be performed in accordance with these standard practices as long as they are consistent with the standard of care. If any of these standard practices are inconsistent with the CONSULTANT's standard of care or are in conflict with one another, or if strict adherence to the same is impossible, then the CONSULTANT shall advise the SPONSOR of such conflict or impossibility. The CONSULTANT and the SPONSOR shall then meet to resolve such conflict or address such impossibility. In the event that such conflict cannot be resolved in consonance with the CONSULTANT's standard of care or such impossibility cannot be addressed in consonance with the CONSULTANT's standard of care, then the CONSULTANT and the SPONSOR shall terminate this Agreement and enter into a reformed Agreement with adjustments to the services to be performed and the compensation to be paid or terminate this Agreement pursuant to the terms and conditions set forth in Article 11 hereinafter.

#### **ARTICLE 4—ENTIRE AGREEMENT**

This Agreement, with its accompanying Schedule or Schedules and Addendum, constitutes the entire agreement between the SPONSOR and the CONSULTANT with respect to its subject matter, and supersedes any prior agreement, whether written or verbal, with respect to that subject matter. This Agreement may be amended or modified only by written instrument signed by the SPONSOR and the CONSULTANT.

#### **ARTICLE 5—TAXES, ROYALTIES, AND EXPENSES**

The CONSULTANT shall pay all taxes, royalties, and expenses incurred by the CONSULTANT in connection with performing its services under this Agreement, unless otherwise provided in Article 2.

## ARTICLE 6—INDEMNIFICATION AND INSURANCE

- 6.1. Indemnification. The CONSULTANT agrees that it shall defend, indemnify and hold harmless the COUNTY from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the work of the CONSULTANT and its subconsultants, agents, servants, or employees, and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the CONSULTANT and its subconsultants or failure on the part of the CONSULTANT and its subconsultants to comply with any of the covenants, terms or conditions of this agreement.
- 6.2. Insurance Requirements. CONSULTANT shall procure and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by COUNTY. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence work in until such insurance has been approved by COUNTY. The certificates shall be on forms approved by COUNTY. Acceptance of the certificates shall not relieve CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. COUNTY reserves the right to require CONSULTANT to provide insurance policies for review by COUNTY. CONSULTANT grants COUNTY a limited power of attorney to communicate with CONSULTANT's insurance provider and/or agent for the express purpose of confirming the coverages required hereunder.
- 6.3. Commercial General Liability Insurance. The CONSULTANT agrees that it will, at its own expense, at all times during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than One Million Dollars (\$1,000,000.00). The CONSULTANT agrees to have the COUNTY added to said insurance policies as a named additional insured, on a primary, non-contributory basis, as its interests may appear, and to provide the COUNTY with a certificate from said insurance company, or companies, showing coverage as herein before required, such certificate to show the COUNTY as an additional insured and to provide that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.4. Professional Liability Insurance. The CONSULTANT shall maintain a professional liability policy, including errors and omissions, and will provide the COUNTY with proof of coverage in the amount of One Million Dollars (\$1,000,000.00) per incident and One Million Dollars (\$1,000,000.00) aggregate. The CONSULTANT agrees that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.5. CONSULTANT shall maintain Auto Liability insurance in an amount equal to or greater than \$1,000,000.00 for the duration of this Agreement. The CONSULTANT agrees to have the COUNTY added to said insurance policies as a named additional insured, on a primary, non-contributory basis, as its interests may appear, and to provide the COUNTY with a certificate from said insurance company, or companies, showing coverage as herein before required, such certificate to show the COUNTY as an additional insured and to provide that coverage shall not be terminated without written prior notice to the County of at least thirty (30) days.
- 6.6. Workman's Compensation insurance shall be procured and maintained by CONSULTANT in accordance with New York State Law.

6.7. CONSULTANT shall require any subconsultant to procure and maintain insurance coverage of the same type and in the same amounts with the same endorsements required of the CONSULTANT in paragraphs 6.3, 6.4, 6.5, and 6.6 above.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the SPONSOR beyond such as may legally exist irrespective of this Article or this Agreement.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the SPONSOR nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the SPONSOR and the CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

The provisions of this Article 6 shall survive termination or expiration of this Agreement.

#### **ARTICLE 7—LABOR LAW REQUIREMENTS**

The CONSULTANT, and any subconsultant or subcontractor retained by it in connection with the performance or furnishing of services under this Agreement, shall comply with the requirements of state or federal statutes, regulations, or orders applicable to the employment of employees, as set forth in Schedules “H”, “I” and “J”, which are attached hereto and made a part hereof.

#### **ARTICLE 8—NONDISCRIMINATION PROVISIONS**

During the performance of its services under this Agreement, the CONSULTANT, and any subconsultant, subcontractor, or vendor retained by it, shall comply with the nondiscrimination requirements set forth in Schedules “H” and “I” hereto, as applicable to this Project.

The CONSULTANT will include the provisions of Schedules “H”, “I” and “J” in every subconsultant agreement, subcontract, or purchase order in such a manner that such provisions will be binding upon each subconsultant, subcontractor, or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing such provisions of such subconsultant agreement, subcontract, or purchase order as the SPONSOR may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation by a subconsultant, subcontractor, or vendor as a result of such direction by the SPONSOR, the CONSULTANT shall promptly so notify the SPONSOR’s legal counsel, requesting such counsel to intervene and protect the interests of the SPONSOR.

#### **ARTICLE 9—ASSIGNMENT REQUIREMENTS**

The CONSULTANT specifically agrees that:

- A. It is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement or of its right, title, or interest herein, or its power to execute this Agreement, to any other person, company, or corporation without the previous consent in writing of the SPONSOR, and the Commissioner of the NYSDOT.
- B. If this provision of the Agreement is violated, the SPONSOR may terminate this Agreement for cause in



accordance with the provisions of Article 12. Furthermore, the SPONSOR shall be relieved from any liability and obligation hereunder to the person, company, or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement in violation of the foregoing paragraph (A), and such transferee shall forfeit and lose all monies assigned to it under this Agreement, except so much as may be required to pay its employees.

#### **ARTICLE 10—ADDITIONAL SERVICES**

If authorized in writing by the SPONSOR through a Supplemental Agreement, the CONSULTANT shall furnish or obtain from others any service that is beyond the scope of Schedule(s) "A" ("Additional Services"). The scope, and time for performance, and payment from the SPONSOR to the CONSULTANT for, any Additional Services (which shall be on the basis set forth in Schedule(s) "B") shall be set forth in such Supplemental Agreement.

#### **ARTICLE 11—ABANDONMENT OR AMENDMENT OF PROJECT AND TERMINATION**

A. **ABANDONMENT OR AMENDMENT OF THE PROJECT**—The SPONSOR shall have the absolute right to abandon or to amend its Project or to change the general basis of performance at any time, and such action on its part shall in no event be deemed a breach of this Agreement. If the SPONSOR amends its Project or changes the general basis thereof, and the CONSULTANT is of the opinion that Additional Services are made necessary thereby, then the provisions of Article 10 of this Agreement with respect to Additional Services shall apply. If the SPONSOR abandons the Project, then the provisions of paragraph B(1)(b) below shall govern payment to the CONSULTANT.

B. **TERMINATION**

The obligation to provide further services under this Agreement may be terminated:

1. **For Cause:**

- a. By either party upon thirty (30) days' prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as the result of such substantial failure if the party receiving notice begins, within seven (7) days after receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within thirty (30) days of such receipt; provided that, if and to the extent that such substantial failure cannot reasonably be cured within such thirty (30)-day period, and if the party has diligently attempted to cure the failure and thereafter continues diligently to cure the problem, then the cure period may, in the discretion of the terminating party, be extended to sixty (60) days after the receipt of notice.
- b. By the CONSULTANT upon seven (7) days' written notice if (a) the CONSULTANT believes that it is being requested by the SPONSOR to perform or furnish services contrary to or in conflict with the CONSULTANT's responsibilities as a licensed design professional or the standard of care set forth in Article 3 hereof; or (b) the CONSULTANT's services are delayed or suspended for more than ninety (90) days, consecutively or in the aggregate, for reasons beyond the CONSULTANT's control; or (c) the SPONSOR has abandoned, or is considered to have abandoned, the Project.

2. **For convenience** by the SPONSOR, effective upon the receipt of notice by the CONSULTANT.

C. PAYMENTS UPON TERMINATION

1. **For Cause:**

- a. By the SPONSOR: If the SPONSOR terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT and its subconsultants, subcontractors, and vendors through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for cause during any phase of Basic Services, the CONSULTANT will also be paid for such services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". The CONSULTANT will also be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services to the extent that such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses.
- b. By the CONSULTANT: If the CONSULTANT terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed or furnished by the CONSULTANT and its subconsultants, subcontractors, or vendors through the completion of such phase shall constitute total payment for such services. The CONSULTANT shall also be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" hereto measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

2. **For convenience**

If the SPONSOR terminates this Agreement for convenience upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for convenience during any phase of Basic Services, the CONSULTANT will also be paid for such services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". Additionally, the CONSULTANT will be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services through the effective date of termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

**ARTICLE 12—SUSPENSION OF SERVICES**

If the CONSULTANT's services hereunder are delayed or suspended, in whole or in part, by the SPONSOR for more than ninety (90) calendar days, consecutively or in the aggregate, through no fault of the CONSULTANT, then the CONSULTANT may consider the Project to have been abandoned by the SPONSOR and may terminate

this Agreement for cause.

Upon the SPONSOR's resumption of its Project, and if the CONSULTANT has not terminated this Agreement for cause, the CONSULTANT shall resume its services under this Agreement until the services are completed and accepted, subject to any adjustment in the rates set forth in Schedule(s) "B" because of the passage of time.

#### **ARTICLE 13—INTERCHANGE OF DATA**

During the performance of this Agreement, all technical data in regard to the Project whether (a) existing in the office of the SPONSOR or (b) existing in the office of the CONSULTANT, shall be made available to the other party to this Agreement without expense to such other party.

#### **ARTICLE 14—DISPOSITION OF PROJECT DOCUMENTS**

At the time of completion of its services and upon payment in full therefor, the CONSULTANT shall make available to the SPONSOR copies of documents prepared as the result of this Agreement. These documents shall then become the property of the SPONSOR and the maintenance of the data therein shall be the sole responsibility of the SPONSOR. Any reuse of the documents by the SPONSOR or others on extensions of the Project, or on any other project, without written verification or adaptation by the CONSULTANT and its subconsultants, subcontractors, or vendors, as appropriate, for the specific purpose intended will be at the SPONSOR's sole risk and expense and without liability or legal exposure to the CONSULTANT or its subconsultants, subcontractors, or vendors. The SPONSOR shall indemnify the CONSULTANT, its subconsultants, subcontractors, and vendors against, and hold them harmless from, all claims, damages, losses, and expenses (including reasonable expert and attorneys' fees) arising out of or resulting from such reuse.

In the event that this Agreement is terminated for any reason, then within ten (10) days after such termination, the CONSULTANT shall make available to the SPONSOR all data and material prepared under this Agreement, including cover sheets, in accordance with and subject to the terms of the above paragraphs.

#### **ARTICLE 15—CODE OF ETHICS**

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any service under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, as amended, and Schedule "G", which is attached hereto and made a part hereof.

#### **ARTICLE 16—INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with its status as an independent contractor, shall conduct itself consistent with such status; shall neither hold itself out as nor claim to be an officer or employee of the SPONSOR by reason hereof; and shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the SPONSOR, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

#### **ARTICLE 17—PATENT RIGHTS AND COPYRIGHTS**

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-

how, data, and findings, shall be made available without cost to the State of New York or its licensees and the FAA for public use. No material prepared in connection with this Project shall be subject to copyright. The State and the FAA shall have the right to publish, distribute, disclose, or otherwise use any material prepared under this Project, subject to the provisions of Article 14 hereof.

#### **ARTICLE 18—NEW YORK STATE PARTICIPATION**

The State of New York is not a party to this Agreement and no reference in this Agreement to the Commissioner of Transportation or any representative thereof, or to any rights granted to the Commissioner of Transportation or any representative thereof or the State of New York by the Agreement, makes the State of New York a party to this Agreement.

The CONSULTANT and the SPONSOR agree that properly authorized officials of the State of New York may from time to time inspect all Project documents for the purpose of insuring compliance with New York State laws and protecting the interests of the State of New York.

#### **ARTICLE 19—FEDERAL PARTICIPATION**

The CONSULTANT and the SPONSOR agree that properly authorized officials of the FAA may from time to time inspect all Project documents for the purpose of insuring compliance with Federal laws and protecting the interests of the FAA.

#### **ARTICLE 20—MISCELLANEOUS**

- A. The CONSULTANT shall require all persons employed to perform services hereunder, including its subconsultants or subcontractors, vendors, agents, officers, and employees, to comply with applicable laws in the jurisdiction in which the Project is located.
- B. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- C. By execution of this Agreement, the CONSULTANT represents that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining any approval of this Agreement.
- D. Any notice required under this Agreement shall be in writing, addressed to the appropriate party at the address set forth above, and shall be given personally; by registered or certified first-class mail, postage prepaid and return receipt requested; by facsimile transmission, with confirmation of receipt; or by a nationally-recognized overnight courier service, with proof of receipt. Notice shall be effective upon the date of receipt. For purposes of this Agreement, failure or refusal to accept receipt shall constitute receipt nonetheless. Either party may change its address for notice by giving notice to the other in accordance with the terms of this paragraph.
- E. This Agreement, and the interpretation and enforcement of the provisions hereof, is governed by the laws of the State of New York.
- F. SPONSOR acknowledges that:
  - CONSULTANT is not recommending any action to SPONSOR or other obligated person hereunder that would cause CONSULTANT to be considered a municipal advisor for purposes of the Securities and Exchange Commission Registration of Municipal Advisors Rule, 78

Fed. Reg. 67468 (2013);

- CONSULTANT does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) to SPONSOR or other obligated person with respect to the information and material contained in this Agreement or any Project deliverable; and
- SPONSOR or other obligated person should discuss any information and material contained in this Agreement or Project deliverable with any and all internal or external advisors and experts that SPONSOR or other obligated person deems appropriate before acting on this information or material.

G. As the Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Project Contractor's method of determining prices, or over competitive bidding or market conditions, the Consultant's opinions of probable Project Costs and Construction Costs, if required as part of the Scope of Services for the Project, are to be made on the basis of experience and qualifications and represent the Consultant's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but the Consultant cannot and does not guarantee that proposals, bids, or actual Project Costs or Construction Costs will not vary from opinions of probable cost prepared by the Consultant.

#### **ARTICLE 21— SUBCONSULTANTS/SUBCONTRACTORS AND VENDORS**

All subconsultants and subcontractors performing services for or work on this Project shall be bound by the same required provisions of this Agreement as is the CONSULTANT. As set forth above, all agreements between the CONSULTANT and a subconsultant, subcontractor, or vendor shall include all standard required contract provisions, and such agreements shall be subject to review by the NYSDOT and the FAA.

#### **ARTICLE 22 — FORCE MAJEURE**

Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including, but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; loss of utility services; blizzard; flood; fire; labor unrest; strikes; war; riot; or any cause the party is unable to prevent with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay. Additionally, if the delay resulting from any of the foregoing increases the cost of or time required by CONSULTANT to perform its services hereunder in an orderly and efficient manner, then CONSULTANT shall be entitled to an equitable adjustment in schedule and/or compensation.

#### **ARTICLE 23 — DISPUTE RESOLUTION**

A. The SPONSOR and the CONSULTANT agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them prior to exercising their right under Section 24B below. The thirty-day period may be extended upon mutual agreement of the parties.

- B. If any dispute cannot be resolved pursuant to paragraph (A) above, and only if mutually agreed by SPONSOR and CONSULTANT, said dispute and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or the breach of any provision hereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to a party initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding. The cost of mediation shall be shared equally between the parties.
- C. Any dispute that cannot be resolved pursuant to paragraphs A and B above shall be adjudicated by a court of competent jurisdiction in Oneida County, New York.

IN WITNESS WHEREOF, this Agreement has been executed by the SPONSOR, acting by and through the County Executive, who has caused the seal of his or her office to be affixed hereto, and by the CONSULTANT, acting by and through a duly-authorized officer, effective the day and year first above-written, subject to the approval of the Commissioner of the NYSDOT, the State Comptroller, and the FAA.

**SPONSOR**  
**ONEIDA COUNTY, NEW YORK**

**CONSULTANT**  
**C&S ENGINEERS, INC.**

By: \_\_\_\_\_  
 Hon. Anthony J. Picente, Jr.

By: \_\_\_\_\_  
 Jeffrey D. Palin, P.E.  
 Vice – President, Ind/Air and Private Facilities

Title: County Executive

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

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

Date: 6/18/19

Approved  
 \_\_\_\_\_

Oneida County Attorney

**SCHEDULE A**  
**SCOPE OF WORK**

**PROJECT TITLE:** ELECTRONIC AND OPTIC LABS BUILDING 100  
**AIRPORT NAME:** GRIFFISS INTERNATIONAL AIRPORT  
**SERVICES PROVIDED:** DESIGN

**PROJECT DESCRIPTION:**

The CONSULTANT shall provide required professional services to design electronic and optic labs in building 100 as described on plan A-101 attached at the end of this schedule.

All equipment and furnishings for the Labs shall be specified and provided by Rome LAB the Sponsors tenant for the lab space.

Professional services to be provided by the CONSULTANT shall include civil, electrical, structural, mechanical, plumbing, and fire protection services as applicable, required to accomplish the following items ("Basic Services"):

The project schedule is anticipated to be as follows:

	<u>Anticipated Completion Date</u>
Contract Execution	June 1, 2019
Notice to Proceed Design (NTP)	June 15, 2019
Preliminary Design (50%)	July 15, 2019
Final Design	August 15, 2019
Quality Control Reviews, 100% Submittal	August 30, 2019
Advertise	September 15, 2019
Receive Bids	September 30, 2019
Contracts to County for execution/County legal	October 15, 2019
Receive contracts back from County	October 30, 2019
NTP	November 15, 2019
Substantial completion	February 15, 2020

**PRELIMINARY DESIGN PHASE**

The Preliminary Design Phase is intended to identify and evaluate alternatives to provide cost-effective and practical solutions for the work items identified. The CONSULTANT will evaluate alternatives through contacts with local authorities, review of the preapplication, field investigations, and a practical design approach. The Project's design will take advantage of local knowledge and experience and will utilize expertise from recent construction projects in an effort to design a cost-effective Project. The specific services to be provided or furnished for this Phase of the project are the following:

1. Schedule and conduct a pre-design meeting with the COUNTY to review the Scope of Services and become familiar with the Project requirements and operational concerns during the Project's construction.

2. Acquire and review record documents (such as plans, specifications, reports, and studies) to become familiar with data that is available for the project.
3. Perform a preliminary Project site inspection to further familiarize the design team with building and major components.
4. Perform a preliminary environmental review, including the collection and review of available documents such as environmental studies, asbestos, and lead paint survey to identify potential impacts the Project may have on the environment.
5. Perform Code review in accordance with New York State current building code.
6. Preliminary design of electronic and optic labs. Specific items include the following:
  - Design of preliminary floor plan
  - Design of HVAC system
  - Design of plumbing system
  - Design of electrical and lighting systems
  - Design of Fire Alarm and fire Suppression Systems
7. Schedule and conduct a meeting with the SPONSOR to review the preliminary design.
8. Prepare preliminary opinion of probable construction costs for each major element of the Project.

#### **FINAL DESIGN PHASE**

The services included under this Phase shall generally consist of services required to furnish the COUNTY with a complete set of Contract Documents for the Project, including Final Plans, Specifications, and opinion of probable construction costs. Services to be performed or furnished during this Phase may include revising the preliminary submittal information to comply with COUNTY comments and then completion of the final design. Plans and Specifications will be completed; final design will be coordinated with the COUNTY; and a complete set of bid documents will be furnished to the COUNTY. A final opinion of probable construction cost will also be prepared and submitted. A final Construction Phasing and Operations Plan will be included as part of the specifications.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Final design of bldg. #100 Electronic and Optic Labs
- 2.
3. Final design of HVAC.
4. Final design of plumbing system.
5. Final design of electrical and lighting systems.
6. Final design of communication/security system.
7. Fire alarm and fire suppression systems.



8. Finalize General Specifications and prepare written Technical Specifications for all construction materials and installations. Finalize construction phasing and operations plan and include in Specifications.
9. Prepare final opinion of probable construction costs based upon the actual bid items and quantity takeoffs.
10. Submit draft final documents to COUNTY for final review and comment. Schedule and conduct draft final review meeting with COUNTY to discuss and resolve final comments.
11. Reproduce and submit sufficient copies of bid documents to COUNTY for bidding purposes. Bid documents shall consist of the Contract Drawings and Specifications.

## **BID PHASE**

The Bid Phase is that time frame between completion of the design process and beginning of actual construction when the COUNTY publicly advertises and receives bids, awards contracts to the lowest responsible bidder, and executes a construction contract to perform the work with the successful contractor(s). The CONSULTANT shall assist the COUNTY during this Phase as required.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Assist COUNTY in the advertisement of the Project and issuance of bid documents.
2. Receive and respond as required to questions from potential bidders regarding the Contract Documents.
3. Schedule and conduct pre-bid conference(s) as requested by COUNTY and advise COUNTY on matters relating to design. Prepare meeting minutes of the pre-bid conference(s).
4. Prepare addenda to the bid documents after advertisement and prior to bidding as required upon the COUNTY'S approval.
5. Attend bid opening. Upon receipt of bids, perform bid reviews. The bid review shall include items such as a check of the contractor's bid extensions, bid security, execution of bid, non-collusive bidding certificate, EBO certification, statement of surety's intent, addenda receipt, eligibility certification, corporate bidder's certification, non-discrimination statement and nonsegregated facilities certificate. Request evidence of competency and evidence of financial responsibility from the contractor. Review contractor's list of personnel, list of equipment, and financial statement. Formal contact of the contractor's references shall be made upon COUNTY's request or if the contractor has no past working relationship with CONSULTANT and COUNTY.
6. Prepare a final bid tabulation, recommendation / rejection of award to the COUNTY, and a sample award letter.
7. Upon award of contract, prepare conformed copies of contracts; coordinate contractor's execution of contract; review contractor's bonds, insurance certificates; review contractor's submission with COUNTY and coordinate COUNTY'S execution of the contract.
8. Coordinate Notice to Proceed (NTP) for construction.

**END OF SCHEDULE A-1**



***C&S Engineers, Inc.-Schedule B***

(PUBLISHED RATES VALID THROUGH 12/31/19)

<u>TITLE</u>	<u>RATE/HR.</u>
Senior Principal/Group Manager	\$195
Principal Engineer/Architect/Dept. Mgr/Program Mgr	\$160
Managing Engineer/Architect/Geologist	\$145
Chief Engineer/Architect	\$145
Senior Project Engineer/Architect	\$125
Project Engineer/Architect/Environmental Scientist	\$110
Environmental Scientist	\$100
Engineer/Architect	\$95
Geologist	\$90
Staff Engineer/Architect	\$90
Senior Designer	\$85
Designer/Design Technician	\$80
CADD Operator	\$75
Environmental Analyst	\$72
Administrative Assistant	\$60

External Expenses: Billed at cost plus 5%

Services by Others: Subcontractors will be invoiced at cost plus 5%  
to cover administrative expenses.

## SCHEDULE "D"

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
AIRPORT IMPROVEMENT PROGRAM  
SPONSOR CERTIFICATION**

**SELECTION OF CONSULTANTS**

<i>(Sponsor)</i>	<i>(Airport)</i>	<i>(Project Number)</i>
Design Electronic and Optic Labs Building 100	Griffiss Int'l Airport	146.149

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General standards for selection of consultant services within Federal grant programs are described in Title 49, Code of Federal Regulations (CFR), Part 18.36. Sponsors may use other qualifications-based procedures provided they are equivalent to specific standards in 49 CFR 18 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standard.

	Yes	No	N/A
1. Solicitations were (will be) made to ensure fair and open competition from a wide area of interest.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. For contracts over \$100,000, consultants were (will be) selected using competitive procedures based on qualifications, experience, and disadvantaged enterprise requirements with the fees determined through negotiations.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. A record of negotiations has been (will be) prepared reflecting considerations involved in the establishment of fees, which are not significantly above the sponsor's independent cost estimate.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. If engineering or other services are to be performed by sponsor force account personnel, prior approval was (will be) obtained from the FAA.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. The consultant services contracts clearly establish (will establish) the scope of work and delineate the division of responsibilities between all parties engaged in carrying out elements of the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Costs associated with work ineligible for AIP funding are (will be) clearly identified and separated from eligible items in solicitations, contracts, and related project documents.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Yes	No	N/A
7. Mandatory contract provisions for grant-assisted contracts have been (will be) included in consultant services contracts.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. The cost-plus-percentage-of-cost methods of contracting prohibited under Federal standards were not (will not be) used.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. If the services being procured cover more than the single grant project referenced in this certification, the scope of work was (will be) specifically described in the advertisement, and future work will not be initiated beyond five years.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have prepared documentation attached hereto for any item marked "no" that is correct and complete.

Oneida County Dept. of Aviation  
 \_\_\_\_\_  
*(Name of Sponsor)*

\_\_\_\_\_  
*(Signature)*  
 Mr. Chad Lawrence  
 \_\_\_\_\_  
*(Typed Name of Sponsor's Designated Official Representative)*

Commissioner of Aviation  
 \_\_\_\_\_  
*(Typed Title of Sponsor's Designated Official Representative)*

\_\_\_\_\_  
*(Date)*

END OF SCHEDULE

## **SCHEDULE E**

**(RESOLUTION TO BE INSERTED)**

SCHEDULE H  
AIRPORT AID PROGRAM

**A/E SERVICES REQUIRED FEDERAL CONTRACT PROVISIONS**

For purposes of this schedule the term "Contractor" or "Consultant" shall refer to "Consultant" as that term is defined in the Agreement to which this schedule is attached.

**ACCESS TO RECORDS AND REPORTS**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. Sponsor will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Sponsor reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Sponsor elects to terminate the contract. The Sponsor's notice will identify a specific date by which the Contractor must correct the breach. Sponsor may proceed with termination of the contract if the Contractor fails to correct the breach by deadline indicated in the Sponsor's notice. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

**GENERAL CIVIL RIGHTS PROVISIONS**

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the contractors and sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

**CIVIL RIGHTS – TITLE VI ASSURANCES.**

**Title VI Solicitation Notice:**

The Sponsor in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

**Compliance with Nondiscrimination Requirements**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.



3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts, and authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income

populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the Sponsor immediately upon discovery. The Sponsor assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceed \$150,000.

## CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

### 1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

### 2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) above, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) above.

### 3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) above.

### 4. Subcontractors.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

## CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

## CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction", must verify each lower tier participant of a "covered transaction" under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.

3. Inserting a clause or condition in the covered transaction with the lower tier contract

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

### **DISADVANTAGED BUSINESS ENTERPRISES**

**Contract Assurance (§ 26.13)** - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

**Prompt Payment (§26.29)** - The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from Sponsor. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Sponsor to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. Sponsor encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

### **TEXTING WHEN DRIVING**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, Sponsor encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

### **ENERGY CONSERVATION REQUIREMENTS**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

### **EQUAL OPPORTUNITY CLAUSE**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and

remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

### **CERTIFICATION REGARDING LOBBYING**

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

### **RIGHTS TO INVENTIONS**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within in the 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental or research work.

### **SEISMIC SAFETY**

In the performance of design services, the Contractor agrees to furnish a building design and associated construction specification that conform to a building code standard which provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Contractor agrees to furnish the Sponsor a "certification of compliance" that attests conformance of the building

design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

## TERMINATION OF CONTRACT

**Termination for Convenience-**The Sponsor may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Contractor. Upon receipt of the notice of termination, except as explicitly directed by the Sponsor, the Contractor must immediately discontinue all services affected. Upon termination of the Agreement, the Contractor must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Contractor under this contract, whether complete or partially complete. Sponsor agrees to make just and equitable compensation to the Contractor for satisfactory work completed up through the date the Contractor receives the termination notice. Compensation will not include anticipated profit on non-performed services. Sponsor further agrees to hold Contractor harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

**Termination for Default-**Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Sponsor:** The Sponsor may terminate this Agreement in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Sponsor approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project;
  3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Sponsor all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Sponsor agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Sponsor further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Sponsor determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Sponsor issued the termination for the convenience of the Sponsor.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Sponsor:
1. Defaults on its obligations under this Agreement;
  2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
  3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Sponsor agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Sponsor and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Sponsor's breach of the contract.

In the event of termination due to Sponsor breach, the Engineer is entitled to invoice Sponsor and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Sponsor agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror -

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and
- c. has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
- (2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
- (3) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

## VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

END OF SCHEDULE

## SCHEDULE I

### NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

#### A. Standard Clauses For All New York State Contracts (Appendix A).

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee, or any other party):

1. **Executory Clause.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Comptroller's Approval.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$5,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective, or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **Worker's Compensation Benefits.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **Non-Discrimination Requirements.** 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **Non-Collusive Bidding Requirement.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **International Boycott Prohibition.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 240,1 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment, or modification thereto shall be rendered forfeit and void. The contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination, or disposition of appeal (2 NYCRR 105.4).
9. **Set-Off Rights.** The State shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **Records.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
11. **Identifying Information and Privacy Notification:**
  - (a) **Federal Employer Identification Number and/or Federal Social Security Number.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, (i.e., the seller's or lessor's identification number). The number is either the payee's Federal employee identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.
  - (b) **Privacy Notification.**
    - (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
    - (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.
12. **Equal Employment Opportunities For Minorities And Women.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a



contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

Contractor will include the provisions of "a", "b", and "c", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. **Conflicting Terms.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. **Governing Law.** This contract shall be governed by the laws of the State of New York except where the federal supremacy clause requires otherwise.
15. **Late Payment.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.
16. **No Arbitration.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. **Service of Process.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), contractor hereby consents to service of process upon it be registered or certified mail, return receipt request. Service hereunder shall be complete upon contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. **Prohibition on Purchase of Tropical Hardwoods.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility

of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. Macbride Fair Employment Principles. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (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 Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.
20. Omnibus Procurement Act of 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.  
Information on the availability of New York State subcontractors and suppliers is available from:  
NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St --7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>  
  
A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development Division of Minority and Women's Business Development 30 South Pearl St --2nd Floor Albany, New York 12245 Telephone: 518-292-5250 Fax: 518-292-5803 <http://www.empire.state.ny.us>  
The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million: a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.
21. Reciprocity And Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
22. Compliance with New York State Information Security Breach and Notification Act. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
23. Compliance with Consultant Disclosure Law. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.
24. Procurement Lobbying. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made

in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. Certification of Registration To Collect Sales And Compensating Use Tax By Certain State Contractors, Affiliates And Subcontractors. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

END OF SCHEDULE

SCHEDULE J

ADDENDUM - STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses, which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

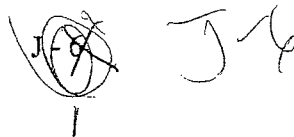
2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:


- i. No federal appropriated funds have been paid or will be paid, by or on

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## SCHEDULE J

behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

- ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - C. Are not presently indicted or otherwise criminally or civilly

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charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.05 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

2) The Contractor's policy of maintaining a drug-free workplace ;

3) Any available drug counseling, rehabilitation, and employee assistance program ; and

4) The penalties that may be imposed upon , an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the

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## SCHEDULE J

Contract, the employee will:

- 1) Abide by the terms of the statement; and
  - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

Griffiss International Airport – Building 100

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## SCHEDULE J

d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten [http://csbst1/auroraweb/BST\\_Proddb.asp](http://csbst1/auroraweb/BST_Proddb.asp) (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building Campus,  
Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

#### 4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information :
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health



## SCHEDULE J

information electronically; and

- iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  - ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  - iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  - iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  - v. Make available protected health information in accordance with 45 CFR §164.524;
  - vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;

## SCHEDULE J

- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
  - viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
  - ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

### 5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this

## SCHEDULE J

Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

### 6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

### 7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

### 8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

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accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

### 9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief: (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

### 10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

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### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

### 12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

### 13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

### 14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

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In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

### 15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

### 16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account, which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented.

## SCHEDULE J

Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida

## SCHEDULE J

County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, "on Oneida County property" shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.





**C&S Companies**  
499 Col. Eileen Collins Blvd.  
Syracuse, NY 13212  
p: (315) 455-2000  
f: (315) 455-9667  
[www.cscos.com](http://www.cscos.com)

June 19, 2019

Mr. Chad Lawrence  
Griffiss International Airport  
660 Hangar Road  
Suite 223  
Rome, NY 13441

Re: *Consultant Agreement for Design of  
Electronic and Optic Labs in Building 100*

Dear Mr. Lawrence:

Enclosed find six (6) C&S Engineers, Inc. executed copies of the above referenced agreement.

If you have any questions or require any additional information, please do not hesitate to contact our office. Thank you.

Sincerely,

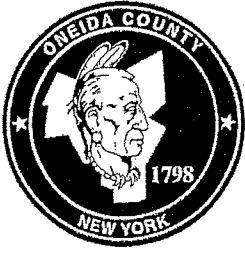
C&S Engineers, Inc.

A handwritten signature in black ink, appearing to read 'Ralph E. Napolitano', written in a cursive style.

Ralph Napolitano  
Program Director

Enclosures

Cc: [Bsmith@ocgov.net](mailto:Bsmith@ocgov.net)  
File



**ONEIDA COUNTY BOARD OF ELECTIONS**

Union Station ♦ 321 Main St. ♦ 3<sup>rd</sup> Floor  
Utica, New York 13501  
Fax: (315) 798-6412

Anthony J. Picente Jr.  
County Executive

Carolann N. Cardone  
Democratic Commissioner  
(315) 798-5762

Rose M. Grimaldi  
Republican Commissioner  
(315) 798-5763

FN 20 19-284

AIRPORT

**WAYS & MEANS**

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

*[Signature]*  
Anthony J. Picente, Jr.  
County Executive

Date 8-13-19

August 8, 2019

Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building, 10<sup>th</sup> Floor  
800 Park Avenue  
Utica, New York 13501

Dear County Executive Picente:

Attached please find a poll site agreement for the Young Men's Christian Association and Woman's Community Center of Rome, New York (YMCA-WCC) for Early Voting for the 2019 General Election. This agreement provides for the Board of Elections to use the Rome YMCA-WCC daily from October 26, 2019 through November 3, 2019, in order to provide a location for voters to take advantage of the Early Voting measures just enacted into law this spring. The YMCA-WCC will be open for voting from 10:00 AM until 6:00 PM Monday through Friday, and from 10:00 AM until 3:00 PM on the weekends. We will pay the Young Men's Christian Association and Woman's Community Center of Rome, New York the sum of \$75.00/day for each of the nine days of Early Voting, or a total of six hundred and seventy-five dollars (\$675.00).

This will be one of the three Early Voting locations across the County, along with the New Hartford Town Office Building and the Westmoreland Fire House. If this agreement meets with your approval, please indicate so by endorsing this letter and forwarding this agreement to the Board of Legislators for consideration at their next scheduled meeting.

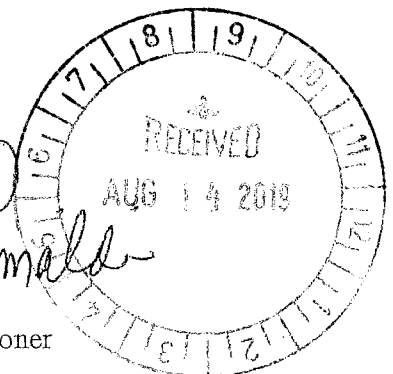
Should you have any questions, please feel free to contact us at our office.

Thank you for your assistance in this matter.

Respectfully,

*[Signature]*  
Carolann N. Cardone  
Democratic Commissioner

*[Signature]*  
Rose Marie Grimaldi  
Republican Commissioner



**Oneida Co. Department:** Board of Elections

**Competing Proposal** \_\_\_\_\_  
**Only Respondent** \_\_\_\_\_  
**Sole Source RFP** \_\_\_\_\_  
**Other**     X    

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** Young Men’s Christian Association and Woman’s  
Community Center of Rome, New York  
301 West Bloomfield Street  
Rome, New York 13440

**Title of Activity or Service:** 2019 Early Voting Poll Site Agreement

**Proposed Dates of Operation:** September 1, 2019 – December 31, 2019

**Client Population/Number to be Served:** N/A

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Poll site agreement for use of premises by the Oneida County Board of Elections daily from October 26, 2019 through November 3, 2019 for Early Voting.
- 2) **Program/Service Objectives and Outcomes:** N/A
- 3) **Program Design and Staffing:** N/A

**Total Funding Requested:** \$675.00      **Account :** A1450.4951

**Oneida County Dept. Funding Recommendation:** \$675.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** 100% County

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:**

## **POLL SITE AGREEMENT**

THIS AGREEMENT (the "Agreement"), dated as of the 1<sup>st</sup> day of September, 2019, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 800 Park Avenue, Utica, New York, by and through its Board of Elections, hereinafter referred to collectively as the "County," and the Young Men's Christian Association and Woman's Community Center of Rome, New York, a domestic not-for-profit corporation organized and existing under the laws of the State of New York, with its principal office located at 301 West Bloomfield Street, Rome, New York, hereinafter referred to as the "Owner," each a "Party," and collectively, the "Parties."

### **WITNESSETH**

**WHEREAS**, New York State has enacted changes to the New York Election Law that provide for early voting to be implemented beginning with the general election in 2019 (the "Early Voting"); and

**WHEREAS**, the County is responsible for holding all primary and general elections (the "Elections") throughout Oneida County, including Early Voting; and

**WHEREAS**, the Owner has a facility that the Parties have agreed would be suitable for use as a Poll Site (the "Poll Site") for the Early Voting to be held in; and

**WHEREAS**, the County and the Owner desire to enter into a Poll Site Agreement to clearly state the terms and conditions whereby the Owner shall allow the County to use its premises for the purposes of holding its Early Voting; and

**WHEREAS**, the Oneida County Board of Legislators has approved this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises, terms and obligations hereafter made, the Parties mutually agree and obligate themselves as follows:

#### **1. POLL SITE INFORMATION**

- 1.1. The Poll Site's name is Rome YMCA;
- 1.2. The Poll Site's address is 310 West Bloomfield Street, Rome, New York 13440;
- 1.3. Except for the extra security being provided by the County during the Early Voting period, as provided in Sections 3.4 and 6.7, below, the Owner does not request the County to provide security services at the Poll Site during the Early Voting period.

1.4. The Early Voting at the Owner's Poll Site shall include multiple election districts within the County.

1.5. The contact information for the Owner's contact person during the Owner's normal business hours for the Poll Site is:

Name & Title: Bruce Hairston;  
Address: 301 West Bloomfield Street, Rome, New York 13440;  
Telephone number: 315.336-3500 x228;

1.6. The contact information for the Owner's contact person during non-business hours for the Poll Site is:

Name & Title: Bruce Hairston;  
Telephone number: 315.281-5892.

## **2. TERM**

2.1. The term of this Agreement shall be from September 1, 2019 through December 31, 2019, and shall include the entire period of Early Voting in 2019.

2.2. In 2019, the dates for the Early Voting are as follows:

2.2.1. Beginning on Saturday, October 26, 2019, and ending on Sunday, November 3, 2019;

2.3. For all week days, namely October 28, 29, 30, 31 and November 1, 2019, the County shall have uninterrupted use and possession of the Poll Site from 8:30 a.m. until 7:30 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

2.3.1. The Polls will be open for Early Voting on these days from 10:00 a.m. until 6:00 p.m. each day.

2.4. For all weekend days, namely October 26 and 27 and November 2 and 3, 2019, the County shall have uninterrupted use and possession of the Poll Site from 8:30 a.m. until 4:30 p.m. (being ninety minutes before the opening and after the closing of the polls), or until the poll inspectors have completed their work, whichever time is later.

2.4.1. The Polls will be open for Early Voting on these days from 10:00 a.m. until 3:00 p.m. each day.

2.5. The Owner shall immediately notify the County should any conflict arise with the availability of the Poll Site. The Owner may contact the County using the following phone number: (315) 798-5765.

### **3. DELIVERY AND SECURITY OF MACHINES**

3.1. The Owner hereby agrees to make the Poll Site available for delivery and pickup of the voting machines(s) and all necessary voting equipment for one (1) week prior to the Elections and one (1) week after the Elections. The County shall deliver said machines to the Poll Site, possibly including the purple-colored Election Day Bags (the "Election Day Bags");

3.2. Upon receipt of the voting machine(s), the Owner or the Owner's representative shall sign off on a "Voting System Transportation Manifest" (the "Manifest"), confirming that the machines were delivered and received by the Poll Site. The Parties acknowledge and agree that the Owner or their representative's signature on the Manifest is essential to the chain of custody. The Owner or the Owner's representative's signature is also required for the receipt of the Election Day Bags, if delivered.

3.3. The Owner shall keep the voting machines and all necessary voting equipment locked and sealed. The Owner hereby agrees to indemnify, save and hold harmless the County for any damage to the voting machine(s) and/or voting equipment while in the sole custody of the Owner.

3.4. The County shall provide for security of the voting machines and any other necessary voting equipment and voting materials during all times when the polls are closed during the Early Voting period. This security shall be provided by a Oneida County Sheriff's Deputy or an Oneida County Special Patrol Officer, who shall arrive at the close of the polls each day during the Early Voting period, and shall remain until the opening of the polls on the following day.

**4. OWNER'S OBLIGATIONS:** The Owner hereby promises, covenants and agrees as follows:

4.1. To use reasonable or ordinary care in keeping the Poll Site in a reasonably safe condition. This duty of care shall apply equally to all parking lots or other parking areas adjacent to the Poll Site facility;

- 4.2. To warn all voters and other visitors, in a clear and conspicuous manner, of any latent or concealed perils that are known or should be known to the Owner or occupant, of which the voters and other visitors are unaware and cannot discover through the exercise of reasonable care;
- 4.3. To furnish necessary electricity, light and heat to the Poll Site;
- 4.4. To provide access to electrical outlets, as needed;
- 4.5. To provide a telephone for official use only by County poll workers and inspectors. The phone shall be available at all times and must be in or near the poll worker areas to enable them to make and receive calls from the County;
- 4.6. To provide for up to maximum of twelve (12) chairs and three (3) tables no less than forty-eight (48) inches in length per election district;
- 4.7. To ensure that the Poll Site is accessible to the public during the times specified herein, and that the doors are opened;
- 4.8. To ensure that there is a functional restroom facility available for use by the County poll workers and inspectors;
- 4.9. To ensure that the Poll Site is not located on premises owned or leased by a person holding office or who is a candidate for public office at a primary or general election, and to notify the County immediately if the Owner should become aware that this has occurred or is occurring;
- 4.10. To ensure that the Poll Site is situated in a room or location within the building suitable for registration and voting, and which is as close as possible to a convenient entrance to such building that provides access, by ramp or otherwise, to physically disabled voters;
- 4.11. To ensure that the Poll Site is otherwise accessible to citizens with disabilities and complies with the accessibility guidelines of the Americans with Disabilities Act (the "ADA");
- 4.12. To ensure that the Poll Site is opened at the designated time to allow inspectors sufficient time to set up the voting system as well as arrange the Poll Site;

- 4.13. To make available access to a refrigerator and/or kitchen for use by the County poll workers and inspectors;
- 4.14. To have the Poll Site clear of extra furnishings prior to the arrival of the County poll workers and inspectors, in order to ensure that there is adequate space to accommodate the voting machine(s) as well as the voting booths;
- 4.15. To consent to the County's placement of temporary cones, signs and other devices in and around the Poll Site to notify voters of the voting area;
- 4.16. To acknowledge that all items placed at the Poll Site by County poll workers and inspectors shall remain the sole property of the County; and
- 4.17. To acknowledge that in the event any of the Early Voting dates are delayed or continued to another date as a result of a common disaster, the Owner agrees to make the Poll Site(s) available to the County on a subsequently scheduled election date.
- 4.18. To allow for and accommodate the continuous and uninterrupted presence of the Oneida County Sheriff's Deputy or Special Patrol Officer during all hours throughout the Early Voting period when the polls are closed.

## **5. OWNER'S INSURANCE REQUIREMENTS**

- 5.1. As part of its' obligation to indemnify, defend and hold harmless the County as set forth herein, the Owner agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.
- 5.2. Commercial General Liability Insurance (CGL): The Owner shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate.
- 5.3. Excess/Umbrella Liability Insurance: The Owner shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella and/or excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence.

- 6. COUNTY'S OBLIGATIONS:** The County hereby promises, covenants, agrees and acknowledges as follows:



- 6.1. Not to use the Poll Site or any part thereof for any purpose other than the official voter registration and election functions;
  - 6.2. Not to sub-license or assign any rights under this Agreement over said Poll Site or any part thereof to another without the prior written consent of the Owner;
  - 6.3. To punctually pay rent, if any, as the same accrues. The rent for this Agreement shall be seventy-five dollars (\$75.00) per day of the Early Voting period, for a total of six hundred and seventy-five dollars (\$675.00);
  - 6.4. To use reasonable care to ensure that no damage happens to the building or any improvements or fixtures therein;
  - 6.5. To provide security services if so requested in paragraph 1 of this Agreement; and
  - 6.6. To hold the Owner harmless for any damage caused to the Poll Site(s) by placement of voting machines, booths, or other items in the Poll Site(s).
  - 6.7. To provide for an Oneida County Sheriff's Deputy or Special Patrol Officer to provide security over the voting machines and voting equipment and materials at the Poll Site at all times during the Early Voting period where the polls are closed.
7. **COUNTY'S INSURANCE REQUIREMENTS:** As part of its obligation to indemnify, defend and hold harmless the Owner as set forth herein, the County agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage as described below.

7.1. Commercial General Liability ("CGL") Insurance:

- 7.1.1. The County shall, at its own expense, during the term of this Agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property or persons. The liability and property damage coverage of such insurance shall not be less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;
- 7.1.2. CGL coverage shall be written on ISO Occurrence Form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from

premises, operations, independent contracts, products-completed operations, and personal and advertising injury;

7.1.3. The Owner, and any other parties required by the Owner, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

7.2. Auto Liability:

7.2.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of business auto liability insurance in an amount equal to or greater than one million dollars (\$1,000,000).

7.3. Excess/Umbrella Liability Insurance:

7.3.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of umbrella/excess liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and such insurance shall not be less than two million dollars (\$2,000,000) annual aggregate;

7.3.2. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL;

7.3.3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

7.4. Workers' Compensation and Employer's Liability Insurance:

7.4.1. The County shall, during the term of this Agreement, purchase and maintain in force a policy of insurance or self-insurance which will insure against all claims under New York State Workers' Compensation Law at statutory New York State limits.

7.5. Certificates of Insurance: Prior to the start of any work, the County shall provide certificates of insurance to the Owner. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of each of the County's policies.

These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner.

## 8. INDEMNIFICATION

- 8.1. The obligations of the Parties under this section shall survive any expiration or termination of this Agreement, and shall not be limited by any enumeration herein of required insurance coverage;
- 8.2. To the fullest extent permitted by applicable law, the Owner (the "Indemnifying Party") shall indemnify and hold harmless, and at the County's option, defend, the County, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the Owner's authorized personnel) arising out of or in connection with the exercise by the Owner or any of the Owner's authorized personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party;
- 8.3. To the fullest extent permitted by applicable law, the County (the "Indemnifying Party") shall indemnify and hold harmless, and at the Owner's option, defend, the Owner, and/or its officers, directors, members, agents, employees, contractors and other representatives (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party caused by any negligent act or omission, or intentional misconduct of the Indemnifying Party, its officers, agents, employees (including the County's authorized personnel) arising out of or in connection with the exercise by the County or any of the County's authorized

personnel of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of an Indemnified Party.

**9. TERMINATION OF AGREEMENT:**

9.1. This Agreement may be terminated by the County, for any reason, upon thirty (30) days written notice to the Owner;

9.2. This Agreement may be terminated by the Owner, for any reason, upon ninety (90) days written notice to the County.

**10. CHOICE OF LAW/FORUM:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, exclusive of its choice of laws, rules and principles. The Parties agree that any legal action shall be filed in a court of competent jurisdiction in Oneida County, New York.

**11. SEVERABILITY:** If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the Parties hereby agree that this Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the Parties hereby agree that all other provisions shall remain valid and enforceable.

**12. ADVICE OF COUNSEL:** Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

**13. ENTIRE AGREEMENT:** The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the Parties, and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the Parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to, Addendum I (Standard Oneida County Conditions). No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the Party sought to be bound.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the Parties hereto have affixed their hands and seals the day and year mentioned above.

COUNTY OF ONEIDA

BY: \_\_\_\_\_

**ANTHONY J. PICENTE, JR.**  
**Oneida County Executive**

ONEIDA COUNTY BOARD OF ELECTIONS

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

**CAROLANN N. CARDONE**  
**Democratic Commissioner of Elections**

ONEIDA COUNTY BOARD OF ELECTIONS

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

**ROSE MARIE GRIMALDI**  
**Republican Commissioner of Elections**

YOUNG MEN'S CHRISTIAN ASSOCIATION AND WOMAN'S COMMUNITY CENTER  
OF ROME, NEW YORK

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

**HENRY J. LEO**  
**Executive Director**

**Approved**

\_\_\_\_\_  
Robert E. Pronteau  
Assistant Oneida County Attorney

**ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS**

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;



- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by 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 will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.



13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida; and
  - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



# ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING • 800 PARK AVENUE • UTICA, N.Y. 13501-2977

Gerald J. Fiorini  
Chairman  
(315) 798-5900

Mikale Billard  
Clerk  
(315) 798-5404

George Joseph  
Majority Leader

Philip M. Sacco  
Minority Leader

August 14, 2019

Board of Legislators  
800 Park Avenue  
Utica, NY 13501

FN 20 19-285  
**PUBLIC SAFETY**

**WAYS & MEANS**

Dear Honorable Members:

I hereby resubmit to you the modified version of the Animal Abuse Registry.

I hereby request the Public Safety Committee and Ways & Means Committee to consider this Local Law.

Respectfully submitted,

Gerald J. Fiorini

**ONEIDA COUNTY BOARD OF LEGISLATORS**

*RESOLUTION NO.*

*INTRODUCED BY: Mr. Fiorini, Mr. D'Onofrio  
2ND BY:*

**LOCAL LAW INTRO. \_\_\_\_ OF 2019  
LOCAL LAW NO. \_\_\_\_ OF 2019**

**A LOCAL LAW ESTABLISHING AN ANIMAL ABUSER REGISTRY AND PROHIBITING  
ANIMAL OWNERSHIP BY ANIMAL ABUSE OFFENDERS WITHIN  
ONEIDA COUNTY**

**BE IT ENACTED BY THE BOARD OF COUNTY LEGISLATORS OF THE COUNTY OF ONEIDA  
AS FOLLOWS:**

**SECTION 1. PURPOSE AND INTENT.**

The State of New York has criminalized the cruel treatment of animals. However, animal abuse and cruelty continues to occur in Oneida County and throughout New York State.

Requiring animal abusers to register with their law enforcement agency will provide members of the community, particularly animal shelters and pet sellers, with the identities of convicted animal abusers. The registry will also warn potential employers that may be looking to hire an individual to work closely with animals in pet shops, shelters, or veterinary offices.

The Oneida County Legislature hereby finds that it is in the best interest of the residents of Oneida County and their animals that an online registry be established identifying individuals residing in Oneida County who have been convicted of animal abuse crimes in order to prevent these individuals from adopting, purchasing or otherwise obtaining animals from any animal shelter or pet seller.

**SECTION 2. DEFINITIONS.**

As used in this Local Law, the following terms have the meanings indicated:

“Animal Abuse Crime” - Any of the following crimes listed in subsections (a) through (e):

a) A violation of any of the following provisions of the NYS Agriculture Markets Law (AML Article 26):

Section 351 - Prohibition of animal fighting

Section 353 - Overdriving, torturing and injuring animals; failure to provide proper sustenance

Section 353-a - Aggravated cruelty to animals

Section 355 - Abandonment of animals

Section 356 - Failure to provide proper food and drink to impounded animal Section 359 - Carrying animal in a cruel manner

Section 360 - Poisoning or attempting to poison animals

Section 361 - Interference with or injury to certain domestic animals

Section 362 - Throwing substance injurious to animals in public place

Section 365 - Clipping or cutting the ears of dogs

Section 366 - Companion animal stealing

Section 366-a - Removing, seizing or transporting dogs for research purposes

b) Sexual misconduct with an animal in violation of NYS Penal Law (PL) § 130.20(3)

c) Harming a service animal in violation of PL §242.10 and PL §242.15

d) Killing or injuring a police animal in violation of PL §195.06

e) Harming an animal trained to aid a person with a disability in violation of PL §195.12

“Animal” - Any living mammal (except a human being), bird, reptile, amphibian or fish.

“Animal Abuse Offender” - Any person eighteen (18) years of age or older, convicted of an Animal Abuse Crime, except youthful offenders with convictions contained within sealed records.

“Animal Abuser Registry” - The online registry established by this Local Law for registering any person residing in Oneida County convicted of an Animal Abuse Crime.

“Animal Shelter” - Any organization which maintains buildings, structures or other property for the purpose of harboring Animals which may be stray, unwanted, lost, abandoned or abused and seeks to find appropriate temporary or permanent homes for such Animals, including, but not limited to, any duly incorporated humane society, pound, Animal protective association or Animal rescue group.

“Conviction” - An adjudication of guilt by any court of competent jurisdiction, whether upon a verdict after trial, upon a plea of guilty, or an Alford Plea.

“Farm” – A business engaged in a farming operation, as defined by New York State Agriculture and Markets Law §301(11).

“Pet Seller” - Any individual, person, partnership, firm, corporation, or other entity which routinely offers Animals for sale or is otherwise routinely engaged in the business of selling, exchanging or otherwise transferring ownership of Animals.

### **SECTION 3. ESTABLISHING AN ANIMAL ABUSER REGISTRY.**

The Oneida County Sheriff is hereby directed to create, manage, and maintain an Animal Abuser Registry containing the names and residence information of registered Animal Abuse Offenders living in Oneida County

who are hereby prohibited from owning Animals.

a) The Oneida County Sheriff's Office shall have a link to the Animal Abuser Registry on the Oneida County Sheriff's Office webpage, together with the links to other County Animal Abuser registries that are available in the State of New York. Such other County Animal Abuser registries may be used as informational resources by Animal Shelters and Pet Sellers.

b) The Animal Abuser Registry shall contain the required information about each Animal Abuse Offender, as outlined in Section 4(c) below, for fifteen (15) years following his or her release from incarceration or, if not incarcerated, from the date of the judgement of Conviction.

c) Any currently or previously registered Animal Abuse Offender convicted of a subsequent Animal Abuse Crime shall be placed on the Animal Abuser Registry for life following the second Conviction. These Convictions are not limited to Convictions within Oneida County, but extend to other counties who also maintain an Animal Abuser Registry.

d) Upon notification to the Oneida County Sheriff's Office of a successful appeal of a Conviction of an Animal Abuse Crime by an individual that has been required to register pursuant to this Local Law, the registration information for that individual shall be removed from the Oneida County Animal Abuser Registry within five (5) business days following the notification. In the case where a second Conviction has been successfully appealed, that Animal Abuse Offender will remain on the Oneida County Animal Abuser Registry for fifteen (15) years.

e) The Animal Abuser Registry shall be used for the limited purpose of determining whether such Animal Abuse Offender is prohibited from owning an Animal under this Local Law.

f) The provisions of Agriculture and Markets Law § 42 shall not apply as it relates to this Local Law. In the event a person acting for or employed by a Farm owner, association or corporation is placed on the Animal Abuser Registry, the prohibition of ownership of Animals shall not extend to the Farm owner, association or corporation for which such person is employed, nor shall it extend to common owners of a Farm in the event one owner is adjudicated to be an Animal Abuse Offender. Only the Animal Abuse Offender shall be required to register with the Animal Abuser Registry.

#### **SECTION 4. REGISTRATION REQUIREMENTS.**

a) When a person is convicted of an Animal Abuse Crime in any court within Oneida County, the Oneida County District Attorney shall forward to the Oneida County Sheriff's Office the name and address of the convicted person along with the specific Animal Abuse Crime of which such person was convicted, thereby notifying the Oneida County Sheriff's Office that the person is an Animal Abuse Offender and required to register with the Animal Abuser Registry.

b) All Animal Abuse Offenders must register with the Animal Abuser Registry within five (5) business days of their release from incarceration or, if not incarcerated, from the date of the Conviction.

c) Each Animal Abuse Offender shall submit to the Oneida County Sheriff's Office on a form prepared by the Oneida County Sheriff's Office, the following:

- i. Their name and any other name by which they may be known;
- ii. Their residence address;
- iii. Their date of birth; and



iv. A description of the offense for which such person was convicted, the date of Conviction, and the sentence imposed.

d) The Oneida County Sheriff's Office shall photograph the front of the Animal Abuse Offender's head and shoulders.

e) The Oneida County Sheriff's Office shall update Animal Abuse Offender information on the Animal Abuser Registry when new Convictions are made within Oneida County and/or when updates to the Registry are provided by Animal Abuse Offenders, and may provide a press release regarding the same, and make it available to:

i. Other law enforcement entities within New York State, including Animal control agencies, and

ii. Animal Shelters, Pet Sellers, animal-welfare organizations, and other groups involved in Animal adoption and the sale of Animals.

f) Every Animal Abuse Offender shall update their Registry information within five (5) days of any change of residence address and/or upon any official change of name. The obligation to provide such updates continues throughout the entire period in which such person is required to be registered.

g) Every Animal Abuse Offender shall pay a fee of one hundred twenty-five dollars (\$125.00) to the Oneida County Sheriff's Office at the time of registration. All such fees shall be used to help pay the administrative and maintenance costs of maintaining the Registry. Updates to the Animal Abuser Registry are made at no additional fee.

## **SECTION 5. EXAMINATION OF REGISTRY.**

Prior to the sale, exchange or other transfer of ownership of any Animal, an Animal Shelter, Pet Seller or other person or entity involved in transferring ownership of Animals is encouraged to examine the Animal Abuser Registry of Oneida County, as well as any other applicable New York County Animal Abuser registry to confirm that the name of the potential owner of the Animal is not listed as an Animal Abuse Offender, and may contact the Oneida County Sheriff's Office to confirm a potential owner's identify.

## **SECTION 6. PENALTIES.**

a) Any Animal Abuse Offender required to register with the Animal Abuser Registry who fails to so register shall be guilty of a class A misdemeanor punishable by incarceration for a period of not more than one (1) year and/or a fine not to exceed one thousand dollars (\$1,000.00).

b) Any Animal Abuse Offender who violates the prohibition against owning an Animal shall be guilty of a class A misdemeanor punishable by incarceration for a period of not more than one (1) year and/or a fine not to exceed one thousand dollars (\$1,000.00).

i. It shall not be a violation of this Local Law if an Animal Abuse Offender owns an Animal used as a service animal, either utilized by themselves or by another person residing at the same address as the Animal Abuse Offender. A service animal is to be defined in a manner consistent with Federal or State Law for person with disabilities.

## **SECTION 7. RULES AND REGULATIONS.**

The Oneida County Sheriff, or the Oneida County Sheriff's designee, is hereby authorized and empowered to take such steps as may be reasonably necessary to implement this Local Law.

**SECTION 8. SEVERABILITY.**

If any clause, sentence, paragraph, section, subdivision or other part of this Local Law or its applications shall be adjudged by a court of competent jurisdiction to be invalidated or unconstitutional, such order or judgement shall not affect, impair, or otherwise invalidate the remainder of this Local Law which shall remain in full force and effect.

**SECTION 9. EFFECTIVE DATE.**

This Local Law shall apply to those Animal Abuse Offenders with Convictions occurring on or after the effective date of this Local Law.

This Local Law shall take effect immediately upon filing with the Secretary of State in accordance with Sections 20, 21, and 27 of New York State Municipal Home Rule Law.

APPROVED: Public Safety Committee (      )  
                  Ways and Means Committee (      )

DATED:

Adopted by the following vote:  
AYES    NAYS    ABSENT