



# 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 DOCUMENTATION AUGUST 12, 2020

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

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**ONEIDA COUNTY**  
**WORKERS' COMPENSATION DEPARTMENT**

ONEIDA COUNTY OFFICE BUILDING, 800 PARK AVENUE, UTICA, NY 13501

PHONE: (315) 798-5688 FAX: (315) 798-5924

Alicia M Caternolo-Viscardi

Email: acaternoloviscardi@ocgov.net

Oneida County  
Board of Legislators  
Gerald J. Fiorini, Chairman

Workers' Compensation  
Committee  
Norman Leach, Chairman

August 11, 2020

FN 20 20-258

Gerald J. Fiorini, Chairman  
Oneida County Board of Legislators  
800 Park Avenue  
Utica, New York 13501

**WORKERS' COMPENSATION**  
**WAYS & MEANS**

Dear Chairman Fiorini:

Attached is the proposed 2021 Workers' Compensation Budget. I respectfully request that this proposed budget be referred to the Workers' Compensation and Ways and Means Committees for their consideration.

Sincerely yours,



Norm Leach, Chairman  
Workers' Compensation Committee

NL:ACV

Att.

**INTRODUCTORY  
NO.**

**F.N. 2021-**

## **ONEIDA COUNTY BOARD OF LEGISLATORS**

### **RESOLUTION NO.**

**INTRODUCED BY:** *Leach, Waterman, Welsh*  
**2ND BY:**

**RE:** PROPOSED WORKERS' COMPENSATION BUDGET FOR 2021

**WHEREAS,** The Oneida County Workers' Compensation Committee has filed a budget estimate for the operation of the Oneida County Self- Insurance Plan as hereinafter set forth for the year 2021, and

**WHEREAS,** It is desirable to authorize the County Comptroller and the Commissioner of Finance to establish in their accounts a budget estimate for the operation of the Oneida County Self-Insurance Plan, now, therefore, be it hereby

**RESOLVED,** That the following budget estimate for 2021 is hereby ordered to be placed upon the books of the County Comptroller and the Commissioner of Finance, and that the County Comptroller be, and hereby is, authorized to make payments from the respective accounts as hereinafter set forth upon inspection and examination by the Workers' Compensation Committee.

## BUDGET APPROPRIATIONS

## PROGRAM ADMINISTRATION AND SUPPORT

S1710.109	Salaries & Fringes	\$	108,849
S1710.195	Other Fees & Services (See attachment)	\$	513,615
S1710.416	Telephone	\$	450
S1710.418	Meter Postage	\$	615
S1710.455	Travel	\$	3500
S1710.491	Other Materials & Supplies	\$	100
S1710.492	Zixmail	\$	59
S1710.495	Other Expenses	\$	250
S1990.9	Contingent Account	\$	<u>30,000</u>
	<b>Total Administrative Expense</b>		<b>\$ 657,438</b>

S1720.410	Indemnity & Medical	\$	4,351,032
S1720.412	Insurance & Bonding	\$	400
S1720.495	WCB Assessments	\$	<u>410,000</u>

**Total Claims Expense** **\$ 4,761,432**

**TOTAL ADMINISTRATIVE & CLAIMS EXPENSES** **\$ 5,418,870**

## ESTIMATED REVENUES

S2222	Participant Assessments	\$	4,659,652
S2401	Interest Earnings	\$	30,000
S2701	Refund of Prior Years - Expenditures	\$	16,000
S2705	Revenues	\$	<u>713,218</u>

**TOTAL ESTIMATED REVENUES** **\$ 5,418,870**

RESOLVED, That the Oneida County Board of Legislators hereby approves and accepts the aforementioned Workers' Compensation Budget for 2021.

APPROVED: Workers' Compensation Committee  
Ways & Means Committee

DATED:

Adopted by the following vote:

AYES \_\_\_\_\_ NAYS \_\_\_\_\_ ABSENT \_\_\_\_\_

## 2021 Budget - "Other Fees and Services" Breakdown

### "Other Fees & Services" - Account S1710.195

Estimated cost to place in reserves for Excess	\$ 300,000
Cost for 3 <sup>rd</sup> Party Administration 2020	\$ 166,415
Department of Finance annual service charge for 2020	\$ 8,700
Estimated cost for an actuarial analysis in 2020	\$ 6,500
Department of Audit & Control accounting fee for 2020	\$ 12,000
Miscellaneous expert attorney fees and other contract fees	<u>\$ 20,000</u>
<b>Total proposed "Other Fees and Services"</b>	<b><u>\$513,615</u></b>



## ONEIDA COUNTY DEPARTMENT OF LAW

Oneida County Office Building  
800 Park Avenue ♦ Utica, New York 13501-2975  
(315) 798-5910 ♦ Fax (315) 798-5603

ANTHONY J. PICENTE JR.  
COUNTY EXECUTIVE

PETER M. RAYHILL  
COUNTY ATTORNEY

August 11, 2020

FN 20 20-259

GOVERNMENT OPERATIONS

WAYS & MEANS

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

Dear County Executive Picente:

I enclose herewith a Proposed Resolution adopting the new Retention and Disposition Schedule for New York Local Government Records, Schedule LGS-1, recently issued by the New York State Archives. This Schedule supersedes and replaces the existing CO-2 Schedule. Local governments must adopt this new schedule for official use prior to January 1, 2021.

If you are in agreement with the adoption of this schedule, please forward to the Board of County Legislators for their consideration and approval at their next meeting.

Very truly yours,

Robert E. Pronteau  
Assistant County Attorney

Enc.

cc: Sandy DePerno

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

Anthony J. Picente, Jr.  
County Executive

Date 8-11-20

## **ONEIDA COUNTY BOARD OF LEGISLATORS**

*RESOLUTION NO.*

*INTRODUCED BY:  
2<sup>ND</sup> BY:*

**RE: RESOLUTION ADOPTING SCHEDULE LGS-1 FOR LEGAL DISPOSITION OF ONEIDA COUNTY RECORDS, REPLACING SCHEDULE CO-2.**

**WHEREAS,** the New York State Education Department, through the New York State Archives, pursuant to Article 57-A of the New York State Arts and Cultural Affairs Law, has issued a new Retention and Disposition Schedule for New York Local Government Records, Schedule LGS-1, which replaces and supersedes the existing CO-2 Schedule, and

**WHEREAS,** This Board is in receipt of a request from Robert E. Pronteau, Assistant County Attorney, requesting that this Board adopt the newly issued Retention and Disposition Schedule for New York Local Government Records (LGS-1) for legal disposition of official Oneida County Records, and

**RESOLVED,** That the Oneida County Board of Legislators hereby adopts the Retention and Disposition Schedule for New York Local Government Records (LGS-1), issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for local government records, for use by all Oneida County officers in legally disposing of valueless records listed therein, replacing Schedule CO-2; and it is further

**RESOLVED,** That in accordance with Article 57-A, only those records will be disposed of that are described in Retention and Disposition Schedule for New York Local Government Records (LGS-1), after they have met the minimum retention periods described therein; and it is further

**RESOLVED,** That only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods.

APPROVED:                 Government Operations Committee (October X, 2020)  
  Ways and Means Committee                 (October X, 2020)

DATED:

Adopted by the following vote:  
AYES      NAYS   0   ABSENT





# 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

FN 20 20-260

July 20, 2020

**AIRPORT**

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

**WAYS & MEANS**

Re: Lease Agreement – Cypep, Inc., 360 Square feet in Building 660

Dear County Executive Picente:

Please consider acceptance of this Lease Agreement between Griffiss International Airport and Cypep, Inc.

The lease agreement shall be for a period of 1 (1) year, commencing on July 1, 2020 and ending On June 30, 2021. Following the expiration of the initial term, each year for five (5) consecutive years, this Lease Agreement shall automatically renew for an additional one (1) year term.

If you concur with this lease agreement, please sign and forward to the Board of Legislators for further consideration.

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 7-29-20

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

**ONEIDA COUNTY BOARD OF LEGISLATORS  
CONTRACT SUMMARY**

**Name & Address of Vendor:** Cypep, Inc.  
228 Genesee Street  
Oneida, New York 13421

**Title of Activity or Service:** Lease

**Proposed Dates of Operation:** July 1, 2020 to June 30, 2021 (Initial Term)

**Client Population/Number to be Served:** N/A

**Summary Statements**

1) Narrative Description of Proposed Services: This is a lease agreement 360+/- square feet of office space at 660 Hangar Road, Rome. The lease has a one (1) year term but is automatically renewed annually for up five additional one-year terms, unless notice to the contrary is received from the tenant.

2) Program/Service Objectives and Outcomes: N/A

3) Program Design and Staffing: N/A

**Total Funding Requested:** N/A -Revenue      **Account #:**

**Oneida County Dept. Funding Recommendation:** \$6,480.00 in revenue for the initial term.

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

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

**Past Performance Data:** None

**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 \_\_\_\_\_, 2020, 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 Cypep, Inc. (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 360 +/- square feet of office space within the building commonly referred to as Building 660, Hangar, 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 Galaxy Aviation Lasergrade/CATS Testing Center.

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 one (1) year, commencing on July 1, 2020 and ending on June 30, 2021 (the "Initial Term"), unless this Lease Agreement is sooner terminated in accordance herewith by either party providing sixty (60) days advance written notice. Following the expiration of the Initial Term, each year for five (5) consecutive years this Lease Agreement shall automatically renew for an additional one (1) year term (each a successively numbered "Renewal Term"), unless Tenant shall notify the Landlord to the contrary no later than sixty (60) days prior to the commencement of any Renewal Term. Also, the Tenant hereby agrees that the rent to be charged during such tenancy shall be increased each July 1 by adding three percent (3%) to the base rent that was in effect during the immediately preceding twelve (12) months.

b. 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 each January 1 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 Agreement in the total sum of Six Thousand Four Hundred Eighty and 00/100 Dollars (\$6,480.00), payable over twelve (12) equal monthly installments of Two Hundred Ninety-Seven and 00/100 Dollars (\$540.00) each.

b. The Rent to be charged during the First Renewal Term would be the total sum of Six Thousand Six Hundred Seventy-Four and 40/100 Dollars (\$6,674.40), payable in twelve (12) equal monthly installments of Five Hundred Fifty-Six and 20/100 Dollars (\$556.20).

c. The Rent to be charged during the Second Renewal Term would be the total sum of Six Thousand Eight Hundred Seventy-Four and 63/100 Dollars (\$6,874.63), payable in twelve (12) equal monthly installments of Five Hundred Seventy-Two and 89/100 Dollars (\$572.89).

d. The Rent to be charged during the Third Renewal Term would be the total sum of Seven Thousand Eighty and 87/100 Dollars (\$7,080.87), payable in twelve (12) equal monthly installments of Five Hundred Ninety and 07/100 Dollars (\$590.07).

e. The Rent to be charged during the Fourth Renewal Term would be the total sum of Seven Thousand Two Hundred Ninety-Three and 30/100 Dollars (\$7,293.30), payable in twelve (12) equal monthly installments of Six Hundred Seven and 77/100 Dollars (\$607.77).

f. The Rent to be charged during the Fifth Renewal Term would be the total sum of Seven Thousand Five Hundred Twelve and 10/100 Dollars (\$7,512.10), payable in twelve (12) equal monthly installments of Six Hundred Twenty-Six and 01/100 Dollars (\$626.01).

g. 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.

h. All such Rent 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 this Lease Agreement, including all Renewal Terms, 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 \$4,000,000 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 of Oneida, and all other parties required of the Landlord, 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. Workers' Compensation and Employers 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 and/or 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 Commercial General Liability Policy. These certificates and the insurance policies required above and annexed hereto as Exhibit "C," which is hereby incorporated by reference, 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 this Lease Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement which shall become effective as of the date first above written.

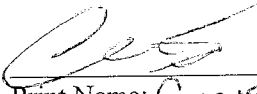
County of Oneida, Landlord

Cypep, Inc.

By:

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

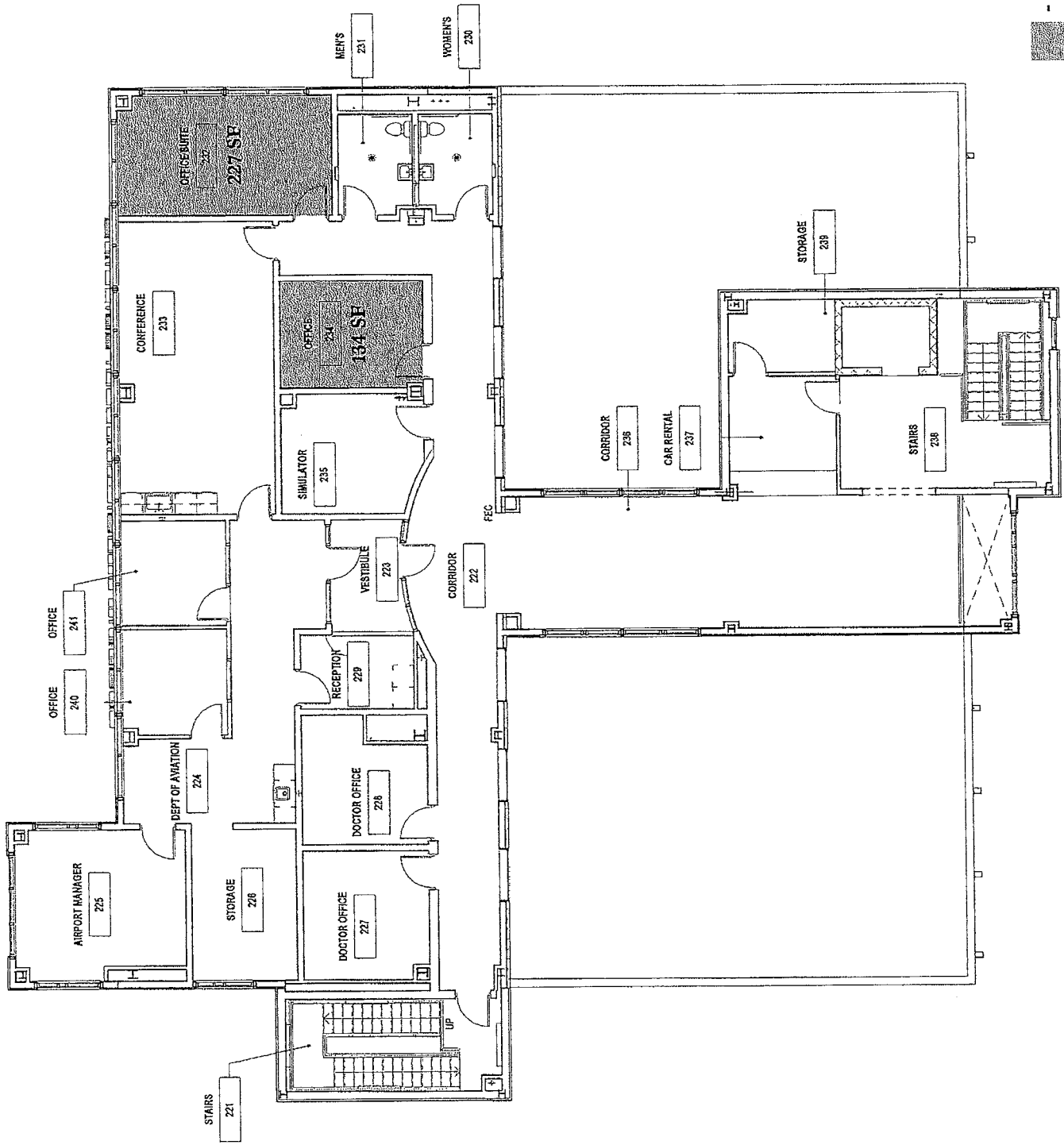
By:

  
\_\_\_\_\_  
Print Name: Cyprius G. Nohelt  
Title: President

Approved:

\_\_\_\_\_  
Amanda Lynn Cortese  
Special Assistant County Attorney

# Exhibit A



- GALAXY AVIATION  
361 SF (TOTAL)

BUILDING #660 - SECOND FLOOR PLAN



# **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, and 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 Leasehold 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.

**m. Recording.** This Lease Agreement shall not be recorded in the public records.

# **Exhibit C**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER OneGroup NY, Inc 706 N Clinton Street Syracuse NY 13204	CONTACT NAME: Christina Smith, CISR PHONE (A/C No, Ext): 315-280-6310 E-MAIL ADDRESS: csmith@onegroup.com	FAX (A/C No): 315-457-7902
	INSURER(S) AFFORDING COVERAGE	
INSURED CYPEP, Inc. 228 Genesee Street Oneida NY 13421	INSURER A: Dryden Mutual	NAIC # 13919
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

## COVERAGES

CERTIFICATE NUMBER: 720588347

REVISION NUMBER:

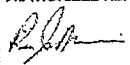
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	CFL0009760801	3/1/2020	3/1/2021	EACH OCCURRENCE	\$ 2,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
						MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 2,000,000
						GENERAL AGGREGATE	\$ 5,000,000
						PRODUCTS - COMP/OP AGG	\$ 5,000,000
							\$
	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident)	\$
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB					EACH OCCURRENCE	\$
						AGGREGATE	\$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			PER STATUTE	
						OTHER	
						E.L. EACH ACCIDENT	\$
						E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Oneida County Department of Aviation is listed as an additional insured.

## CERTIFICATE HOLDER

## CANCELLATION

Oneida County Department of Aviation 660 Hangar Road Rome NY 13441	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**Dryden Mutual Insurance Company  
Commercial Fire & Liability Policy  
Liability Coverage Section**

Named Insured: **CYPEP, Inc.**

File #: **C396138**

Policy Number: **CFL00097608-01**

The following is a list and description of the policy forms and endorsements that apply to the liability section of this policy. Some optional endorsements may state a specific amount of insurance or contain specific schedules. The endorsements that contain schedules will have the specific information shown under a separate liability schedule. Our limit of liability is not to exceed the amount shown in any such schedule and each shall be subject to the terms and conditions of the specific endorsement.

**Liability Policy Forms**

Form #	Edition Date	Description	Premium
LS-5S	01/88	Business General Liability Insurance Schedule	\$ 137.00
LS-6	01/88	Business General Liability - Extra Coverage	\$ 35.00
LS-22	09/02	Additional Insured (1) Oneida County Department Of Aviation 660 Hangar Rd Rome, NY 13441-4733	\$ 5.00
LS-23	01/88	Additional Insured (Club Members)	\$ Incl
LS-27	01/88	Products Designated Operations Operations: Clubs - Civic -No Bldg or Premises Owned or Leased - Incl Products Located: 660 Hangar Rd Rome, NY 13441-4733	\$ Incl
LS-77	04/95	Aggregate Limits Applicable At Each Location	\$ Incl
LS-84	10/97	New York Amendatory Endorsement Medical Payments Excess Limit Charge	\$ 9.00 \$ 200.00

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through June 23, 2020.

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Selected Entity Name: CYPEP, INC.

Selected Entity Status Information

**Current Entity Name:** CYPEP, INC.

**DOS ID #:** 1976986

**Initial DOS Filing Date:** NOVEMBER 28, 1995

**County:** MADISON

**Jurisdiction:** NEW YORK

**Entity Type:** DOMESTIC BUSINESS CORPORATION

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

CYPEP, INC.  
228 GENESEE STREET  
ONEIDA, NEW YORK, 13421

**Chief Executive Officer**

CYRUS G NOBLE IV  
228 GENESEE ST  
ONEIDA, NEW YORK, 13421

**Principal Executive Office**

CYRUS G. NOBLE IV  
228 GENESEE ST.  
ONEIDA, NEW YORK, 13421-2709

**Registered Agent**

NONE

This office does not record information regarding the names and addresses of officers, shareholders or

directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

### \*Stock Information

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

\*Stock information is applicable to domestic business corporations.

### Name History

Filing Date	Name Type	Entity Name
NOV 28, 1995	Actual	CYPEP, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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**ONEIDA COUNTY DEPARTMENT OF LAW**

Oneida County Office Building  
800 Park Avenue ♦ Utica, New York 13501-2975  
(315) 798-5910 ♦ Fax (315) 798-5603

**ANTHONY J. PICENTE JR.**  
COUNTY EXECUTIVE

**PETER M. RAYHILL**  
COUNTY ATTORNEY

FN 20 00-261

August 4, 2020

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

**PUBLIC WORKS**

**WAYS & MEANS**

RE: Jug Sports  
Lease of Murnane Field/Donovan Stadium

Dear County Executive Picente:

Attached please find an amendment to an agreement between the Oneida County Sports Facility Authority and Jug Sports, LLC for your review. This amendment to the earlier lease between the parties will extend the lease to cover the 2021 and 2022 baseball seasons following the cancellation of games in 2020 due to COVID-19.

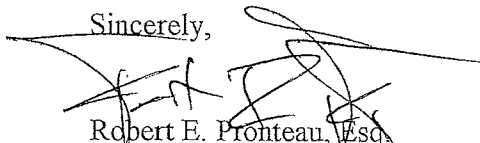
The total revenue associated with this agreement will remain at \$21,000.00. The annual rent amounts and other expenses in the original lease will be pushed back one year each, respectively, now covering the 2021 and 2022 baseball seasons.

If you approve of this amendment, please indicate so by endorsing this letter and forwarding this lease to the Board of Legislators for consideration at their next scheduled meeting.

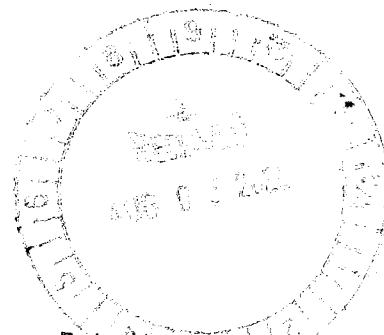
Should you have any questions, please contact me.

Thank you for your attention to this matter.


Sincerely,

  
Robert E. Pronteau, Esq.  
Assistant County Attorney

REP  
Enclosures



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

  
Anthony J. Picente, Jr.  
County Executive  
Date 8-5-20

Oneida Co. Department: County Attorney  
(Sports Facility Authority)

Completing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u>  X  </u>

**ONEIDA COUNTY BOARD OF LEGISLATORS  
CONTRACT SUMMARY**

**Name & Address of Vendor:** Jug Sports, LLC  
7179 Count Highway 18  
West Winfield, NY 13491

**Title of Activity or Service:** Amendment to the Lease of Murnane Field/Donovan Stadium  
for Blue Sox Baseball

**Proposed Dates of Operation:** January 1, 2021 to December 31, 2022

**Client Population/Number to be Served:** Residents and Non-Residents of Oneida County who will  
attend baseball games.

**Summary Statements**

- 1. Narrative Description of Proposed Services:** Amendment to the Lease of Murnane Field/Donovan Stadium for Blue Sox Baseball.
- 2. Program/Service Objectives and Outcomes:**
- 3. Program Design and Staffing:**

**Total Funding Requested:** \$ 21,000.00 (Revenue)

**Account#:**

**Oneida County Dept. of Funding Recommendation:** \$21,000.00 (Revenue)

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

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

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** This lease is being amended to run during the years 2021 and 2022 following the cancellation of baseball games during the 2020 season due to COVID-19.



**LEASE AMENDMENT**

**THIS AMENDMENT** (the “Amendment”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **ONEIDA COUNTY SPORTS FACILITY AUTHORITY**, a duly constituted public authority of the State of New York, with offices at 800 Park Ave., Utica New York, hereinafter called the “Lessor,” and **JUG SPORTS, LLC** a domestic limited liability company organized and existing pursuant to the laws of the State of New York, with offices at 7179 County Highway 18, West Winfield, New York, hereinafter called the “Lessee,” consists of the following promises, recitals, covenants and conditions.

**WITNESSETH:**

WHEREAS, the Lessor and the Lessee have entered into an agreement, attached hereto as **EXHIBIT 1** (hereinafter, the “Original Agreement”), by which the Lessor has agreed to Lease certain property, known as Donovan Stadium at Murnane Field (the “Facility”) for the Lessee’s use for baseball in the years 2020 and 2021; and

WHEREAS, the 2020 COVID-19 Pandemic has caused an interruption in and cancellation of all scheduled baseball games and supporting activities for 2020 season; and

WHEREAS, the parties are desirous of still having a lease agreement in place for two years;

**NOW THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The term of the Original Agreement shall be changed to cover the baseball seasons in the years 2021 and 2022.
2. The attachments to the Original Agreement, “Blue Sox lease - schedule A payment – 2020” and “Blue Sox lease - schedule A payment – 2021” shall be substituted for by the payment schedules attached to this Amendment, namely, “Blue Sox lease - schedule A payment - Amended

- 2021,” and “Blue Sox lease - schedule A payment - Amended – 2022.” All references in the Original Agreement referencing “Schedule A” will instead refer to the attachments to this Amendment.

4. All other terms of the Original Agreement remain in effect without change or alteration.

**IN WITNESS WHEREOF**, the Lessor and the Lessee have signed this Amendment on the day and date first above written.

**LESSOR: ONEIDA COUNTY SPORTS FACILITY AUTHORITY**

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

\_\_\_\_\_  
Joseph Johnson, Chairman

**LESSEE: JUG SPORTS, LLC**

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

\_\_\_\_\_  
George Deak, Jr., Owner

Approved:

\_\_\_\_\_  
Robert E. Pronteau, Esq.  
Assistant County Attorney

## LLC CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_, a \_\_\_\_\_ of  
(Name) (Specify Member or Manager)

\_\_\_\_\_ LLC, a limited liability company organized  
(Name of Company)

and existing under the laws of the State of \_\_\_\_\_, (the

“Company”), hereby certify: (i) that \_\_\_\_\_ LLC is run by  
(Name of Company)

\_\_\_\_\_ ; (ii) that \_\_\_\_\_  
(Specify if run by its Members or a Manager) (Name of signer of contract documents)

is a \_\_\_\_\_ of \_\_\_\_\_ LLC; and (iii)  
(Specify Member or Manager) (Name of Company)

that as such, \_\_\_\_\_, pursuant to the articles of

organization and the operating agreement is empowered and authorized, on behalf of the

Company, to execute and deliver contracts and amendments thereto, and all documents

required therewith and associated with such contracts and amendments.

**IN WITNESS WHEREOF**, the undersigned has affixed his/her signature and the seal of  
the LLC this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[or, if the LLC has no seal]

**IN WITNESS WHEREOF**, the undersigned has affixed his/her signature this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_. The LLC has no seal.

*If the LLC has a seal, place it here*

\_\_\_\_\_  
Print Name:  
Its: Member / Manager

## ONEIDA COUNTY SPORTS FACILITY AUTHORITY Blue Sox Payment Schedule

Pursuant to the Lease Agreement, Jug Sports LLC agrees to pay the following:

### 2021 Season

Clubhouse rental	\$1,000
Light cycle (mid-May to mid-June)	\$2,000
Regular season (26 games)	\$7,000
<b>Total</b>	<b>\$10,000</b>

### Payment schedule:

1/1/21	\$1,000 deposit due (Already paid in January, 2020)
5/1/21	\$3,000 installment due
6/1/21	\$3,500 installment due
7/1/21	\$2,500 remaining balance due
8/15/21	any additional charges due

### Possible additional charges:

- Utility bills for concession stand and clubhouse
- Drying agent (see schedule B for details)
- Dumpster charge
- Additional games
  - Any games above the 26 scheduled regular season games will be billed as follows:
    - \$170 – day game with pregame BP – no lights
    - \$245 – night game with pregame BP
    - \$300 – day/night double header with pregame BP
      - Any game without pregame BP would be a reduction of \$50

## ONEIDA COUNTY SPORTS FACILITY AUTHORITY Blue Sox Payment Schedule

Pursuant to the Lease Agreement, Jug Sports LLC agrees to pay the following:

### 2022 Season

Clubhouse rental	\$1,000
Light cycle (mid-May to mid-June)	\$2,000
Regular season (26 games)	\$8,000
<b>Total</b>	<b>\$11,000</b>

### Payment schedule:

1/1/22	\$1,000 deposit due
5/1/22	\$3,000 installment due
6/1/22	\$3,500 installment due
7/1/22	\$3,500 remaining balance due
8/15/22	any additional charges due

### Possible additional charges:

- Utility bills for concession stand and clubhouse
- Drying agent (see schedule B for details)
- Dumpster charge
- Additional games
  - Any games above the 26 scheduled regular season games will be billed as follows:
    - \$170 – day game with pregame BP – no lights
    - \$245 – night game with pregame BP
    - \$300 – day/night double header with pregame BP
      - Any game without pregame BP would be a reduction of \$50

# Exhibit 1

## Lease Agreement

A LEASE AGREEMENT (the "Agreement") entered into on the 24<sup>th</sup> day of <sup>February</sup> ~~November~~, 2019, by and between the Oneida County Sports Facility Authority, a duly constituted public authority of the State of New York, with offices at 800 Park Ave., Utica New York, hereinafter called the "Lessor," and Jug Sports, LLC a domestic limited liability company organized and existing pursuant to the laws of the State of New York, with offices at 7179 County Highway 18, West Winfield, New York, hereinafter called the "Lessee."

### WITNESSETH

Whereas, the Lessor is the current operator of the facility owned by Oneida County, known as Donovan Stadium at Murnane Field (the "Facility"), and

Whereas, the Lessee wishes to lease from the Lessor said facility for the conduct of baseball games and events incidental thereto, and

Whereas, the Lessor wishes to promote the use of the field and adjacent buildings for the staging of such baseball games

NOW THEREFORE, in consideration of the premises and the mutual promises made by the parties hereto, the Lessor and Lessee agree as follows:

1. The Lessor shall let to the Lessee and the Lessee shall lease, on a non-exclusive basis, from the Lessor those components of the Facility set forth in paragraph 5 below for a term of two seasons, such seasons to commence on June 1 and end on July 31 for each year of the two seasons, namely, 2020 and 2021 (each, individually a "season," and collectively, the "seasons").
2. The Lessee shall pay the Lessor each season as described in the attached schedule A.
3. The Lessee shall further lease the third base clubhouse for a sum as described in the attached Schedule A. This Agreement does not include air conditioning in the clubhouse. If this unit is used, the Lessee is responsible for resulting utility bills for said clubhouse.
4. On or before January 1<sup>st</sup> of each year of this Agreement, the Lessee shall provide the Lessor with a schedule of baseball games so as to allow the Lessor adequate time to prepare and maintain field conditions and prepare the buildings at the field.
5. This Agreement shall cover all of the buildings at the Facility, including the aforementioned third base clubhouse, as well as the grandstand, press box, radio booths, dugouts, signage, posts, scoreboards, concession stand, restrooms, souvenir and ticket

booths, and such other buildings, structures or booths as may be available and necessary to put on a baseball game. During Lessee's games, Lessee shall have exclusive use and control of the press box and radio booth at the Facility.

6. During the term of each season, Lessee shall pay for all utilities needed to operate and occupy the concession stand and offices. Lessor agrees to provide Lessee with the bills for utility services for which Lessee agrees to reimburse Lessee within 15 days of receipt. The Lessee is solely responsible for cleanup following any special events (i.e. fireworks). The Lessor will be responsible for stadium cleanup as a result of a normal baseball game.
7. Grounds-keeping and field maintenance shall be the responsibility of the Lessor. The Lessee shall comply with the attached schedule B which describes the facility procedures and guidelines.
8. Lessee agrees that, prior to the season, it shall enter into appropriate agreements with the City of Utica (the "City") and the County of Oneida (the "County") relative to the provision of fire protection and Emergency Medical Technician ("EMT") and security services. The Lessor shall be provided with a copy of all such agreements or understandings reached with the City and/or County prior to the start of each season. Lessee reserves the right to obtain EMT and security services from a private contractor in the event such services may be procured at a lesser expense to the Lessee. Any such privately-contracted EMT and security services shall comply with any and all requirements of the Lessor and/ or County's insurance coverage relative to any necessary certifications and licensing.
9. Lessee shall provide liability coverage in an amount not less than Three Million Dollars (\$3,000,000) with the Lessor and the County of Oneida named as additional insureds. Proof of such liability coverage shall be provided to the Lessor and the County prior to the start of each season.
10. The Lessee agrees to indemnify and hold harmless the Lessor and the County of Oneida and their agents, employees and officers from and against any and all claims, suits and demands for personal injury, including, but not limited to, death and property damage which may arise from or be attributable to the actions, negligence or lack of care of the Lessee, its employees, agents and invitees. The Lessor agrees to indemnify and hold harmless the Lessee from and against any and all claims, suits, and demands for personal injury, including, but not limited to, death and property damage which may arise from or be attributable to the actions, negligence or lack of care of the Lessor, its employees, agents and invitees.
11. Game cancellations due to weather conditions are at the discretion of the Lessor. The decision will be made by a designated member of the grounds crew and must be adhered to by the Lessee. The Lessee must receive permission from the head grounds-keeper or a



person so designated by the Lessor prior to putting the tarp onto the field. A time to remove the tarp must be agreed upon prior to putting the tarp on. Should the tarp being left on the field too long cause damage to the field, the Lessee will be financially liable to compensate the Lessor to repair or replace the damaged sections of the field.

12. Appropriate scheduling accommodations must be made by Lessee for use of facility by the New York State American Legion Tournament. This includes not scheduling games for at least one day prior to the scheduled start of the tournament. In the event that the Lessee would host a playoff game during the New York State American Legion Tournament, every effort will be made to accommodate the game around the tournament schedule, with the tournament having preference.
13. Lessor shall provide storage space for the Lessee on an "as available" basis.
14. Lessee shall be solely responsible for obtaining and maintaining any and all necessary approvals, permits and licenses to dispense and sell alcoholic beverages at the Facility. Lessee shall obtain the necessary insurance coverage needed to protect the Lessor and the County of Oneida from and against any and all claims, suits or demands which may in any way result from the Lessee's sale of alcoholic beverages at the facility. Such insurance coverage shall be in an amount not less than Three Million Dollars (\$3,000,000.00). Lessee shall name the County and the Lessor as additional insureds on such policies and shall provide the Lessor and the County with the proof of such coverage before the start of each season. This policy needs to be delivered to the Lessor no later than May 20 of each year. This insurance is in addition to the insurance requirements of paragraph 9, above.
15. Lessee shall have the right to sell all advertising signage on the outfield fence at the Facility. The Lessee does not have the authority to sell advertising signage on the outside of the outfield fence or anywhere facing the outside roadways. Any other advertising signage must be approved by Lessor's Board of Directors in writing, including but not limited to, dugouts and internal fencing. Advertising in allowable, designated areas is permitted to be placed beginning on April 1st and must be taken down by October 1<sup>st</sup> of each year. It is the responsibility of the Lessee to place, maintain and remove advertising. The Lessor has the right to have any advertising removed or relocated, with the cost of said removal or relocation being passed on to the Lessee. Advertising on the outfield fence must NOT damage the windscreen. Any damage to the windscreen (i.e., poking holes through it) will result in the Lessee being financially liable to compensate the Lessor to replace the damaged sections of the windscreen.
16. Parking during season games and events at the Facility shall be free. Lessee shall provide employees to assist in parking vehicles. Lessor shall remain responsible for maintenance of the parking surface. At no time are any vehicles permitted to be parked within the facility.

17. All radio, television, cable, internet and other forms of broadcasting of Lessee's games and any revenue realized as incidental thereto shall be the sole property of the Lessee. Any revenue realized from the sale of souvenirs by the Lessee at the Facility during the season shall be retained by the Lessee.
18. Lessee shall not conduct, or sponsor fireworks displays without first obtaining the necessary prior approval, permits and licenses from the City of Utica and/or the County of Oneida and meeting the insurance requirements of both the City and the County. The Lessee is solely responsible for cleanup following any special events (i.e. fireworks).
19. Lessee may play music at the Facility but only in compliance with all applicable City of Utica noise ordinances governing same.
20. Lessee shall be solely responsible for collecting, reporting and paying any and all applicable sales tax on taxable items sold at the Facility.
21. In the event that Lessor enters into a lease agreement with a minor league baseball team for use and possession of the field, and such agreement conflicts with the use and possession by Lessee set forth herein, then upon at least sixty days' written notice to the Lessee by the Lessor, Lessee's rights pursuant to this Agreement shall be superseded. Notwithstanding Lessee's rights pursuant to this Agreement being superseded, during the first season in which this occurs, the Lessor shall offer alternative accommodations to the Lessee, acceptable to the Lessee (agreement to which shall not be unreasonably withheld), or pay the Lessee liquidated damages of \$5,000.00 per game for any game neither the field nor an alternative accommodation is available to the Lessee. Lessee has the right to opt out of contract at any point with 30 days' written notice to Lessor.
22. In the event that the Lessee defaults in the performance of any of the covenants herein, it is mutually understood and agreed that the Lessor may terminate this Agreement and re-enter said premises without resort to judicial processes or to any legal remedy available to it. Lessee shall be given ten (10) days to cure any default in performance of the covenants herein.
23. All notices to be served upon Lessee by Lessor or upon Lessor by Lessee shall be in writing and delivered or certified mail. Notices to the Lessors shall be addressed to: Oneida County Sports Authority, c/o 800 Park Avenue, Utica, New York, 13501, Attn: Roland DeCarlo. Notices to the Lessee shall be addressed to: Jug Sports LLC, 7179 County Highway 18, West Winfield, NY 13491.
24. No waiver of any breach or breaches of any provision or condition of this Agreement shall be construed to be a waiver of any preceding or succeeding provision or condition of the lease or breach of same.

25. This Agreement may be modified or amended only in writing, duly authorized and executed by the Lessor and Lessee. It may not be modified or amended by oral agreements or understandings between the parties.
26. If any part of this Agreement shall be declared invalid or illegal by a court of competent jurisdiction, only that part declared invalid or illegal shall be void and thereby be of no effect. All other parts of this Agreement shall remain in full force and effect. The captions of the various paragraphs of this Agreement are for convenience and reference purposes only. They are of no other effect.
27. The Lessee further covenants and agrees to indemnify, defend and hold harmless the County of Oneida and the Lessor, their respective officers, members, agents and employees, from and against any and all loss or expenses that may arise to any and all Lessee property left within the facility during the off season, either intentionally or unintentionally, by reason of liability for damage or theft, injury or death, and any other claims for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of any omission of duty, negligence or wrongful act on the part of the Lessee, the County of Oneida and the Lessor, and their respective officers, members, agents or employees, in connection with this Agreement.
28. The Lessee will be responsible for providing a dumpster for garbage and a dumpster for cardboard at the Facility inside the Rose Place gates from June 1 until the completion of the season. The Lessee will be responsible for this cost in its entirety. The Lessor will provide an additional key to provide to the dumpster service to enable to access the dumpsters. It is the responsibility of the Lessee to return this key at the end of the season. Should the Lessee fail to meet this obligation the Lessor will arrange for the dumpsters while the Lessee will remain financially responsible.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

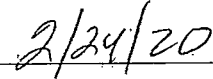
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written.

Lessor: Oneida County Sports Facility Authority

By:

Date:

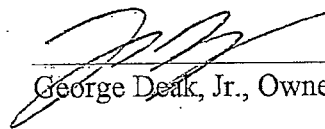
  
\_\_\_\_\_  
Joseph Johnson, Chairman

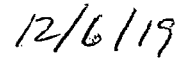
  
\_\_\_\_\_

Lessee: Jug Sports, LLC

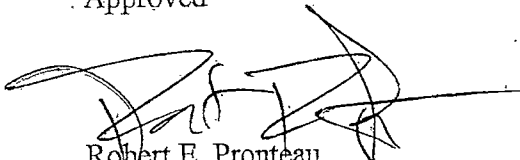
By:

Date:

  
\_\_\_\_\_  
George Deak, Jr., Owner

  
\_\_\_\_\_

Approved

  
\_\_\_\_\_  
Robert E. Pronteau  
Assistant County Attorney

LLC CERTIFICATE OF AUTHORITY

I, George Deak, a member/manager of  
(Name) (Specify Member or Manager)

Jog Sports LLC LLC, a limited liability company organized  
(Name of Company)

and existing under the laws of the State of NY, (the

"Company"), hereby certify: (i) that Jog Sports LLC LLC is run by  
(Name of Company)

George Deak; (ii) that George Deak  
(Specify if run by its Members or a Manager) (Name of signer of contract documents)

is a manager of Jog Sports LLC LLC; and (iii)  
(Specify Member or Manager) (Name of Company)

that as such, @ Jog Sports LLC, pursuant to the articles of

organization and the operating agreement is empowered and authorized, on behalf of the

Company, to execute and deliver contracts and amendments thereto, and all documents

required therewith and associated with such contracts and amendments.

IN WITNESS WHEREOF, the undersigned has affixed his/her signature and the seal of  
the LLC this 16<sup>th</sup> day of December, 2019.

[or, if the LLC has no seal]

IN WITNESS WHEREOF, the undersigned has affixed his/her signature this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_. The LLC has no seal.

If the LLC has a seal, place it here

George Deak

Print Name:

Its: Member / Manager

State of New York  
County of Herkimer

Appeared before me this 16<sup>th</sup> day of December 2019 stating the  
above is true and correct.

Helen Monette

HELEN MONETTE  
Notary Public, State of New York  
No. 01M05059331  
Qualified in Otsego County  
My Commission Expires Apr. 29, 2020

## ONEIDA COUNTY SPORTS FACILITY AUTHORITY Blue Sox Payment Schedule

Pursuant to the Lease Agreement, Jug Sports LLC agrees to pay the following:

### 2020 Season

Clubhouse rental	\$1,000
Light cycle (mid-May to mid-June)	\$2,000
Regular season (26 games)	\$7,000
<b>Total</b>	<b>\$10,000</b>

### Payment schedule:

1/1/20	\$1,000 deposit due
5/1/20	\$3,000 installment due
6/1/20	\$3,500 installment due
7/1/20	\$2,500 remaining balance due
8/15/20	any additional charges due

### Possible additional charges:

- Utility bills for concession stand and clubhouse
- Drying agent (see schedule B for details)
- Dumpster charge
- Additional games
  - o Any games above the 26 scheduled regular season games will be billed as follows:
    - \$170 – day game with pregame BP – no lights
    - \$245 – night game with pregame BP
    - \$300 – day/night double header with pregame BP
  - Any game without pregame BP would be a reduction of \$50

## ONEIDA COUNTY SPORTS FACILITY AUTHORITY Blue Sox Payment Schedule

Pursuant to the Lease Agreement, Jug Sports LLC agrees to pay the following:

### 2021 Season

Clubhouse rental	\$1,000
Light cycle (mid-May to mid-June)	\$2,000
Regular season (26 games)	\$8,000
<b>Total</b>	<b>\$11,000</b>

### Payment schedule:

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5/1/21	\$3,000 installment due
6/1/21	\$3,500 installment due
7/1/21	\$3,500 remaining balance due
8/15/21	any additional charges due

### Possible additional charges:

- Utility bills for concession stand and clubhouse
- Drying agent (see schedule B for details)
- Dumpster charge
- Additional games
  - Any games above the 26 scheduled regular season games will be billed as follows:
    - \$170 – day game with pregame BP – no lights
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    - \$300 – day/night double header with pregame BP
  - Any game without pregame BP would be a reduction of \$50

## ONEIDA COUNTY SPORTS FACILITY AUTHORITY

### Blue Sox

#### Team Procedures & Guidelines

- At no time are any vehicles permitted to be parked within the confines of the gates
  - The visiting team bus should never be driven within the confines of the gates. The Blue Sox team bus may pull in the Rose place entrance to pick up players ONLY when no other games are being played at the facility.
- All gates should be locked when team is not there to keep the facility secure
  - Should a gate be left unlocked, the grounds crew has been instructed to lock all gates when they leave the facility
  - All padlocks should be locked on the fence when the gate is left open in order to prevent the lock from being lost or stolen and available to staff to lock the gate should it be left open
- Signage
  - Alcohol signs are acceptable but should be placed appropriately. The Lessee should be responsible for all signage and should not allow vendors or partners to hang signs in the facility without supervision and approval of the location.
- Practice & pregame for road games
  - The team is permitted to utilize the practice field (including the batting cages and bullpens) and the outfield grass up to 120 minutes prior to any scheduled game (not the Blue Sox, excluding tournaments) at the facility  
\*\*\*COVER BULL PEN MOUNDS AFTER USING\*\*\*
  - The main field infield should not be used for practice without prior permission from the Authority
- Pregame for home games
  - The grounds crew WILL NOT unlock the small front gate – this will be the responsibility of the Blue Sox
  - Field will be ready for on field batting practice 3 hours prior to game time
    - The practice field, cages and bull pen will also be available
    - At this time the press box should be available with the scoreboard on
    - The bathrooms should also be open at this time
  - The grounds crew may determine that the field conditions do not permit for on field batting practice or I/O, in which case the batting cages and the practice field will be used.
  - Time schedule for standard 6:35 game start time
    - 4-4:30 Home team on field BP
    - 4:30-5 Visiting team on field BP
    - 5:10-5:25 Home team I/O
    - 5:25-5:40 Visiting team I/O
  - The field must be cleared 30 minutes prior to game time for the grounds crew to prepare the field for the game



*Jugs Sports LLC Lease – Schedule B*

- The batting shell, screens, pitching ramp, mats and skirt should be stored outside the left field gate. These items SHOULD NOT be stored on the field of play, in the dugout, or outside the field
- In-game
  - The grounds crew will turn on the lights at the end of the 5<sup>th</sup> inning unless requested to do so earlier. If the lights are not turned on by the beginning of the 6<sup>th</sup> inning, then they will be turned on as soon as possible thereafter and will not wait until the inning ends.
- Post-game
  - Place all garbage in dugout and bullpen in respective garbage cans
  - Cover bullpen mounds
  - Garbage in concession should be placed in the dumpster each night and not left outside unprotected from animals
  - Garbage in the clubhouse should be placed in the dumpster each night and not left outside unprotected from animals
  - Leave the message board on the default message “Welcome to Donovan Stadium”
  - On days that there are fireworks after the game, the Lessee must comply section 18 of the lease. Additionally, the Lessee must notify the Authority of such events. The Lessee is expected to provide additional manpower to assist with the cleanup the next morning.
- Cancellation / Makeup games
  - The determination to cancel a game will be made by the head groundskeeper prior to the umpires arriving at the field
    - Drying agent
      - Included in the game cost is two (2) bags of drying agent
      - Any additional bags used will be billed to the Lessee at a rate of \$15 per bag used. The ground crew is required to get permission from the Lessee prior to using any additional bags.
  - All makeup games must be rescheduled through Greg Gaeta, NOT through the grounds crew
- Other teams using facility
  - Utica Post American Legion baseball team will occasionally hold practice during a Blue Sox game. The following procedures will be followed to minimize any disruption of the crowd or the game
    - Practice will not begin until after the game has started
    - Utica Post players will enter through the main gate identifying themselves as players attending practice
    - The players will go around the outfield fence to the practice field in order to not disrupt the game
    - The players will use the batting cage and practice field without getting in the way of the players in the bullpen.
    - Occasionally other teams need to access the ice machine inside the clubhouse. The grounds crew will allow access as needed. The grounds crew

- are instructed to accompany the player into the clubhouse with their container to get the ice and then lock the clubhouse when leaving.
- End of Season Exit Strategy
  - Clubhouse - the following should be done by 8/21.
    - All stickers should be removed from lockers and offices
    - The clubhouse should be left in a condition to allow it to be used in the Fall and Spring
    - All items should be removed from clubhouse or stored in storage room
    - Chairs should be left in locker area
  - Concession
    - All items should be cleaned and serviced and shut down by 8/21
    - It is permissible to store items in the office and the storage area outside the office
    - The other areas should be left in a manner that would allow them to be used in the Fall
  - Beer building
    - All beer, including tap system must be removed by 8/21
    - Nothing should be stored in here as it needs to be left in condition that would allow it to be used in the Fall and Spring
  - Items stored at facility
    - Please coordinate with head groundskeeper to store large items on the premises for the off season
  - Return Keys
    - All keys must be returned by 8/21
    - All needs to access the facility should be completed by 8/21



Undersheriff Joseph Lisi  
Chief Deputy Lisa Zurek

Chief Deputy Jonathan Owens  
Chief Deputy Derrick O'Meara

*Sheriff Robert M. Maciol*

July 20, 2020

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

FN 20 20-262  
PUBLIC SAFETY  
WAYS & MEANS

Dear County Executive Picente:

The Sheriff's Office has received an insurance claim from Traveler's Insurance in the amount of \$1,323.40. The loss was due to a rear end collision with a Sheriff's vehicle #470. I would like request a Supplemental Appropriation of Funds of \$1,323.40 for Sheriff Auto Fleet Repairs.

I respectfully request your Board approval for the following **2020** supplemental appropriation:

TO:  
A3110.4522      Automotive Repairs      \$1,323.40

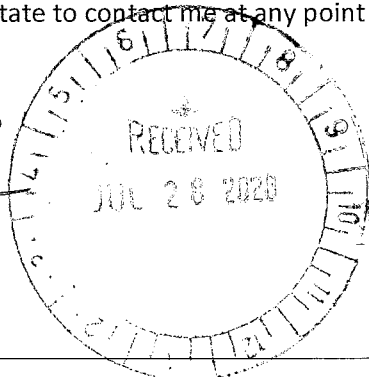
This supplemental appropriation will be fully supported by anticipated revenue in:

A2681      Insurance Recoveries - Sheriff      \$1,323.40

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.*  
Anthony J. Picente, Jr.  
County Executive  
Date 7/27/20

**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



ONEIDA COUNTY  
 DEPARTMENT OF EMERGENCY SERVICES  
 FIRE COORDINATOR  
 911 CENTER  
 STOP DWI PROGRAM

ANTHONY J. PICENTE, JR.  
 County Executive

EDWARD STEVENS  
 Director

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

July 20, 2020

FN 20 20 263  
**PUBLIC SAFETY**

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

**WAYS & MEANS**

Dear County Executive Picente,

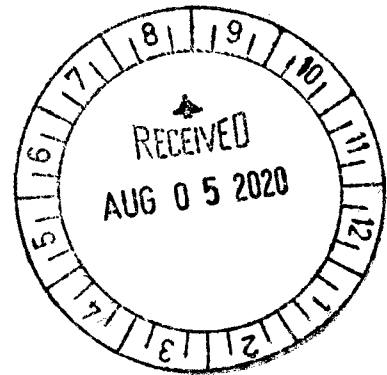
The Department of Emergency Services requests to enter into a contract with United Radio, Inc. for maintenance of Oneida County's jail radio system. This contract covers annual maintenance and repair of that equipment for a one (1) year period, beginning on January 1, 2020 and ending on December 31, 2020, with up to five (5) automatic renewal periods. The cost for the maintenance contract for year 1 is \$20,004.00. Costs for all five years are specified in Schedule C of the agreement.

I respectfully request approval from the Board of Legislators at the Board's earliest convenience. If you approve of this request, kindly sign where indicated.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Edward T. Stevens  
 Director of Emergency Services



mle

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

Anthony J. Picente, Jr.  
 County Executive

Date 8-4-20

Oneida Co. Department Emergency Services Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Sole Source X

Oneida County Board of Legislators  
Contract Summary

Name of Proposing Organization United Radio Service, Inc.  
5703 Enterprise Parkway  
East Syracuse, NY 13057

Title of Activity or Services: Maintenance of the County's Jail Radio system

Proposed Dates of Operations: January 1, 2020 to December 31, 2020, with automatic renewal periods up to a total of five (5) years

Client Population/Number to be Served: Oneida County Jail

SUMMARY STATEMENTS

- 1) **Narrative Description of Proposed Services:** Provide annual repair services for the County's Trbonet jail radio system. On-site repair services will be available 24 hours/day, 7 days/week, 365 days/year.
- 2) **Program/Service Objectives and Outcomes:** Keep equipment serviced and in working order.
- 3) **Program Design and Staffing Level:** United Radio technicians

Total Funding Requested: \$20,004.00 (year 1) Account: #3020.493  
\$110,539.00 for five years

Oneida County Dept. Funding Recommendation: \$110,539.00 total 5 years

Proposed Funding Source (Federal \$ /State \$ / County \$): 100% County

Cost Per Client Served: N/A

Past performance Served: N/A

O.C. Department Staff Comments: This contract allows for automatic renewal terms to ensure continued service to the jail radio system. The costs are as follows: 2020: \$20,004.00; 2021: \$21,050.00; 2022: \$22,050.00; 2023: \$23,160.00; 2024: \$24,320.00.  
The five-year total is \$110,539.00.

UNITED RADIO SERVICE, INC.  
EQUIPMENT MAINTENANCE AGREEMENT

THIS EQUIPMENT MAINTENANCE AGREEMENT (the "Agreement") is made effective as of January 1, 2020 (the "Effective Date") by and between United Radio Service, Inc., a New York corporation with principal offices located at 5703 Enterprise Parkway, East Syracuse, New York 13057 ("United"), and Oneida County, a municipal corporation organized and existing under the laws of the State of New York with its principal offices located at 800 Park Avenue, Utica, New York 13501, by and through its Department of Emergency Services, located at 120 Base Road, Oriskany, New York 13424 ("Customer").

WHEREAS, Customer desires to retain United to provide certain maintenance services in connection with certain equipment utilized at the Oneida County Correctional Facility; and

WHEREAS, United is willing to perform such services upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, United and Customer agree as follows:

1. Services.

1.1. On the terms and conditions set forth herein, United shall provide to Customer, during the Coverage Hours (as defined in Section 1.4), the maintenance services described in the Description of Services attached hereto as Schedule A (collectively, the "Services"). All services not specifically included in the Description of Services are excluded from the Services.

1.2. Notwithstanding anything to the contrary in Section 1.1, with respect to any of the Equipment (as defined in this Section 1.2) which is under a manufacturer's warranty, the Services shall include only those Services which are not covered by such manufacturer's warranty. "Equipment" means the equipment listed on the List of Equipment attached hereto as Schedule B and excludes batteries and portable accessories, including but not limited to antennas, batteries and speaker (lapel) microphones.

1.3. Notwithstanding anything to the contrary in Section 1.1, the Services shall not include: (a) maintenance of any transmission line, antenna, tower or tower lighting; (b) repair or replacement of the Equipment or any component or part of the Equipment which has become defective from any cause whatsoever other than normal wear and/or usage, including but limited to as a result of damage caused by accidents, physical abuse or misuse of the Equipment or acts of God (including, but not limited to, flood, fires, earthquakes or other natural disasters); (c) the Equipment's end of life, as reasonably determined by United; (d) any modifications or changes of any kind to the existing functionality of the Equipment as of the Effective Date which may be requested by Customer; or (e) programming services.

1.4. The Services shall be available during the coverage hours (the "Coverage Hours") identified in the Description of Services.

2. Term.

2.1. The term of this Agreement (the "Initial Term") shall commence on January 1, 2010 and shall remain in effect thereafter for a period of one (1) year until December 31, 2020, unless sooner terminated as provided in Section 6.

2.2. Upon expiration of the Initial Term, this Agreement shall automatically renew for additional successive one (1) year terms, for up to a total of five (5) years, unless either party provides written notice of nonrenewal at least thirty (30) days prior to the end of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"), unless sooner terminated as provided in Section 6. Notwithstanding the foregoing, no renewal of this Agreement shall be effective under this Section 2.2 unless United provides written notice to Customer, served personally or by certified mail, calling the attention of Customer to the existence of the automatic renewal provision in this Section 2.2 at least (45) days and not more than (60) sixty days prior to the end of the then-current Term.

2.3. If the Term is renewed for any Renewal Terms pursuant to this Section, the terms and conditions of this Agreement during each such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term as set forth in Section 3. If either party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.

3. Fees.

3.1. For the Services to be performed hereunder, Customer shall pay to United a fee determined in accordance with the Fee Schedule attached hereto as Schedule C. Said fee shall be payable annually within thirty (30) days of receipt by Customer of an invoice from United and shall be due so long as Customer is satisfied with the Services and Equipment is operational.

3.2. In addition to the Services provided by United to Customer hereunder, Customer may request and United may provide such other services as may be agreed to by United and Customer from time to time (the "Additional Services"). Customer shall pay United the hourly rate for such Additional Services set forth on the Fee Schedule plus the cost of any parts or materials within thirty (30) days of receipt by Customer of an invoice therefore.

3.3. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided that in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, United's income, revenues, gross receipts, personnel, or real or personal property or other assets.

3.4. Customer shall reimburse United for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees.

4. Place of Performance of Services. The Services provided in connection with base stations and other fixed Equipment shall be performed at the location of such Equipment

(the "Customer Location"). All other Equipment must be shipped, at Customer's expense, or dropped off by Customer at United's office located at 5703 Enterprise Parkway, East Syracuse, New York 13057. United shall be responsible for the cost of return shipping.

5. Customer Obligations. Customer shall:

5.1. Respond promptly to any reasonable requests from United for instructions, information, or approvals required by United to provide the Services.

5.2. Provide access to any Customer Location and the Equipment as required to enable United to perform the Services and supply adequate heat, lighting, and power at such Customer Location.

5.3. Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in United's provision of the Services.

6. Termination.

6.1. Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party:

a. Materially breaches this Agreement, and such breach is Incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or

b. (i) Becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (iv) is dissolved or liquidated or takes any corporate action for such purpose; (v) makes or seeks to make a general assignment for the benefit of its creditors, or (vi) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

6.2. Notwithstanding anything to the contrary in Section 6.1, United may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment.

6.3. The expiration or termination of this Agreement shall not affect or impair United's right to receive any amounts due under this Agreement that accrued prior to such expiration or termination.

7. Standards for the Performance of the Services. United shall perform the Services in accordance with the following standards:

7.1. If parts of the Equipment are replaced, manufacturer parts of equal quality to the original parts shall be used;

7.2. Oil, water, dust and foreign substances shall be removed from the Equipment;

7.3. The Equipment shall be maintained at levels necessary to provide the required communication;



7.4. Routine maintenance procedures prescribed from time to time by United for its Equipment shall be followed;

7.5. The Services shall be performed in compliance with all applicable federal, state, and local laws and regulations;

7.6. The Services shall be performed by qualified persons; and

7.7. The Equipment shall be inspected and adjusted periodically and as often as required which shall typically not exceed once per calendar year.

8. Limited Warranty; Disclaimer of Other Warranties.

8.1. United warrants that it shall perform the Services in accordance with the terms and subject to the conditions set forth in this Agreement.

8.2. United's sole and exclusive liability and Customer's sole and exclusive remedy for breach of the warranty set forth in Section 8.1 shall be as follows:

a. United shall use reasonable efforts to promptly cure any such breach; provided, that if United cannot cure such breach within a reasonable time (but no more than thirty (30) days) after Customer's written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 6.1.

b. In the event the Agreement is terminated pursuant to Section 8.2(a) above, United shall within thirty (30) days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for the Services for the month or year (as applicable, depending on whether Customer is invoiced monthly or annually) in which the date of termination occurs, less a deduction equal to the fees for the Services performed up to and including the date of termination on a pro-rated basis.

c. The foregoing remedy shall not be available unless Customer provides written notice of such breach within thirty (30) days after the performance of the nonconforming Services by United.

8.3. UNITED MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 8.1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

9. Limitation of Liability.

9.1. IN NO EVENT SHALL UNITED BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT UNITED HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2. IN NO EVENT SHALL UNITED'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO UNITED PURSUANT TO THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. Insurance.

10.1. During the Term, United and Customer shall each maintain, at their own sole cost and expense, such insurance coverage which is necessary to cover its obligations and responsibilities under this Agreement, including, but not limited to, commercial general liability insurance in reasonable and appropriate amounts. Each party shall maintain during the Term, at its sole cost and expense, workers' compensation and employer's liability insurance in the amounts required by law.

10.2. United 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 \$2,000,000 Annual Aggregate.

10.2.a.1. 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.

10.2.a.2. Oneida County and any other parties required by the Customer 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.

b. Workers Compensation and Employers Liability

10.2.b.1. Statutory limits apply.

c. Automobile Liability

10.2.c.1. Business Auto Liability with limits of at least \$1,000,000 each accident.

10.2.c.2. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

10.2.c.3. Oneida County shall be included as additional insureds on the auto policy. Coverage for these additional insureds shall be on a primary and non-contributing basis.

d. Commercial Umbrella

10.2.d.1. Umbrella limits must be at least \$1,000,000.

10.2.d.2. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.

10.2.d.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.

10.2.d.4. For the avoidance of doubt, Oneida County acknowledges that umbrella coverage will not be specifically amended to include additional insureds but instead will be automatically changed to remain consistent with the CGL.

10.3. Waiver of Subrogation: United waives all rights against the Customer and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability or Workers Compensation and Employers Liability insurance maintained per requirements stated above.

10.4. Certificates of Insurance. Prior to the start of any work, United shall provide a certificate of insurance to the Customer. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of United's Commercial General Liability Policy. United will advise Customer at least 30 days in advance of the cancellation or non-renewal of any of the above required insurance policies.

10.5. No Representation of Coverage Adequacy. By requiring insurance, the Customer does not represent that coverage and limits will be adequate to protect United. The Customer reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements stated in this Agreement, or failure to identify any insurance deficiency, will not relieve United from, nor may it be construed or considered a waiver of United's obligation to maintain, the required insurance at all times during the performance of this Agreement.

10.6. Each party shall deliver to the other party, upon request, certificates or other proof of its insurance, describing the amount and coverage of its insurance.

11. Indemnification. Each party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other party and its members, shareholders, officers, agents, directors, employees, contractors, representatives, successors and permitted assigns (collectively, the "Indemnified Party") from and against any and all claims, actions, losses, damages, costs and expenses of whatever kind, including reasonable attorneys' fees and expenses, that are incurred by the Indemnified Party, relating to, arising out of resulting from any third party claim alleging the Indemnifying Party's breach of any representation, warranty,

covenant or provision of this Agreement or the negligence, gross negligence or willful misconduct on the part of the Indemnifying Party or its members, officers, agents, directors, employees, contractors or representatives in connection with this Agreement.

12. Compliance with FCC Requirements. Applications and statements of fact required by the Federal Communications Commission (the "FCC") must be subscribed and sworn to by the radio or television licensee, and Customer is solely responsible for compliance with all FCC requirements. However, upon Customer's request, United will provide Customer with forms, advice and technical assistance, including frequency, modulation and power measurements, to assist Customer with the completion of any forms, reports or other documentation required by the FCC.

13. Performance of Services.

13.1. United represents that United is duly licensed and has the qualifications, the manufacturer certifications, the specialized skills, the experience and the ability to properly perform the Services. United shall use the United's best efforts to perform the Services such that the results are satisfactory to the Customer. United shall be solely responsible for determining the location, 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.

13.2. United may, at United's own expense, employ or engage the services of such employees, subcontractors and/or partners as United deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be employees of the Customer, and the Customer shall have no obligation to provide Assistants with any salary or benefits. United shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the Customer, in compliance with any and all applicable Federal, State or Local Laws and Regulations. United shall expressly advise the Assistants of the terms of this Agreement.

13.3. United acknowledges and agrees that United and its Assistants have no authority to enter into contracts that bind the Customer or create obligations on the part of the Customer without the prior written authorization of the Customer.

13.4. United shall inform the Customer within twenty-four (24) hours if it is unable or unwilling to perform Services pursuant to this Agreement. United maintains the right to do so at any time, and the Customer maintains the right to contract with other individuals or entities to perform the same services.

14. Independent Contractor Status.

14.1. It is expressly agreed that the relationship of United to the Customer shall be that of an independent contractor. Employees of United shall not be considered employees of the Customer for any purpose including, but not limited to, claims for unemployment insurance, worker's compensation, retirement, or health benefits. United, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself in accordance with such status, that neither it, nor any of its employees or Assistants, shall hold themselves out as, nor claim to be, officers or employees of the Customer 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 Customer.

14.2. United 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 the general public as a regular course of business. United and the Customer agree that United is free to undertake other work arrangements during the Term of this Agreement, and may continue to make its services available to the public.

14.3. United and its Assistants shall not be eligible for compensation from the Customer due to absence because of a) illness; b) normal vacation; c) attendance at school or special training or a professional convention or meeting.

14.4. United acknowledges and agrees that neither United, nor its Assistants, shall be eligible for any Customer employee benefits, including retirement membership credits.

14.5. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges United's independent contractor status, it is agreed that both the Customer and United 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.

14.6. United 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.

15. Notices. Any notice or other communication required or permitted under this Agreement (each, a "Notice") shall be in writing and addresses to the other party at its address set forth on the signature page to this Agreement. Except as otherwise provided herein, all Notices must be given by personal delivery, overnight delivery service, or by registered or certified mail, return receipt requested. Notices shall be effective (a) if personally or overnight service delivered, upon delivery, or (b) if mailed by registered or certified mail, five (5) days after mailing. Either party may change its address for Notices for time to time in accordance with this Section.

16. No Third Party Beneficiaries. This Agreement is not intended to benefit any third party, nor shall any person or entity who is not a party hereto be entitled to enforce any of the rights or obligations of a party under this Agreement.

17. Assignment. This Agreement shall not be assignable, in whole or part, by either party without the prior written consent of the other party. Any purported assignment in violation of the preceding sentence shall be null and void.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

19. Construction. This Agreement has been negotiated by the respective parties, each of which has had the opportunity, whether exercised or not, to be represented by counsel, and the language hereof will not be construed for or against any party hereto.

20. Non-Waiver. No waiver by either party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. Section Headings. The section and subsection headings contained in this Agreement are included for convenience only and form no part of the Agreement between the parties and shall not be utilized in interpreting the meaning of any paragraph or subparagraph of this Agreement.

22. Survival. The rights and obligations of the parties set forth in this Section 8.4 and in Sections 6 and 8-11 and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

23. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in any state or federal court located in the County of Oneida, New York. The parties hereby irrevocably submit to the exclusive jurisdiction of these courts and waive the defense of inconvenient forum to the maintenance of any action or proceeding in such venue.

24. Force Majeure. United shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of United including, without limitation, acts of nature, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of thirty (30) days, Customer shall be entitled to give notice in writing to United to terminate this Agreement and recoup any fees paid in advance of Services rendered.

25. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be, or shall become, prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

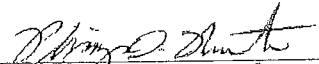
26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by electronic means, such as portable document format, shall be as effective as delivery of a manually executed counterpart of this Agreement.

27. Entire Agreement. This Agreement constitutes the complete and entire understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations and understandings. 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, Schedule A, Schedule B, Schedule C, and Schedule D, the Oneida County Standard Contract Clauses Addendum, which are hereby incorporated into this Agreement by this reference. This Agreement may only be modified or amended by a written agreement signed by an authorized representative of Customer and the Field Operations Manager of United.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

UNITED RADIO SERVICE, INC.

CUSTOMER:

By:   
Name: Philip D. Rubenstein  
Title: President

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

Address: 5703 Enterprise Parkway  
East Syracuse, NY 13057

Address: 800 Park Avenue  
Utica, NY 13501

Phone: 315.446.7181

Phone: 315.798.5800

Email: wdawes@unitedradio.com

Email: ce@ocgov.net

## SCHEDULE A

### Description of Services

"Coverage Hours" means: 24 hours/day x 7 days/week x 365 days/year

The Services consist of labor and parts required to repair the Equipment which has become defective through normal wear and/or usage, and specifically includes/excludes the following:

Included: (See Schedule B)

- A. On-Site Response
  - 'Coverage Hours'
  - FNE Equipment
  
- B. Remote
  - 'Coverage Hours'
  - Phone Support -- FNE and Software
  - Code plug archiving
  - Code plug restoration
  - Subscriber Equipment, mailed to United Radio for service

Excluded:

- Preventative Maintenance, including, but not limited to Bluetooth beacon battery replacement
- Software Platforms
- Software Updates/Upgrades
- End of Life equipment
- Failures due to acts of god, or physical abuse



## SCHEDULE B

### List of Equipment

- 4) MTR3000 Repeater
- 1) 24 Port Switch
- 1) HP Router
- 1) 1800 Watt UPS
- 100) XPR7580e Portable
- 15) 6 Unit Portable Charger
- 50) Bluetooth Beacon
- 4) XPR5850E Control Station with Power Supply
- 1) LED Wall Mount Monitor
- 1) Dell R230 Server
- 1) Dell 7000 Series All In One Client
- 1) RKP17 KVM w/ Monitor
- 2) A200 Gateway

SCHEDULE C

Fee Schedule

2020

(January 1, 2020 – December 31, 2020)

Annual Maintenance Contract Amount \$20,004.00

2021

(January 1, 2021 – December 31, 2021)

Annual Maintenance Contract Amount \$21,005.00

2022

(January 1, 2022 – December 31, 2022)

Annual Maintenance Contract Amount \$22,050.00

2023

(January 1, 2023 – December 31, 2023)

Annual Maintenance Contract Amount \$23,160.00

2024

(January 1, 2024 – December 31, 2024)

Annual Maintenance Contract Amount \$24,320.00

Hourly Rate for Additional Services (Prevailing Wage)

Business Hours (T&M): \$195.00

After Hours (T&M): \$350.00



UNITRAD-01

DALLEN

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/8/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MILLER AGENCY OF NEW YORK INC 7000 E GENESEE ST, BLDG E FAYETTEVILLE, NY 13066	CONTACT NAME:	
	PHONE (A/C, No, Ext): (315) 446-5444	FAX (A/C, No): (315) 446-5719
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : PHOENIX INSURANCE CO.		25623
INSURER B : TRAVELERS INDEMNITY CO. OF AMERICA		25666
INSURER C : TRAVELERS PROPERTY CASUALTY CO OF AMERIC		25674
INSURER D : TRAVELERS INDEMNITY COMPANY		1899
INSURER E :		
INSURER F :		

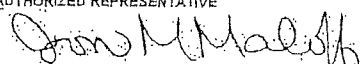
INSURED  
United Radio Inc  
5703 Enterprise Parkway  
East Syracuse, NY 13067

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	630-132L3909	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMPIOP AGG \$ 10,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	810 1N944582 20	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	X	CUP 3J503649	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 20,000,000 AGGREGATE aggregate \$ 20,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	✓	UB 7K726702 19 43 V	7/1/2020	7/1/2021	<input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Certificate holder is included as additional insured on a Primary-Non contributing basis as required by written contract to the extent of forms attached.  
 Waiver of Subrogation applies to General Liability, Umbrella, Workers Compensation  
 CGD246 8/05  
 CGD 467 2/19  
 CAT 960 2/15

CERTIFICATE HOLDER  ONEIDA COUNTY 800 PARK AVE Utica, NY 13501	CANCELLATION  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET ADDITIONAL INSURED**  
 (Includes Products-Completed Operations If Required By Contract)

This endorsement modifies Insurance provided under the following:  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART

**PROVISIONS**

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that you agree in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only:

- a. With respect to liability for "bodily injury" or "property damage" that occurs, or for "personal injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement and while that part of the contract or agreement is in effect; and
- b. If, and only to the extent that, such injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the written contract or agreement applies. Such person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is subject to the following provisions:

- a. If the Limits of Insurance of this Coverage Part shown in the Declarations exceed the minimum limits required by the written contract or agreement, the insurance provided to the additional insured will be limited to such minimum required limits. For the purposes of determining whether this limitation applies, the minimum limits required by the written contract or agreement will be considered to include the minimum limits of any Umbrella or Excess liability coverage required for the additional insured by that written contract or agreement. This provision will not increase the limits of insurance described in Section III – Limits Of Insurance.
- b. The insurance provided to such additional insured does not apply to:

- (1) Any "bodily injury", "property damage" or "personal injury" arising out of the providing, or failure to provide, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
- (b) Supervisory, inspection, architectural or engineering activities.

- (2) Any "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the written contract or agreement specifically requires you to provide such coverage for that additional insured during the policy period.

- c. The additional insured must comply with the following duties:

- (1) Give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

- (a) How, when and where the "occurrence" or offense took place;
- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- (2) If a claim is made or "suit" is brought against the additional insured:

COMMERCIAL GENERAL LIABILITY

- (a) Immediately record the specifics of the claim or "suit" and the date received; and
  - (b) Notify us as soon as practicable and see to it that we receive written notice of the claim or "suit" as soon as practicable.
- (3) Immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- (4) Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover such additional insured for a loss we cover. However, this condition does not affect whether the insurance provided to such additional insured is primary to other insurance available to such additional insured which covers that person or organization as a named insured as described in Paragraph 4., Other Insurance, of Section IV – Commercial General Liability Conditions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## XTEND ENDORSEMENT FOR SERVICE INDUSTRIES

This endorsement modifies Insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>A. Who Is An Insured – Unnamed Subsidiaries</li> <li>B. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees And Co-Volunteer Workers</li> <li>C. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies</li> <li>D. Blanket Additional Insured – Broad Form Vendors</li> <li>E. Blanket Additional Insured – Controlling Interest</li> <li>F. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers</li> </ul> | <ul style="list-style-type: none"> <li>G. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises</li> <li>H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations</li> <li>I. Blanket Additional Insured – Grantors Of Franchises</li> <li>J. Incidental Medical Malpractice</li> <li>K. Blanket Waiver Of Subrogation</li> </ul> |
|---|---|

### PROVISIONS

#### A. WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to SECTION II – WHO IS AN INSURED:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or

- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1, of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

#### B. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES AND CO-VOLUNTEER WORKERS

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to

COMMERCIAL GENERAL LIABILITY

your other "volunteer workers" while performing duties related to the conduct of your business.

C. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
  - b. An organization, other than a partnership, joint venture or limited liability company; or
  - c. A trust;
- as indicated in its name or the documents that govern its structure.

D. BLANKET ADDITIONAL INSURED -- BROAD FORM VENDORS

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Occurs subsequent to the signing of that contract or agreement; and
- b. Arises out of "your products" that are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
  - (1) Any express warranty not authorized by you or any distribution or sale for a purpose not authorized by you;
  - (2) Any change in "your products" made by such vendor;
  - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
  - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or

- (6) "Your products" that, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

**E. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST**

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II – WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

**F. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS**

- The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed, subsequent to the signing of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:

- (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
- (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

**G. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES**

- The following is added to SECTION II – WHO IS AN INSURED:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings,



COMMERCIAL GENERAL LIABILITY

canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations.

H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to SECTION II – WHO IS AN INSURED:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

I. BLANKET ADDITIONAL INSURED – GRANTORS OF FRANCHISES

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that grants a franchise to you is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your operations in the franchise granted by that person or organization.

If a written contract or agreement exists between you and such additional insured, the limits of insurance provided to such insured will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

J. INCIDENTAL MEDICAL MALPRACTICE

- 1. The following replaces Paragraph b. of the definition of "occurrence" in the DEFINITIONS Section:
  - b. An act or omission committed in providing or failing to provide "incidental

medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

- 2. The following replaces the last paragraph of Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietitian, nutritionist, occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or
- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

- 3. The following replaces the last sentence of Paragraph 5. of SECTION III – LIMITS OF INSURANCE:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

- 4. The following exclusion is added to Paragraph 2., Exclusions, of SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the DEFINITIONS Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
  - b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.
6. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not

subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. BLANKET WAIVER OF SUBROGATION**

The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

If the Insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.



ONE TOWER SQUARE  
HARTFORD CT 06183

WORKERS COMPENSATION  
AND  
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00) - 001

POLICY NUMBER: UB-7R726702-18-43-V

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED  
BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS  
WAIVER.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:  
BUSINESS AUTO COVERAGE FORM

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>A. BROAD FORM NAMED INSURED</li> <li>B. BLANKET ADDITIONAL INSURED</li> <li>C. EMPLOYEE HIRED AUTO</li> <li>D. EMPLOYEES AS INSURED</li> <li>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</li> <li>F. WAIVER OF DEDUCTIBLE – GLASS</li> <li>G. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</li> </ul> | <ul style="list-style-type: none"> <li>H. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</li> <li>I. PERSONAL PROPERTY</li> <li>J. AIRBAGS</li> <li>K. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS.</li> <li>L. BLANKET WAIVER OF SUBROGATION</li> <li>M. UNINTENTIONAL ERRORS OR OMISSIONS</li> </ul> |
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**PROVISIONS**

**A. BROAD FORM NAMED INSURED**

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

**B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an

additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who is An Insured provision contained in Section II.

**C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

COMMERCIAL AUTO

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

- 1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

- 2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

G. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

H. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

I. PERSONAL PROPERTY

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and
- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

J. AIRBAGS

The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

K. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV – BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative notice as soon as reasonably

possible of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**L. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

- 5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**M. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV – BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

Schedule D - Oneida County Standard Contract Clauses 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 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 Purchasing  
800 Park Ave 6<sup>th</sup> Floor Utica, NY 13501  
Phone (315) 798-5880 Fax (315) 798-4042  
[purchasing@ocgov.net](mailto:purchasing@ocgov.net)

Anthony J. Picente Jr.  
County Executive

Mello J. Testa  
Director

MEMORANDUM

TO: County Attorney

FROM: Shelley Nowak Assistant Director

RE: Sole Source/United Radio-Trbonet Dealer

DATE: July 8, 2020

The Oneida County Purchasing Department has reviewed the attached request to declare United Uniform a Sole Source provider for maintenance and service on equipment used in the Jail Trbonet System at the Correctional Facility. United Radio installed the County Jail Mototrbo Communications System, and is therefore intimately familiar with it. They programmed and installed mobile and portable radios, as well as servers for the jail. They are the only authorized Trbonet dealer in Central New York, and are able to provide on-site response service 24 hours/day, 7 days/week, 365 days/year. There is no other vendor, distributor, or authorized reseller. Therefore, Purchasing has determined that United Radio has met the qualifications to be deemed a sole source provider for all components and services related to the Jail Trbonet System at the Correctional Facility.

Thank you.



# ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR  
ONEIDA COUNTY EXECUTIVE

PHYLLIS D. ELLIS, BSN, MS, FACHE  
DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

July 20, 2020

FN 20 20-264

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

HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of an extension to an agreement between Oneida County, through its Health Department and Lisa Gilmore. This amendment extends the original agreement for an additional one year term and modifies the rate schedule.

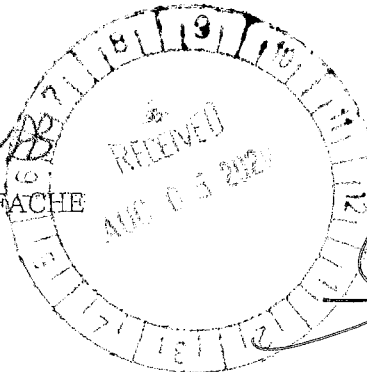
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The cost of this agreement is not expected to exceed \$63,615 for the term of the contract, including the optional two, one year extensions.

If this agreement meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

*Phyllis D. Ellis*  
Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health



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

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

Date 8-4-20

CM

ADMINISTRATION  
ADIRONDACK BANK BLDG., 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-6400 • FAX: (315) 268-6138

SPECIAL CHILDREN SERVICES  
ADIRONDACK BANK BLDG. 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH  
ADIRONDACK BANK BLDG., 4TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES  
408 ELIZABETH ST. UTICA, NY 13501  
TEL: (315) 798-5740 • FAX: (315) 798-1057

Oneida Co. Department: Health

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

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor:

Lisa Gilmore  
211 West Sycamore  
Rome, NY 13440

Title of Activity or Service:

Preschool Related Services

Proposed Dates of Operation:

July 1, 2020 to June 30, 2021

Client Population/Number to be Served:

Eligible preschool children in Oneida  
County with disabilities

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** NYS requires 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, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

**Total Funding Requested:** \$63,615.00 **Account** A2960 1953 Rev act A3277

**Oneida County Dept. Funding Recommendation:** \$63,615.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** State pays 59.5% County pays 40.5%

**Cost Per Client Served:** NA

**Past Performance Data:** 2019 Expense was \$15,847

**O.C. Department Staff Comments:**

**Oneida County Health Department Preschool Related Services Rate Amendment**

**THIS AMENDMENT AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and Lisa Gilmore residing at 211 West Sycamore Street, Rome, New York 13440, (hereinafter referred to as the "Contractor").

**WITNESSETH**

**WHEREAS**, the County and the Contractor entered into an agreement (Oneida County Contract No. 66415), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement, and

**NOW, THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the date first written above.

**Oneida County**

**Contractor**

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

  
\_\_\_\_\_  
Lisa Gilmore

DATE: \_\_\_\_\_

DATE: 7/27/20

Approved:

\_\_\_\_\_  
Ellen Rayhill  
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired Aide 1:1	\$53.00 \$10.00	N/A N/A	\$30.00 N/A

# EXHIBIT A



## ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the COUNTY OF ONEIDA, through its Health Department, 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," and LISA GILMORE, 211 West Sycamore Street, Rome, NY 13440, hereinafter referred to as the "Contractor."

### WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

### 1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

### 2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

### 3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.



#### 4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

#### 5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

#### 6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

## 7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

## 8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

## 9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further 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 Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

## 10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. Physical Therapists must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
  - e. Occupational therapists must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
  - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
  - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
  - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
  - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
  - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
  - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
  - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
  - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
  - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
  - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

## 11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
  - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
  - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
  - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
  - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
  - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

## 12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

## 13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

## 14. INDEMNIFICATION

The Contractor 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 Contractor or its agents, contractors, subcontractors, 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 Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

## 15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. INDEPENDENT CONTRACTOR STATUS

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor shall not be considered employee of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Contractor, in accordance with her status as an independent contractor, covenants and agrees that she will conduct herself in accordance with such status, that she will neither hold herself out as, nor claim to be, an officer or employee of the County by reason thereof and that she 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. Contractor warrants and represents that she 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. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor 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. Contractor acknowledges and agrees that she shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, 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). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor 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.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's 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 agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. SUBCONTRACT

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. EXPENSES

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.

19. TRAINING

Contractor shall not be required to attend or undergo any training by the County. Contractor 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.

20. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Contract, 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 Contract.


21. ENTIRE AGREEMENT

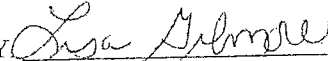
The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire 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 Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

CONTRACTOR

BY:   
Anthony J. Picente Jr.  
Oneida County Executive

BY:   
Lisa Gilmore

DATE: 8/13/18

DATE: 6/17/18

Approved

BY: \_\_\_\_\_  
Raymond F. Bara  
Assistant County Attorney

**APPENDIX A**  
**ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

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.



# ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR.      PHYLLIS D. ELLIS, BSN, MS, FACHE  
ONEIDA COUNTY EXECUTIVE      DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

July 20, 2020

FN 2020 265

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

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 and The Network for Children's Speech, Occupational and Physical Therapy, LLC. This amendment extends the original agreement for an additional one-year term and modifies the rate schedule.

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, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

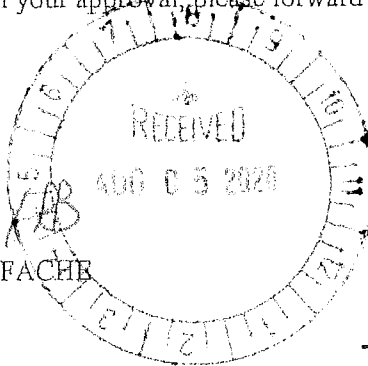
The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The expense is not expected to exceed \$750,000.00 for the term of the contract, including the optional two, one year extensions.

If this agreement meets with your approval, please forward the same to the Board of Legislators for their review and approval.

Sincerely,

*Phyllis D. Ellis* KAB

Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health



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

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

Date 8-4-20

CM

ADMINISTRATION  
ADIRONDACK BANK BLDG., 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-8400 • FAX: (315) 286-8138

SPECIAL CHILDREN SERVICES  
ADIRONDACK BANK BLDG. 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH  
ADIRONDACK BANK BLDG., 4TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5064 • FAX: (315) 798-6496

CLINICAL SERVICES  
408 ELIZABETH ST. UTICA, NY 13501  
TEL: (315) 798-5748 • FAX: (315) 798-1057

Oneida Co. Department: Health

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

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor:

The Network for Children's Speech, Occupational  
and Physical Therapy, LLC.  
171 Intrepid Lane  
Syracuse, NY 13205

Title of Activity or Service:

Preschool Related Services

Proposed Dates of Operation:

July 1, 2020 to June 30, 2021

Client Population/Number to be Served:

Eligible preschool children in Oneida  
County with disabilities

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** NYS requires 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, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$ 750,000.00

Account A2960 1953  
Rev act A3277

Oneida County Dept. Funding Recommendation: \$750,000.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served:

Past Performance Data: NA

O.C. Department Staff Comments:

- See O.C. Department comment



**Oneida County Health Department Preschool Related Services Rate Amendment**

**THIS AMENDMENT AGREEMENT**, made this 1 day of July, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and The Network for Children's Speech, Occupational and Physical Therapy, LLC, a domestic limited liability company organized and existing under the laws of the State of New York, having its principal office located at 171 Intrepid Lane, Syracuse, New York 13205, (hereinafter referred to as the "Contractor").

**WITNESSETH**

**WHEREAS**, the County and the Contractor entered into an agreement (Oneida County Contract No. 66209), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement. and

**NOW, THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the date first written above.

ONEIDA COUNTY

CONTRACTOR

BY: \_\_\_\_\_

Anthony J. Picente Jr.  
Oneida County Executive

BY:  \_\_\_\_\_

Erik Schwartz, Executive Director  
The Network for Children's Speech,  
Occupational and Physical Therapy, LLC.

DATE: \_\_\_\_\_

DATE: 7/23/2020

Approved

\_\_\_\_\_  
Ellen S. Rayhill  
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired Aide 1:1	\$53.00 \$10.00	N/A N/A	\$30.00 N/A

# EXHIBIT A



## ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the COUNTY OF ONEIDA, through its Health Department, 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," and THE NETWORK FOR CHILDREN'S SPEECH, OCCUPATIONAL AND PHYSICAL THERAPY, LLC, a domestic professional service limited liability company organized and existing under the laws of the State of New York, having its principal office located at 171 Intrepid Lane, Syracuse, NY 13205, hereinafter referred to as the "Contractor."

### WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

#### 1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

#### 2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

#### 3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

#### 4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

#### 5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

#### 6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.ons.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

## 7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

## 8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

## 9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further 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 Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

## 10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
  - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
  - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
  - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
  - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
  - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
  - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
  - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
  - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
  - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
  - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
  - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

## 11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
  - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
  - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
  - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
  - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
  - v. Conducting activities such as telephone conferences or other communication practices, Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

## 12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

## 13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

## 14. INDEMNIFICATION

The Contractor 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 Contractor or its agents, contractors, subcontractors, 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 Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

## 15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.



16. **INDEPENDENT CONTRACTOR STATUS**

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor'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 Contractor, in accordance with its status as an independent contractor, covenants and agrees that its employees 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. 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. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor'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. Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, 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). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor 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.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's 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 agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. **SUBCONTRACT**

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. **EXPENSES**

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.

19. **TRAINING**

Contractor shall not be required to attend or undergo any training by the County. Contractor 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.

20. **ADVICE OF COUNSEL**

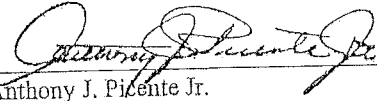
Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

21. ENTIRE AGREEMENT

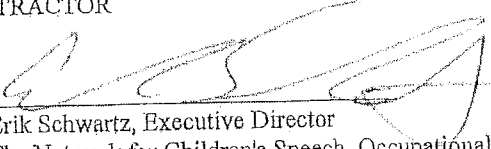
The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum, and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire understanding 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 contract. No waiver, alterations or modifications of and provisions of this contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

BY:   
Anthony J. Picente Jr.  
Oneida County Executive


CONTRACTOR

BY:   
Erik Schwartz, Executive Director  
The Network for Children's Speech, Occupational and  
Physical Therapy, LLC.

DATE: 8/13/18

DATE: 6/19/18

Approved

BY:   
Raymond F Bara  
Assistant County Attorney

**APPENDIX A**  
**ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

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.



# ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR  
ONEIDA COUNTY EXECUTIVE

PHYLLIS D. ELLIS, BSN, MS, FACHE  
DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OOGOV.NET/HEALTH

July 20, 2020

FM 20 20-266

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

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached is one (1) copy of an amendment to an Agreement between Oneida County through its Health Department and Speech Language Therapy of CNY, LLC. This amendment extends the original agreement for an additional one-year term and modifies the rate schedule.

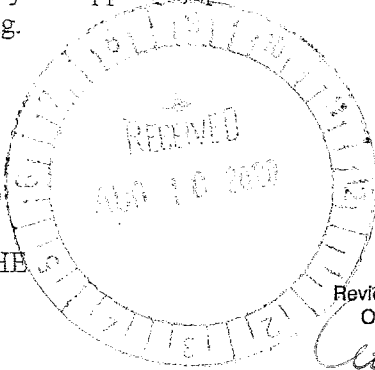
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this agreement will commence July 1, 2020 through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The expense is expected to not to exceed the \$200,000 over the term of the contract, including the optional two, one year extensions.

If this amendment meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

*Phyllis D. Ellis*  
Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health



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

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

CM

Date 8-7-20

ADMINISTRATION  
ADIRONDACK BANK BLDG., 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-6400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES  
ADIRONDACK BANK BLDG. 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH  
ADIRONDACK BANK BLDG., 4TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES  
408 ELIZABETH ST. UTICA, NY 13501  
TEL: (315) 798-5748 • FAX: (315) 798-1057

Oneida Co. Department: Health

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

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor: Speech Language Therapy of CNY, LLC  
4266 Acme Road  
Frankfort, NY 13340

Title of Activity or Service: Preschool Related Services

Proposed Dates of Operation: July 1, 2020 to June 30, 2021  
With option to extend an additional year

Client Population/Number to be Served: Eligible preschool children in Oneida  
County with disabilities

Summary Statements

- 1) **Narrative Description of Proposed Services:** NYS requires 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, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$200,000.00      Account      A2960 1953  
Rev act      A3277

Oneida County Dept. Funding Recommendation: \$200,000.00

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served: unknown

Past Performance Data: 2019 expense was \$58,777.00

O.C. Department Staff Comments:

**Oneida County Health Department Preschool Related Services Rate Amendment**

THIS AMENDMENT AGREEMENT, made this 11 day of July, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"), and Speech-Language Therapy of CNY, LLC, Inc. a limited liability company organized and existing under the laws of the State of New York located at 4266 Acme Road, Frankfort, New York 13340, (hereinafter referred to as the "Contractor").

**WITNESSETH**

WHEREAS, the County and the Contractor entered into an agreement (Oneida County Contract No. 66438), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement, and

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

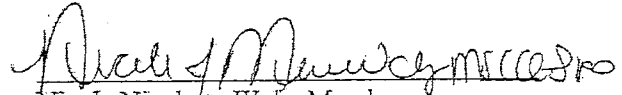
1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

**Oneida County**

**Contractor**

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

  
\_\_\_\_\_  
Nicole Nicolette-Walz, Member  
Speech-Language Therapy of CNY, LLC

DATE: \_\_\_\_\_

DATE: 7/1/2020

Approved:

\_\_\_\_\_  
Ellen S. Rayhill  
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired	\$53.00	N/A	\$30.00
Aide 1:1	\$10.00	N/A	N/A

# EXHIBIT A



## ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the COUNTY OF ONEIDA, through its Health Department, 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," and SPEECH-LANGUAGE THERAPY OF CENTRAL NEW YORK, LLC, a domestic professional service limited liability company organized and existing under the laws of the State of New York, having its principal office located at 4266 Acme Road, Frankfort, NY 13340, hereinafter referred to as the "Contractor."

### WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

### 1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

### 2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

### 3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.



#### 4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

#### 5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC 1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

#### 6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

## 7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

## 8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

## 9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further 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 Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

## 10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
  - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
  - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
  - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
  - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
  - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
  - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
  - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
  - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
  - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
  - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
  - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

## 11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
  - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
  - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
  - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
  - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
  - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

## 12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

## 13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

## 14. INDEMNIFICATION

The Contractor 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 Contractor or its agents, contractors, subcontractors, 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 Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

## 15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.

16. **INDEPENDENT CONTRACTOR STATUS**

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor'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 Contractor, in accordance with its status as an independent contractor, covenants and agrees that its employees 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. 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. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor'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. Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, 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). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor 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.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's 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 agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. **SUBCONTRACT**

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. **EXPENSES**

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.

19. **TRAINING**

Contractor shall not be required to attend or undergo any training by the County. Contractor 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.

20. **ADVICE OF COUNSEL**


Each party acknowledges that, in executing this Contract, 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 Contract.

21. ENTIRE AGREEMENT

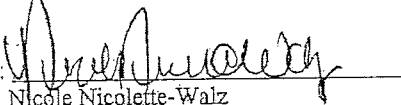
The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and constitute the entire 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 Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

BY:   
Anthony J. Ficente Jr.  
Oneida County Executive

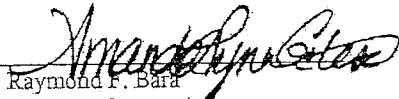
CONTRACTOR

BY:   
Nicole Nicolette-Walz  
Speech-Language Therapy of Central New York, LLC

DATE: 8/13/18

DATE: 6/20/18

Approved

BY:   
01310 Raymond F. Bara  
Assistant County Attorney

**APPENDIX A  
ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
-----------------	--------------------------------------	--

Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

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.



# ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR.      PHYLLIS D. ELLIS, BSN, MS, FACHE  
ONEIDA COUNTY EXECUTIVE      DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

July 20, 2020

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

FN 20 20 267

HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Attached is one (1) copy of an amendment to an agreement between Oneida County, through its Health Department, and 3 Circles Therapy: OT, PT, SLP Services. This amendment extends the original agreement for an additional one-year term and modifies the rate schedule.

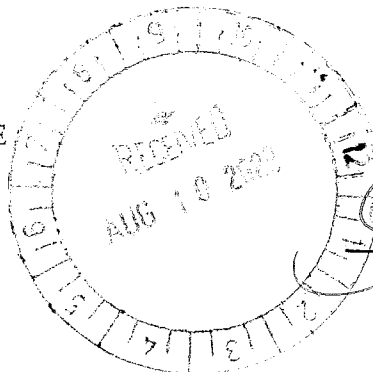
Under Section 4410 of the New York State Education Law and in compliance with Part 200 of the Regulations of the Commissioner of Education of the State of New York, counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.

The term of this amendment will commence July 1, 2020 and continue through June 30, 2021. This is a New York State mandated program. New York State will reimburse the county 59.5% of the costs incurred. The expense is not expected to exceed \$382,056 for the term of the contract, including the optional two, one year extensions.

If this amendment 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



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

*Anthony J. Picente, Jr.*  
County Executive

Date 8-7-20

CM

ADMINISTRATION  
ADIRONDACK BANK BLDG., 5<sup>TH</sup> FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-6400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES  
ADIRONDACK BANK BLDG 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH  
ADIRONDACK BANK BLDG., 4<sup>TH</sup> FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5064 • FAX: (315) 798-6486

CLINICAL SERVICES  
406 ELIZABETH ST. UTICA, NY 13501  
TEL: (315) 798-5748 • FAX: (315) 798-1057

Oneida Co. Department: Health

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

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor:

3 Circles Therapy: OT, PT, SLP Services  
23 Mexico Street  
Camden, NY 13316

Title of Activity or Service:

Preschool Related Services

Proposed Dates of Operation:

July 1, 2020 to June 30, 2021

Client Population/Number to be Served:

Eligible preschool children in Oneida  
County with disabilities

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** NYS requires 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, Counties are to provide payment for related services rendered to eligible preschool aged children with disabilities.
- 2) **Program/Service Objectives and Outcomes:** Compliance with NYS Department of Education Law
- 3) **Program Design and Staffing** NA

Total Funding Requested: \$382,056.00

Account # A2960.1953  
Rev A3277

**Oneida County Dept. Funding Recommendation:**

Proposed Funding Sources (Federal \$/ State \$/County \$): State pays 59.5% County pays 40.5%

Cost Per Client Served: NA

Past Performance Data: 2019 expense was \$79,288.00

O.C. Department Staff Comments:



**Oneida County Health Department Preschool Related Services Rate Amendment**

THIS AMENDMENT AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between Oneida County, a municipal corporation organized and existing under the laws of the State of New York, through its Health Department, with its principal offices at the County Office Building, 800 Park Avenue, Utica, New York, 13501 (hereinafter referred to collectively as the "County"); and 3 Circles Therapy: OT, PT, SLP Services, PLLC, a domestic professional services limited liability company organized and existing under the laws of the State of New York located at 23 Mexico Street, Camden, New York 13316, (hereinafter referred to as the "Contractor").

**WITNESSETH**

WHEREAS, the County and the Contractor entered into an agreement (Oneida County Contract No. 66144), hereinafter referred to as the "Original Agreement," a copy of which is annexed hereto as "Exhibit A," that has an expiration date of June 30, 2020 and allows for an extension of the Original Agreement, and

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The Original Agreement shall be extended for the first of two consecutive one year options beginning July 1, 2020 and ending June 30, 2021.
2. The Original Agreement will be amended to change the Oneida County Rate Schedule which is attached hereto and incorporated in full.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first written above.

Oneida County

Contractor

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

*Alison Eisnor-Pitcher*  
\_\_\_\_\_  
Alison Eisnor-Pitcher  
3 Circles Therapy: OT, PT, SLP Services, PLLC

DATE: \_\_\_\_\_

DATE: 7/23/2020

Approved:

\_\_\_\_\_  
Ellen S. Rayhill  
Assistant County Attorney

APPENDIX A

ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF-HOUR RATE	MAXIMUM COORDINATOR PER HALF-HOUR BLOCK RATE	MAXIMUM GROUP HALF-HOUR RATE
Audiology	\$53.00	\$30.00	\$30.00
Assistive Technology Services	\$53.00	N/A	\$30.00
Counseling Services	\$53.00	\$30.00	\$30.00
Occupational Therapy	\$53.00	\$30.00	\$30.00
Orientation and Mobility Services	\$53.00	N/A	N/A
Physical Therapy	\$53.00	\$30.00	\$30.00
Speech Therapy for Eligible Preschool Students with Disabilities	\$62.50	\$30.00	\$34.00
Teacher of Hearing Impaired	\$53.00	N/A	\$30.00
Teacher of Visually Impaired Aide 1:1	\$53.00 \$10.00	N/A N/A	\$30.00 N/A

# EXHIBIT A



## ONEIDA COUNTY PRESCHOOL RELATED SERVICE CONTRACT

THIS CONTRACT, by and between the COUNTY OF ONEIDA, through its Health Department, 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," and 3 CIRCLES THERAPY: OT, PT, SLP SERVICES, PLLC, a domestic professional service limited liability company organized and existing under the laws of the State of New York, having its principal office located at 23 Mexico Street, Camden, New York 13316, hereinafter referred to as the "Contractor."

### WITNESSETH:

WHEREAS, the County is in need of the provision of related services to preschool children with disabilities pursuant to Section 4410 of the New York State Education Law and Part 200 of the Regulations of the Commissioner of Education, through the County's Education of Handicapped Children Program; and

WHEREAS, the Contractor has been approved by the Commissioner of Education of the State of New York to provide related services to preschool children with disabilities in accordance with Section 4410 of the New York State Education Law and in compliance with 8 NYCRR Part 200, to eligible preschool students with disabilities, as recommended by the Committee on Preschool Special Education and approved by the appropriate Board of Education from the child's resident school district;

NOW, THEREFORE, the parties hereto mutually agree as follows:

#### 1. TERM OF AGREEMENT

This Contract shall become effective July 1, 2018 and shall terminate on June 30, 2020, conditioned upon the continued availability of federal and/or New York State funds for the purpose set forth in this Contract. The County shall also have two (2) separate and consecutive options to extend this Contract. Each option shall be for one (1) year and shall be under the same terms and conditions contained in this Contract. Each such option shall be the sole and exclusive right of the County. Each option shall be exercised by the County in writing, and such option period shall commence upon the expiration of the immediately preceding Contract or option period.

#### 2. RATES

Upon submission of a completed County voucher and required supporting documentation as discussed below for services rendered, the County shall pay the Contractor the rates set forth in the Oneida County Related Service Rates Schedule, attached hereto and incorporated hereto as "Appendix A." Any rate changes during the life of this contract will be submitted as amendments to this Contract.

#### 3. TERMINATION

- a. By Contractor: Should the Contractor request termination of this Contract, a written notice of any such termination shall be provided to the County by the Contractor not less than ninety (90) days prior to the intended effective date of such action. In the event of such termination, the parties shall adjust the accounts due and the Contractor shall undertake no additional expenditures not already required.
- b. By County: This Contract may be terminated at any time by the County upon ten (10) days written notice to the Contractor. However, in the event the Contractor defaults in the performance of any of its obligations under this Contract, the County may terminate this Contract effective upon written notice at any time. Furthermore, should funds become unavailable or should appropriate Federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this Contract, the County shall have the option to immediately terminate this Contract upon providing written notice to the Contractor. In such event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

#### 4. SCOPE OF SERVICES

Services performed pursuant to this Contract shall be provided in accordance with Section 4410 of the New York State Education Law and in compliance with the regulations of the Commissioner of Education of the State of New York set forth in 8 NYCRR 200.

- a. The Contractor shall provide appropriate Related Services for children with disabilities delivered on an itinerant basis subject to New York State Education Department (hereinafter "NYSED") and the appropriate Board of Education (hereinafter "BOE") approval. The parties hereto agree that "Related Services" as used herein shall have the same meaning as that term is defined in Section 4410 of the New York State Education Law and 8 NYCRR 200.1(qq).
- b. The Contractor shall provide Related Services for children with disabilities during the school year. The school year is hereby defined as a July/August session from July 1 through August 31 and/or a September/June session from September 1 through June 30.
- c. The Contractor cannot begin providing Related Services to a child with disabilities until the BOE has approved the Notification of Determination of Placement or STAC 1 (System to Track and Account for Children), if the BOE uses the STAC 1, outlining the appropriate Related Services to be provided by the Contractor. The start date will be indicated on the STAC 1 and a copy shall be provided to the Contractor.
- d. All financial arrangements for services under this Contract shall be between the County and Contractor as outlined in the section entitled "Conditions of Payment" below. The County will maintain an approved Oneida County Related Services Provider List and ensure that the Contractor is a referral from this list approved by the New York State Department of Education for the County of Oneida.

#### 5. CONDITIONS OF PAYMENT:

The County, in accordance with the provisions of this Contract, shall reimburse the Contractor for expenditures made for contracted services as follows:

- a. The County will set rates for all related services delivered on an itinerant basis subject to NYSED approval.
- b. The County will provide payment of services rendered, as authorized on the child's Individualized Education Program (hereinafter "IEP") and the STAC 1 upon the Contractor's submission of a correctly completed voucher on a monthly basis. All submissions must include the required documentation as set forth in this Contract and any other documentation requested by the County. The Contractor shall maintain a copy of the child's IEP throughout the term of this Contract.
- c. The Contractor shall submit a voucher to the County for the services rendered not later than fifteen (15) days after the end of the July/August session and not later than fifteen (15) days after the end of each month for the September to June session.
- d. No payment shall be required to be made by the County prior to the receipt of Notification of Determination of Placement or STAC-1, if the BOE uses the STAC 1 as its notice of determination of placement.
- e. No parent or any person shall be required or requested to make payment for services in addition to the payments made by the County pursuant to this Contract.
- f. The Contractor must submit, for Medicaid eligible children, a signed Medicaid Provider Agreement and Reassignment form with the signed contract so the County can claim Medicaid reimbursement for the Related Services.

#### 6. MEDICAID COMPLIANCE:

The Contractor shall provide with the voucher the following information for all Medicaid eligible children enrolled in its programs pursuant to Section 4410 of the New York State Education Law:

- a. Dates the child received a Related Service (e.g. physical therapy, speech therapy, occupational therapy, skilled nursing services and/or counseling, and transportation, as applicable).
- b. Documentation that each Related Service session was verified as delivered by the signature of the service provider.
- c. Copy of the Medicaid consent form to release child specific information signed by the parent of a child with a disability receiving Medicaid eligible services.
- d. All reporting requirements necessary for Medicaid compliance per Section 4410 of the New York State Education Law. The Contractor shall be responsible for reviewing Medicaid in Education notifications and changes, which can be found at <http://www.oms.nysed.gov/medicaid/>.
- e. Documentation evidencing the number of eligible Medicaid services by service type provided to each Medicaid eligible child pursuant to Section 4410 New York State Education Law.
- f. The Contractor shall obtain from the parent or person in parental relationship to the Medicaid eligible child receiving Related Services pursuant to Section 4410 of the New York State Education Law, the Client Identification Number (hereinafter "CIN"), period of eligibility and any other relevant third party health insurance information for

the purpose of establishing Medicaid as the "payer of last resort." Nothing herein shall preclude the child's enrollment and initiation of services in accordance with the Board's Notice of Determination. A copy is to remain in the Contractor's file.

## 7. COMPLIANCE WITH THE LAW

The Contractor agrees that while performing under the terms of this Contract that the Contractor shall comply with all federal, New York State statutes and regulations, and all local rules and regulations.

## 8. CHILD ABUSE/MALTREATMENT MANDATE

- a. In compliance with Section 4410 of the New York State Education Law and Section 424-a of the New York State Social Services Law, the Contractor is required to screen and be cleared through the State Central Register of Child Abuse and Maltreatment (hereinafter "SCR").
- b. The Contractor is responsible for screening and obtaining clearance through the SCR for the following individuals: (1) Any person who is actively being considered for employment and who will have the potential for regular and substantial contact with children who receive preschool special education programs and Related Services; (2) Any person who is employed by an individual, corporation, partnership, or association that provides goods or services to approved preschool special education children.
- c. The Contractor is responsible for screening individuals through the SCR regardless of whether an individual has been screened through the SCR for employment or contract with another County or agency provider.
- d. The Contractor will not permit unsupervised contact between child and any potential employee or contractor before receiving a completed clearance and acceptable response from SCR.
- e. The Contractor will notify all individuals being screened that an inquiry will be made to the SCR and that this is a State requirement. The Contractor will establish procedures to ensure that the confidentiality of any SCR response is maintained. The Contractor will comply with SCR regulations in not screening employees more than once every six months, and one time only to the extent required by Section 424-a of the New York State Social Services Law for contractors, consultants and volunteers.
- f. Proof of SCR database check in accordance with Section 424-a of the New York State Social Services Law must be submitted to the County with the instant Contract and on an ongoing basis as required for special education services and programs for preschool children with disabilities.

## 9. CONFIDENTIALITY

The County and the Contractor shall hold in strict confidence all child records and disclose information and data in such records only to persons or entities as authorized or required by law or by written consent of the child's representative. The Contractor further 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 Contract. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this Contract in conformity with the provisions of applicable Federal, State, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Contract.

## 10. REPORTING REQUIREMENTS

- a. Contractor employed therapists shall be presently qualified to provide Related Services in New York State and shall submit copies of all appropriate license(s) or certification(s) to the County and update these as necessary during the term of this Contract.
- b. Contractor agrees to attend Committee for Preschool Special Education (hereinafter "CPSE") annual review meetings and program reviews as scheduled by the CPSE Chairperson or BOCES Coordinator for the child being served. The Contractor shall submit a copy of any reports necessary for review at these meetings to the County, as well as the CPSE Chairperson/BOCES Coordinator, at least ten (10) school days prior to the meeting date.
- c. Speech pathologists shall be required to obtain a written prescription (recommendation/order) for speech services signed and dated from (1) NYS Licensed and ASHA Certified Speech-Language Pathologist OR (2) a physician, physician's assistant or nurse practitioner which denotes the appropriate and current ICD code. The NYS Licensed and ASHA Certified Speech-Language Pathologist cannot write a referral if they have not seen the preschool child. According to 18 NYCRR 505.11, a written order must contain a diagnostic statement and purpose of treatment. It is not acceptable for the ordering or referring professional never to have met with the child as it is incompatible with the obligations of the ordering practitioner to assure that the ordered care, services or supplies will meet the recipients needs and restore him/her to the best possible functional level. Physician, physician assistants or nurse practitioner's orders must be dated on or before the initiation of service. No direct or consultation services will be

- permitted unless an appropriately written prescription is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
- d. **Physical Therapists** must obtain a signed prescription (order/recommendation) from a physician, physician assistant or nurse practitioner which denotes an ICD code.
  - e. **Occupational therapists** must obtain a signed prescription (order/recommendation) signed and dated by a licensed physician or nurse practitioner which denotes an ICD code.
  - f. No direct or consultation services can be delivered unless an appropriately signed and dated prescription by the appropriate professional is obtained. A copy of this prescription must also be forwarded to the County with the initial bill.
  - g. The Contractor must obtain a current copy of the IEP from the CPSE Chairperson prior to start of service which will follow the BOE approval date. This is applicable to any later program changes on the IEP as well. The Contractor shall deliver services as specified on the IEP in the areas of remediation, frequency and duration of Related Services.
  - h. The Contractor shall submit an attendance and progress note for each session the child received Related Services on a monthly basis at the minimum, or with the invoice, whichever is presented first. All progress notes submitted must also have the signature and National Provider Identification (NPI) number of this licensed individual and title as well as the direct service provider and title.
  - i. The Contractor shall call the CPSE chairperson for a program review if services cannot be delivered as indicated on IEP due to child's absence, or if the therapist recommends a change in service or discharge.
  - j. The Contractor shall forward a copy of all documentation and justification for 12-month programming to the County and the CPSE prior to any scheduled program review or annual review, whenever such is recommended.
  - k. The Contractor shall meet with the child's parent/guardian at such times as appropriate during the year to discuss goals and progress. Whenever services are to be delivered in conjunction with a general education preschool program, the Contractor shall work with the program by communicating with staff, parents, school district and other therapists. An attempt will also be made to provide parent/guardian with follow up materials to be used at home to reinforce delivery of related services.
  - l. The Contractor shall inform the parent/guardian of his/her responsibility to ensure that the child's attendance enables him/her to benefit from the related services provided. The parent/guardian should be made aware of the need to alert the Contractor in a timely manner when the child will be absent or not available for Related Services if provided in the home.
  - m. If two or more Related Services are required for a child, the CPSE Chairperson shall select one of the therapists to act as a Coordinator of Service. If the CPSE determines that a Special Education Itinerant Teacher (hereinafter "SEIT") is to be provided in conjunction with one or more Related Services, the SEIT shall be responsible for the coordination of such services pursuant to Regulations of the Commissioner of Education. Compensation for such services is to be part of the NYSED established rates for the SEIT model.
  - n. The Contractor's progress notes addressing goals and objectives on the IEP must be completed quarterly. A copy of the progress notes must be provided to the parent, the CPSE Chairperson and the County.
  - o. Upon expiration of the term of this Contract, all files and records shall be retained by the Contractor for six (6) years from the last date of payment under this Contract.

## 11. RESPONSIBILITIES OF THE COORDINATOR OF SERVICE

- a. When two or more Related Services are mandated (not in conjunction with SEIT), the CPSE Chairperson will designate the coordinator of services from the list of approved Related Service providers maintained by the County. The coordinator must be one of the individuals/agencies providing Related Services to the child, as specified by the CPSE. It is suggested that, to the extent possible, service providers be selected from the same agency. It is the responsibility of the coordinator to stay thoroughly informed on all facets of the services provided to the child. In addition to duties as outlined in the section entitled "Reporting Requirements" above, the designated coordinator will perform appropriate coordination activities including but not limited to:
  - i. Arranging the schedule for service delivery, offering recommendations and consulting with the CPSE chairperson to resolve scheduling issues when appropriate.
  - ii. Sharing appropriate information with other Related Service providers for the appropriate integration of such services.
  - iii. Gathering appropriate progress reports and anecdotal information relating to the student's progress from all Related Service providers to ensure that the Coordinator has a general knowledge of the child's progress, as well as any significant considerations, in the Related Service area.
  - iv. Attend Annual Review meeting and other meetings, if requested by the CPSE chairperson. The coordinator is responsible to have all information on the child's progress and needs and is expected to represent the other therapists involved in the child's care at the CPSE meetings.
  - v. Conducting activities such as telephone conferences or other communication practices. Coordination activities must be documented and reported in half-hour service blocks on the Coordination Service Form.

- vi. Coordination services can be provided only by a licensed speech pathologist, physical therapist and occupational therapist.
- b. Billing for Coordination services shall not exceed 10 sessions or service blocks during a September/June session and 2 sessions or service blocks during a July/August session per child. One (1) session or service block consists of a half-hour and will be paid at the rate indicated under the Oneida County Related Service Rates Schedule. Each date of contact and length of time claimed for coordination during the month must be listed and identified. Periods of less than a half-hour block may be combined into half-hour service blocks of coordination services for billing purposes.

## 12. MAKE UP POLICY

- a. Reporting Absences. Habitual absences by the student should be reported to the school district (CPSE) and the Special Education Itinerant Teacher (SEIT) if the child receives SEIT services; if the child receives two or more Related Services, habitual absences shall be reported to the assigned Related Service coordinator appointed by the CPSE Chairperson.
- b. Student Absence or Cancellation. There shall be no makeup for therapy sessions provided under 4410 services which are missed due to a child's absence or cancellation (with or without notice). If a child's illness will necessitate canceling of service for several consecutive sessions, please request the parent/guardian call you to commence Related Services.
- c. Therapist Absence or Cancellation. Related Services which are missed due to the absence or cancellation of the therapist may be made up if the parent consents and the therapist's schedule permits. The makeup sessions must take place within the same week the Related Service was missed.
- d. Prolonged Absence of Therapist. When the therapist is absent for a prolonged period of time, the school district should be notified. The school district is responsible for arranging the replacement for the absent therapist. The school district is responsible for notifying the County of any change of a Related Service provider prior to the change so the County may give the new provider permission to begin services.
- e. Holidays and Other School Closings. The Contractor will follow the calendar of the local school district in which the child resides. Therefore, holiday and other school closings of that particular school district will apply. When Related Services are provided in a mainstream preschool setting, the preschool calendar will be followed except where written prior arrangements have been mandated by the school district and approved by the County.
- f. Limitations on Scheduling Therapy Makeup Sessions. Make up sessions must be clearly documented on the appropriate session notes with reasons for the makeup session.

## 13. INSURANCE

The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate during the term of this Contract. The Contractor shall also maintain general liability insurance and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$2,000,000 aggregate. The Contractor agrees to have the County named as "additional insured" on the general liability policy and to provide the County with certificates from said insurance company or companies showing proof of insurance as stated heretofore. The Contractor further agrees to provide that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants Oneida County a limited power of attorney to communicate with the Contractor's insurance provider and/or agent for the express purpose of confirming the coverage required hereunder.

## 14. INDEMNIFICATION

The Contractor 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 Contractor or its agents, contractors, subcontractors, 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 Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of this Contract.

## 15. EXCLUSIVITY

- a. The County retains the right to reassign children receiving Related Services under the terms of this Contract to other Contractors or its own employees.
- b. The County retains the right to contract with other independent contractors for such services which are the same or similar to those provided by the Contractor, or to provide such services to its eligible children through its own employees. The Contractor retains the right to provide services directly or indirectly through contract with another agency, to persons who are not classified preschool aged children with a disability receiving Related Services in Oneida County.



16. **INDEPENDENT CONTRACTOR STATUS**

- a. It is expressly agreed that the relationship of the Contractor to the County shall be that of an Independent Contractor. The Contractor'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 Contractor, in accordance with its status as an independent contractor, covenants and agrees that its employees 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. 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. Contractor and County agree that Contractor is free to undertake other work arrangements during the term of this Contract, and may continue to make its services available to the public.
- c. The Contractor'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. Contractor acknowledges and agrees that its employees and agents shall not be eligible for any County employee benefits, including retirement membership credits.
- e. Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to Contractor or its employees and agents under this Contract, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and with respect to the employees and agents, 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). Contractor shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Contract.
- f. The Contractor 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.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's 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 agrees to comply with federal and state laws as supplemented in the United States Department of Labor regulation and any other regulations of the federal and state entities relating to such employment and civil rights requirements.

17. **SUBCONTRACT**

The Contractor may not assign the Contractor's rights and obligations under this Contract, or subcontract with or employ another to provide the services described above of this Contract, without the prior written consent of the County.

18. **EXPENSES**

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.

19. **TRAINING**

Contractor shall not be required to attend or undergo any training by the County. Contractor 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.

20. **ADVICE OF COUNSEL**

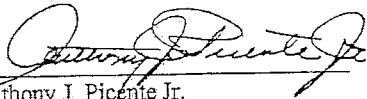
Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Contract.

21. ENTIRE AGREEMENT


The terms of this contract, the Oneida County Related Service Rates Schedule, the attached Standard Oneida County Conditions Addendum (Appendix B), and any other attachments, amendments, addendums or appendixes attached hereto, are deemed incorporated herein in their entirety and 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 Contract. No waiver, alterations or modifications of and provisions of this Contract shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Contract.

ONEIDA COUNTY

BY:   
Anthony J. Picante Jr.  
Oneida County Executive

CONTRACTOR

BY:   
Alison Eismor-Pitcher  
3 Circles Therapy: OT, PT, SLP Services, PLLC

DATE: 9/27/18

DATE: 10/25/18

Approved

4310 BY:   
Raymond F. Bara, Assistant County Attorney

**APPENDIX A**  
**ONEIDA COUNTY RELATED SERVICE RATES SCHEDULE**

RELATED SERVICE	MAXIMUM INDIVIDUAL HALF HOUR RATE	MAXIMUM COORDINATOR RATE PER HALF- HOUR BLOCK
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Audiology	\$53	\$30
Assistive Technology Services	\$53	
Counseling Services	\$53	\$30
Occupational Therapy	\$53	\$30
Orientation & Mobility Services	\$53	
Physical Therapy	\$53	\$30
Speech Therapy	\$53	\$30
Teacher of Hearing Impaired	\$53	
Teacher of Visually Impaired	\$53	
Aide 1:1	\$10	

RELATED SERVICE	MAXIMUM GROUP HALF HOUR RATE
Assistive Technology Services	\$25.00
Audiology	\$25.00
Counseling Services	\$25.00
Occupational Therapy	\$25.00
Physical Therapy	\$25.00
Speech Therapy	\$25.00
Teacher of Hearing Impaired	\$25.00
Teacher of Visually Impaired	\$25.00

APPENDIX B

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.

Anthony J. Picente Jr.  
County Executive

Colleen Fahy-Box  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES**

Contract Administration, 4<sup>th</sup> Floor  
County Office Building, 800 Park Avenue, Utica, NY 13501  
Phone (315) 798-5073 Fax (315) 793-6044

FN 20 20-268

July 6 2020

HEALTH & HUMAN SERVICES

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

WAYS & MEANS

Dear Mr. Picente:

I am submitting an Agreement between the Oneida County Office for the Aging and Continuing Care, and U.S. Care Systems, Inc. If this Agreement meets with your approval, please forward it to the Board of Legislators for further consideration.

This Agreement is for the provision of in-home care services to the frail and elderly that will assist people to delay or to avoid nursing home placement. The total cost of this Agreement is \$267,850.00, with 75% State-funded (\$200,887.50) and 25% County-funded (\$66,962.50). This Agreement commences April 1, 2020 and terminates March 31, 2021.

I respectfully request the approval of this agreement between OFA and Senior Network Health, LLC. Thank you for your consideration.

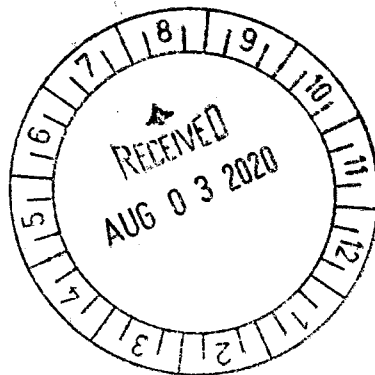
Sincerely,

*Colleen Fahy-Box*

Colleen Fahy-Box  
Commissioner

CFB/md

Enclosure



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

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

Date 8-3-20

Oneida Co. Department: OFA/OCC

Competing Proposal	_____
Only Respondent	_____
Sole Source RFP	_____
Other	<u>  X  </u>

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor: U.S. Care Systems, Inc.  
2416 Genesee Street  
Utica, New York 13502

Title of Activity or Service: Home Health Care Agency (Personal Care Services)

Proposed Dates of Operation: April 1, 2020 through March 31, 2021

Client Population/Number to be Served: Approximately 117 clients, age 60 or older.

Summary Statements:

1) Narrative Description of Proposed Services

Provide non-medical homemaker and personal care services to Oneida County residents, age 60 and older who are functionally impaired in at least one Activity of Daily Living (i.e., bathing, dressing, toileting) or two Instrumental Activities of Daily Living (i.e., housekeeping, shopping, and preparing meals).

2) Program/Service Objectives and Outcomes:

- Provide personal care services to frail, disabled, or homebound individuals who are limited in their activities of daily living.
- Usual tasks that may be performed by the Housekeeper/Chore Worker (PCA Level D) include:
  - Making/changing beds, dusting/vacuuming, light cleaning of kitchens, bedrooms and bathrooms, dishwashing, shopping for client, laundering, transportation to various appointments and community activities.
- Usual tasks that may be performed by the Personal Care Worker (PCA Level II) include:
  - All of PCA Level I tasks as well as bathing, dressing, grooming, assistance toileting, preparation of meals, feeding, and administering medications.

3) Program Design and Staffing

Personal Care Workers will provide a variety of services, including assisting clients with medical needs and regular housekeeping and chores. Designated qualified supervisors will train both PCA I and PCA II workers and make regularly scheduled visits to clients' homes to ensure satisfaction with the services.

Total Funding Requested: \$ 267,850.00 Account #: A6774.49599

Oneida County Dept. Funding Recommendation: \$267,850.00

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

Federal: 0% (\$0) State: 75% (\$200,887.50) County: 25% (\$66,962.50)

Cost Per Client Served: \$21.20 per hour for homemaker/personal care (PCA Level II)  
\$20.55 per hour for housekeeper/chore (PCA Level D)

Past Performance Data: Current provider of personal care services for OFA EISEP clients.

O.C. Department Staff Comments: N/A

AGREEMENT

This Agreement, made by and between U.S. Care Systems, Inc., a domestic business corporation organized and existing under the laws of the State of New York, located at 2614 Genesee Street, Utica, New York 13502 (hereinafter referred to as the "Contractor") and the County of Oneida, a municipal corporation, organized and existing under the laws of the State of New York, with its offices located at 800 Park Ave., Utica, New York 13501, by and through its Office for the Aging and Continuing Care, located at 120 Airline Street, Suite 201, Oriskany, NY 13424, (hereinafter collectively referred to as the "County"). All parties to the Agreement are hereinafter collectively known as the "Parties."

WITNESSETH:

WHEREAS, the County has the primary responsibility for the overall planning and coordination of funds from sources including the Federal Older Americans Act (OAA) (Title III); New York State Office For the Aging (NYSOFA), Expanded In-Home Services for the Elderly Program (EISEP), Community Services for the Elderly (CSE), Congregate Services Initiative (CSI), Supplemental Nutrition Assistance Program (SNAP), Health Insurance Information Counseling and Assistance (HIICAP), Medicare Improvements for Patients and Providers Act (MIPPA)/Senior Health Insurance Program (SHIP); and County of Oneida funds; and

WHEREAS, the County has the responsibility to formally and informally monitor, assess and evaluate all programs, services and contracts funded through the County; and

WHEREAS, the County will provide technical assistance, upon request, to assist the Contractor in more effectively carrying out service delivery and/or complying with federal, state and local statutes, policies, rules and regulations; and

WHEREAS, the Contractor is willing and able to perform the services required by this Agreement;  
NOW, THEREFORE, the Parties agree as follows:

1. TERM OF AGREEMENT

A. This Agreement shall commence April 1, 2020 and terminate March 31, 2021.

B. The County and the Contractor may negotiate this Agreement annually. The County is not obligated to renew this Agreement with the Contractor. The County reserves the right to seek the same or similar services from third parties.

2. SCOPE OF SERVICES

A. The Contractor shall provide the following services

a. Non-medical homemaker/personal care (PCA Level II),

- b. Housekeeper/chore (PCA Level I), and
  - c. III-E in-home community-based PCA Level II respite services through the County's EISEP/III-E Programs;
- B. PCA Level II and PCA Level I services shall be provided to those Oneida County residents who are age sixty (60) or older and who are functionally impaired in at least one (1) Activity of Daily Living (e.g., bathing, dressing, toileting) or two (2) Instrumental Activities of Daily Living (e.g., housekeeping, shopping, preparing meals);
- C. EISEP/III-E respite services shall be provided to care receivers for those Oneida County residents who are primary informal caregivers of persons who are age sixty (60) or older and who are functionally impaired, as shown by the need for the assistance of another person in at least one (1) Activity of Daily Living or two (2) Instrumental Activities of Daily Living.
- D. Residents who are eligible for services shall be referred to as "clients."
- E. The Parties agree that
- a. All EISEP/III-E funded services provided by the Contractor shall be prior approved and authorized by the client's Case Manager as defined in the client's Home Care Plan.
  - b. Non-medical homemaker/personal care (PCA Level II), and housekeeper/chore (PCA Level I) services as defined under EISEP/III-E are equivalent to PCA Level II and PCA Level I services as defined under the New York State Department of Social Services regulations for the Medicaid Program.
  - c. The EISEP non-medical homemaker/personal care (PCA Level II), housekeeper/chore (PCA Level I) and III-E in-home community based PCA Level II respite service clients shall be provided environmental support and personal care functions.
- F. The tasks that may be performed by a homemaker/personal care (PCA Level II) and a housekeeper/chore (PCA Level I) worker are enumerated in the New York State regulations at 18 NYCRR 505.14(5)(i)(a) and (ii)(a).
- 1) some or total assistance with making and changing beds; (Level I & II)
  - 2) some or total assistance with dusting and vacuuming the rooms which the client uses; (Level I & II)
  - 3) some or total assistance with light cleaning of the kitchen, bedroom and bathroom; (Level I & II)
  - 4) some or total assistance with dishwashing; (Level I & II)
  - 5) some or total assistance with listing needed supplies; (Level I & II)
  - 6) some or total assistance with shopping for the client; (Level I & II)
  - 7) some or total assistance with client's laundering; this may include necessary ironing and mending; (Level I & II)
  - 8) some or total assistance with payment of bills and other essential errands; (Level I & II)
  - 9) escort assistance in getting to various appointments and community activities; (Level I & II)

- 10) some or total assistance with bathing of the client in the bed, the tub or in the shower; (Level II).
- 11) some or total assistance with dressing; (Level II)
- 12) some or total assistance with grooming, including care of hair, shaving, and ordinary care of nails teeth and mouth; (Level II)
- 13) some assistance with toileting; this may include assisting the client on and off the bedpan commode or toilet; (Level II)
- 14) some assistance in walking, beyond that provided by durable medical equipment, within the home and outside the home; (Level II)
- 15) some assistance in transferring from bed to chair or wheelchair; (Level II)
- 16) some assistance with preparation of meals in accordance with modified diets, including low sugar, low fat, low salt and low residue diets, as prescribed by a qualified professional; (Level II)
- 17) some assistance with feeding; (Level II)
- 18) some assistance, at the request of the client, with self-administration of medication, including prompting client of time, bringing the medication to the client, opening the container, removing medication from the container and providing necessary liquids for taking the medication, acting as an extension of the client; (Level II)
- 19) assistance with routine skin care, including application of non-prescription skin care products; (Level II)
- 20) non-technical physical assistance to clients in following directions of a qualified professional for use of medical supplies and equipment such as walkers and wheelchairs; (Level II) and
- 21) assistance with changing of simple dressings. (Level II)

G. For the activities described herein, the measure of a UNIT is equal to one (1) hour of service to or on behalf of the client.

H. The Contractor agrees to assign a designated person to coordinate the assignments of workers.

I. The Contractor shall have assign a designated qualified supervisor(s) who insures the maintenance of quality care and provides the necessary support, understanding and consultation to the worker as s/he carries out the duties and responsibilities. The Contractor shall ensure that the supervisor(s):

- a. Make a supervisory in-home visit within five (5) working days of the first time the regularly scheduled homemaker/personal care (PCA Level II), housekeeper/chore (PCA Level I) worker provides services to the client;
- b. Demonstrate and instruct the worker and the client concerning specific tasks to be performed in accordance with the care plan;
- c. Provide information about the Contractor;

- d. Clarify the roles and responsibilities of the worker, the client, and the supervisor in relation to the Care Plan;
  - e. Conduct scheduled visits to the client's home at least every six (6) months;
  - f. Conduct unscheduled visits to the client's home at least one (1) time a year;
  - g. Evaluate the worker's performance of the required tasks;
  - h. Provide to the worker appropriate information, consultation, instruction and demonstration as needed;
  - i. Determine the extent to which client needs are appropriately and adequately being met;
  - j. Follow-up, as directed by the case manager, to report the findings of the supervisory visit; and
  - k. Provide the client and/or authorized representative an opportunity to talk in private about the service being provided.
- J. When a service promised by the Contractor for a scheduled assignment cannot be provided, the client is not at home, or there is a change in the client's condition, including death or hospitalization, the Contractor shall notify the County immediately via the approved fax form.
- K. Any unusual incident that occurs in the presence of Contractor's workers must be reported immediately in writing to the County on the specified fax form.
- L. The Contractor shall provide the non-medical homemaker/personal care (PCA Level II), housekeeper/chore (PCA Level I) and respite workers with training as required by the New York State Department of Social Services and Department of Health.
- a. The Contractor shall instruct each worker how to work with the elderly. Each worker shall receive an orientation, prior to delivering any in-home services.
  - b. Training shall include:
    - 1) The housekeeping chore and/or personal care tasks which the worker may and may not perform;
    - 2) The Contractor's policies and procedures; and
    - 3) The rights of clients as set forth in the EISEP standards and regulations.
- M. Notwithstanding any other provisions in this Agreement, the Contractor and the County remain responsible for:
- a. Ensuring that any service provided pursuant to this Agreement complies with all pertinent provisions of federal, state and local statutes, rules and regulations;
  - b. Planning, coordination and ensuring the quality of all services provided; and
  - c. Ensuring adherence by both Contractor and County staff to the Home Care Plan established for the clients.
- N. The County shall provide the Contractor with a care plan, confirmation of documentation, and a PCA approval form at the time of referral and every six months thereafter. It is the County's responsibility to develop



the care plan according to regulations and to obtain required physician(s) orders related to the services being provided by the Contractor. A registered nurse from the County will review and sign all approved care plans. If there is a change in a patient's condition, a new home assessment, or new physician orders, the County shall develop a revised care plan and send a copy the Contractor.

3. PERFORMANCE OF SERVICES - The Contractor represents that 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 communications with the client or client's caregiver in order to determine the location, 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.

4. REIMBURSEMENT FOR SERVICES

A. It is agreed and understood by the Parties that the County will reimburse the Contractor for EISEP/III-E Services which are provided in accordance with the terms and conditions of this Agreement and the Community Services for the Elderly Program (CSEP) and the Caregiver Support III-E grants.

B. The County shall reimburse the Contractor the rates of \$21.20 per hour for homemaker/personal care (PCA Level II), and \$20.55 per hour for housekeeper/chore (PCA Level I).

C. Two Hundred Thirty Eight Thousand Seven hundred Eighty Five Dollars (\$267,850.00).

D. Reimbursement is payable in twelve (12) monthly vouchers as specified in the Voucher Instructions, attached hereto as APPENDIX C.

E. The County shall not be liable for any late fees for any interest in late payments.

F. The obligations of the Parties are conditioned upon the continued availability of State and County funds. Should funds become unavailable or should appropriate State and County officials fail to approve sufficient funds for completion of the services set forth in this Agreement, the County shall have the option to terminate this Agreement immediately upon providing written notice to the Contractor by certified mail. In such an event, the County shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the County be responsible for any actual or consequential damages as a result of termination.

G. The County reserves the right to withhold payment under this Agreement due to Contractor's failure to properly perform its obligations under this Agreement. The County may withhold payment for including but not limited to:

1. defective services;
2. third party claims;
3. failure of the Contractor to pay its subcontractors, if any;

4. damage to the County, or
5. failure to carry out the services in accordance with this Agreement.

H. The County shall not be responsible for any costs incurred by the Contractor prior to the effective date or following the termination date of this Agreement.

5. **TRAINING** - The Contractor shall not be required to attend or undergo any training by the County, other than those trainings mandated by federal, state or local law and regulations necessary to perform the services described herein. Except for those mandated trainings, the Contractor shall be fully responsible for 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.

6. **INDEPENDENT CONTRACTOR STATUS**

A. The relationship of the Contractor and its employees, subcontractors and/or partners to the County is be that of Independent Contractors. The Contractor and its employees, subcontractors and/or partners are not employees of the County for any purpose including, but not limited to, claims for unemployment insurance, worker's compensation, retirement, or health benefits. The Contractor and its employees, subcontractors, and/or partners, 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 and that they will not 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 Parties 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 and its employees, subcontractors and/or partners 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 shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its employees, subcontractors, and/or partners 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 employees, subcontractors and/or partners, 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, worker's compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of worker's compensation insurance prior to execution of this Agreement.

E. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County because of the County not making such payments or withholdings.

F. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's Independent Contractor status, the parties agree that both the County and the Contractor 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.

G. 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.

## 7. SUBCONTRACTS

A. A subcontractor is a person and/or entity who has an agreement with the Contractor to perform any of the services stated herein.

B. The Contractor may, at the Contractor's own expense, employ or engage the services of such employees, subcontractors and/or partners as Contractor deems necessary to perform the services. The employees, subcontractors and/or partners are not and shall not be employees of the County, and the County shall have no obligation to provide employees, subcontractors and/or partners with any salary or benefits. The Contractor is responsible and liable for the performance of its employees, subcontractors and/or partners and shall ensure that they perform in a manner satisfactory to the County, in compliance with any and all applicable Federal, State or Local Laws and Regulations.

C. The Contractor acknowledges and agrees that the Contractor and its employees, subcontractors and/or partners 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. Prior to the execution of this Agreement, the Contractor shall furnish the County a list of names of subcontractors to whom the Contractor proposes to award any portion of the services. The Contractor shall provide the County with a copy of all agreement(s) between the Contractor and any subcontractors regarding the award of any portion of the services within ten (10) days of their final execution.

E. Any agreements between the Contractor and the subcontractors shall be in accordance with the terms of this Agreement and shall include the conditions of this Agreement including all exhibits, attachments, appendices, and addendums, insofar as applicable.

8. NON ASSIGNMENT CLAUSE - The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Agreement or of its right, title, or interest therein, or its power to execute this Agreement, to any other corporation or person without the prior written consent of the County.

9. STANDARD ASSURANCES

A. The Contractor shall comply with the Rehabilitation Act of 1973, as found in 29 USC 794: no otherwise qualified handicapped individual in the United States shall solely, by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

B. The Contractor shall comply with the New York State Human Rights Law as found in Article 15 of the Executive Law of New York State and with Article 15A of the Executive Law which outlines participation by minority group members and women with respect to state contracts.

C. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 38-352), and any amendment thereto: "No person in the United States shall, on the grounds of race, color, religion, gender, national origin, partisan affiliation or sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance."

D. The Contractor agrees that any program, public information materials, or other printed or published materials on the work of or funded by CSEP/III-E will give due recognition to the New York State Office for the Aging and the Oneida County Office for the Aging and Continuing Care. The statement shall be in font that is one of the following: in italics, or at least two font sizes larger than the rest of the text, or in bold font, or underlined. (e.g., "*This program is supported by Oneida County Office for the Aging and Continuing Care, New York State Office for the Aging and the Administration on Aging.*"). The Contractor shall forward copies of all materials to the County at the end of each month.

E. The County shall conduct a program review to ensure that the Contractor is in compliance with all standards and regulations as set forth in this Agreement.

10. NYSOFA TERMS AND CONDITIONS

A. The Contractor shall comply with statutes, regulations, and policies set by the following: Federal Department of Health and Human Services, Federal Administration on Aging, the NYSOFA, and the County of Oneida, more fully described in APPENDIX A.

B. The Contractor, to the extent it has discretion regarding to whom it will provide services, agrees to provide services to those unserved and underserved older adults in greatest social or economic need, particularly those who are low-income, low-income minorities, older adults with Limited English Proficiency (LEP), Native Americans, and frail/persons with disabilities and older adults residing in rural areas, in accordance with their need for such services, and to meet specific objectives established by the Area Agencies on Aging (AAA) for providing services to the above groups within Oneida County. The Contractor shall concentrate the services on older adults in the targeted populations identified by the AAA following the methods the AAA has established for complying with the targeting requirements under the Older Americans Act and the Equal Access and Targeting Policy issued by the New York State Office for the Aging.

C. The Contractor shall inform persons with LEP of the availability of language assistance, free of charge, by providing written notice of such assistance in a manner designed to be understandable by LEP persons at service locations and, at a minimum, have a telephonic interpretation service contract or similar community arrangement with a language interpretation services provider of their choice. The Contractor shall train staff who have contact with the public in the timely and appropriate use of these and other available language services.

D. To the extent that the contract with the AAA is for a program or service funded under the Area Plan, the Contractor agrees that it and any subcontractors will perform such work in accordance with the terms of the Area Plan. The AAA agrees to make the Area Plan available to the Contractor.

E. For programs established and funded in whole or in part pursuant to Title III of the Older Americans Act, the Contractor shall specify how it intends to satisfy the service needs of low-income minority individuals, older adults with LEP, and older adults residing in rural areas in the area served by it. The Contractor shall, to the maximum extent feasible, provide services to low-income minority individuals, older individuals with LEP, and older adults residing in rural areas in accordance with their need for such services; and meet specific objectives established by the AAA, for providing services to low-income minority individuals, older adults with Limited English Proficiency, and older adults residing in rural areas within the planning and service area.

11. GRIEVANCE PROCEDURES - The Contractor shall implement the County's grievance procedures as required by the New York State Office for the Aging. The written procedures are attached in APPENDIX B.

12. FISCAL REQUIREMENTS/RESPONSIBILITIES

A. The Contractor shall keep CSEP/III-E funds separate; further, state and federal funds shall not be used as local share (match).

B. The Contractor shall comply with all voucher and contribution procedures, and submissions of required reports as described in the County Voucher Instructions, refer to APPENDIX C.

C. The County shall be responsible for sending monthly donation letters and collecting client contributions for all clients who receive Office for the Aging and Continuing Care funded personal care services. Any contributions received by the Contractor for Office for the Aging and Continuing Care funded by a client, directly, will be reported and deducted on monthly vouchers by the Contractor.

D. The Contractor shall report to the County any additional moneys or program income (contributions, donations,) given to the CSEP/III-E supported programs. Program income means gross income received by the Contractor directly generated by a County grant supported activity, or earned as a result of the County grant agreement during the grant period.

E. The Contractor shall maintain copies of proper documentation for all program income, including, but not limited to, in-kind support, donations, contributions, reimbursements and other grants within its program budget.

F. The County shall conduct a periodic audit of revenues and expenditures, as well as the required annual on-site review of the program's fiscal status to ensure expenditures are in proportion to the total program budget.

G. The Contractor shall agree to have an independent audit conducted for the contracted program if it has been a Contractor for two (2) years or more; a copy of the audit shall be submitted to the County upon completion of the program/fiscal audit conducted by the outside auditor.

H. The Contractor shall maintain fiscal records for six (6) years and shall make them available for County to review upon request.

I. The Contractor shall cooperate with the close-out audit that is required when the contract is terminated.

J. The Contractor shall follow close-out procedures administered by the County in accordance with the Code of Federal Regulations 45-74, as amended in 1980.

### 13. INDEMNIFICATION and INSURANCE

A. The obligations of the Contractor 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.

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 \$3,000,000 annual aggregate.

a. 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.

b. 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 these additional insureds shall include completed operations.

2. Medical Malpractice/Professional Liability coverage with limits of \$1,000,000 each occurrence and \$3,000,000 aggregate.

a. Coverage for review of medical records and resulting professional assessment.

3. Workers' Compensation and Employer's Liability Insurance. In the event the Contractor engages any employees, leased employees, volunteers or Subcontractors, the Contractor shall be required to obtain such coverage. Statutory Limits apply.

C. **Certificates of Insurance:** Prior to the start of any work the Contractor 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 the Contractor's CGL policy. The Contractor shall provide full policy documents and any other information regarding her insurance coverages upon request of the County. 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.

D. **Waiver of Subrogation:** The Contractor waives all rights against the County and the Department and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Medical Malpractice/Professional Liability, Automobile Liability, or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.

E. The Contractor shall at all times defend, indemnify, and hold the County and Department and their officers and employees harmless and free and clear of any and all liability arising from any act of omission or commission by the Contractor, or its Subcontractors, with respect to this Agreement and any of the terms thereof.

F. The Contractor shall be solely responsible for the safety and protection of all of its agents, servants, employees, independent contractors, volunteers or partners whether due to the negligence, fault or default of the Contractor or not.

G. The Contractor shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, including, without limitation, attorneys' fees and expenses, 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 services of the Contractor and its agents, servants, employees, independent contractors, volunteers or partners and from any loss or damage arising, occurring or resulting from the acts or failure to act or any default or negligence by the Contractor or failure on the part of the Contractor to comply with any of the covenants, terms or conditions of the Agreement.

H. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, employees, independent contractors, volunteers or partners or to any other persons or damage to any property sustained during its operations and services under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, servants, independent subcontractors, and shall hold harmless and indemnify the County from liability upon any and all claims for injuries to persons or damages to property on account of any neglect, fault or default of the Contractor, its officers, trustees, agents, servants, volunteers or independent subcontractors.

I. Insurance provisions in this Agreement are separate and independent from the indemnity provisions of this section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

J. **No Representation of Coverage Adequacy.** By requiring insurance, the County does not represent that coverage and limits will be adequate to protect the Contractor. The County reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements stated in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor may it be construed or considered a waiver of the Contractor's obligation to maintain the required insurance at all times during the performance of this Agreement.

K. **Claims Made.** In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Agreement by keeping coverage in force using the effective date of this Agreement as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Agreement, and can never be after the effective date of this Agreement. Upon completion or termination of this Agreement, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Agreement.

L. The Contractor shall require any subcontractors to procure and maintain insurance coverage of the same type and in the same amounts with the same endorsements required of the Contractor in the above Insurance Requirements paragraphs.

M. The County may suspend payment(s) to the Contractor if the Contractor and/or its sub-contractors, if any, fails to provide the required insurance documentation in a timely manner.

#### 14. REPORTING REQUIREMENTS

A. All client records and files are owned by the County.

B. The County shall, pursuant to the requirements of CSEP/III-E funded programs, comply with the Definition of Services, April 2011, as established by the New York State Office for the Aging (96-PI-43).

C. The Contractor shall provide the County with required information needed to meet planning, coordination, evaluation and reporting requirements as required by the New York State Office for the Aging's Consolidated Area Agency Reporting System (CAARS), by the 10<sup>th</sup> of every month. The current and revised CAARS Monthly Report Forms and Monthly Summary Form must be submitted as an attachment to the voucher on a monthly basis.



D. The Contractor shall maintain appropriate client records on each EISEP client who receives services through this program and shall provide client records to the County upon request.

E. The Contractor shall comply with policies ensuring client confidentiality, as established by the County. When information sharing between agencies is crucial to the client's well-being and is needed to ensure effective service provision, pertinent information shall be shared in accordance with federal and state regulations and statutes.

F. The Contractor shall timely provide the County with required monthly, periodic, and/or special reports.

15. COORDINATION REQUIREMENTS

A. The Parties shall coordinate referrals.

B. The Parties shall work with older persons, who are not eligible for services through this contracted program, to obtain needed services.

C. The Contractor shall coordinate with other appropriate service providers in obtaining and providing referrals for older residents of Oneida County.

16. AGREEMENT CANCELLATION

A. The County may cancel this Agreement for failure of the Contractor to comply with the terms and conditions of this Agreement.

B. The Contractor and the County reserve the right to cancel the Agreement upon a thirty (30) day written notice to the other Party.

C. The Contractor agrees that in the event of termination, the Contractor shall make a full and final accounting of all funds received and monies expended under the Agreement within thirty (30) days after the date of termination. Any unexpended funds shall be the property of the County.

D. The Contractor shall coordinate with the County and other providers to ensure that any break in service to clients shall not be detrimental to a clients' health or well-being. If available and appropriate, other services shall be substituted and/or coordinated on the clients' behalf.

17. ENTIRE AGREEMENT - The terms of this Agreement, including all 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. 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.

18. STANDARD ADDENDUM - The Contractor shall comply with the County's Standard Clauses as set forth in the Addendum, which is attached hereto and made a part hereof as APPENDIX D.

19. CHOICE OF LAW/FORUM

A. 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.

B. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

20. SUCCESSORS and ASSIGNS - This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, legal or personal representatives, successors, and assigns.

21. 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 agree that the 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.

22. AUTHORITY TO ACT/SIGN - The Contractor hereby represents and certifies that it has the power and authority to execute and deliver this Agreement and to carry out its obligations. The execution and delivery by Contractor of this Agreement and the consummation of the transactions contemplated herein have been duly authorized by the Contractor; no other action on the part of the Contractor or any other person or entity, whether pursuant to its Articles of Incorporation, Articles of Operation, Operating Agreement or Bylaws, as the case may be, or by law or otherwise, are necessary to authorize the Contractor to enter into this Agreement, or to consummate the transactions contemplated herein.

23. 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.

*[The remainder of this page has been intentionally left blank]*

IN WITNESS THEREOF, the Parties hereto have executed this Agreement on the day and year first written below.

U.S. CARE SYSTEMS, INC.



Adam Ullman President/CEO

7/14/20  
Date

COUNTY OF ONEIDA

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

\_\_\_\_\_  
Date

OFFICE FOR THE AGING AND CONTINUING CARE



Colleen Fahy-Box  
Commissioner, Dept. of Family and Community Services

7/24/20  
Date

Approved:

\_\_\_\_\_  
Kimberly A. Kolch, Assistant County Attorney

\_\_\_\_\_  
Date

## APPENDIX A

The Older Americans Act (OAA) of 1965, as amended (42 U.S.C. 3001 et. seq.)  
Code of Federal Regulations CFR)  
45 CFR Part 75 (Administration of Grants)  
45 CFR Part 84 (Nondiscrimination on the basis of Handicap)  
45 CFR Part 92 (Nondiscrimination on the Basis of Race, Color, National Origin, Sex, Age, or Disability)  
45 CFR Part 93 (New Restrictions on Lobbying)  
45 CFR Part 1321, Subparts A-D (Grants to State and Community Programs on Aging)  
45 CFR Part 1321.61 (b)(4) (Advocacy responsibilities of the area agency)  
Age Discrimination in Employment Act of 1975, as amended (29 USC 621, et seq.)  
Americans with Disabilities Act of 1990 (42 USC 12101, et seq.)  
Civil Rights Act of 1964, Subchap. VI, as amended by the Equal Employment Opportunity Act of 1972 (42 USC 2000e, et. seq.)  
Equal Pay Act of 1963, as amended (29 USC 206)  
Rehabilitation Act of 1973, Sec. 504 (29 USC 794) (Nondiscrimination)  
Single Audit Act of 1984 (31 USC 7501, et. seq.)  
Nutrition Services Incentive Program (NSIP) 7 C.F.R. Secs 250.68 et seq.  
Office of Management and Budget (OMB)  
OMB Circular A-87 (Cost Principles for State and Local Governments)  
OMB Circular A-95 (Clearinghouse Review)  
OMB Circular A-102 (Uniform administrative Requirements for 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 and other Non-profit Organizations)  
OMB Circular A-122 (Cost Principles for Non-profit Organizations)  
OMB Circular A-128 (Audits of State and Local Governments)  
OMB Circular A-133 (Audits of State and Local Government and Non-Profit Organizations)  
Federal Executive Order 11246, as Amended by Executive Order 11375 (Affirmative Action)  
New York State Office for the Aging Rules and Regulations  
9 NYCRR Part 6651 et. seq. (Social and Nutrition Services for the Elderly)  
9 NYCRR Part 6654.20 (Social Adult Day Care Programs)  
Executive Law of New York State  
Article 15 (State Human Rights Law)  
Article 15A (Minority/Women's Business contract Requirements)  
Article 7-A (Solicitation and Collection of Funds for Charitable Purposes)  
Executive Order No. 6, issued February 18, 1983 (Assigning responsibilities of the State Department of Civil Service, and certain State agencies for insuring equal employment opportunity for minorities, women, disabled persons and Vietnam era veterans in State government and establishing the Governor's executive committee for affirmative action)  
Executive Order No. 19, issued May 31, 1983 (New York State Policy Statement on Sexual Harassment in the Workplace)  
EISEP Program Standards  
NYS Office for the Aging's 1990 Nutrition Program Standards (90-PI-26)  
Legal Assistance Standards (94-PI-52)  
Weatherization Referral and Packaging Program (WRAP) Handbook

## APPENDIX B

### Oneida County Office for the Aging

#### Grievance Procedures

In accordance with the Older Americans Act (OAA), as amended, the Oneida County Office for the Aging has established the following process for resolving complaints from clients who are dissatisfied with or persons denied services funded under the Act.

#### Right to File a Grievance

The Office for the Aging and all contracting provider agencies who receive OAA funds shall notify program clients of their right to file a grievance with the provider agency and/or with Oneida County Office for the Aging. Upon request, the Office for the Aging will provide assistance with filing a grievance.

#### Denial of Service or Client's Un-satisfaction of Service

A client or applicant who is denied OAA services must be given the reasons for the denial. Services may be denied because of funding restrictions, ineligibility, hours or locations have changed, reassessment determined services no longer needed, or client is disruptive to the program. For OAA services for which a written application is made, the denial shall be confirmed in writing and the applicant informed of the right to file a grievance and to whom the grievance shall be made. For OAA services for which verbal application is made by telephone or in person, the person may be denied verbally and verbally informed of the right to file a grievance and to whom.

#### Grievance Process

##### Filing a Grievance

- Individual must submit their grievance in writing to the Director of the Office for the Aging who will forward the Letter to the designated person of the provider agency to conduct the initial review.
- The grievance must be filed within thirty (30) calendar days of denial, reduction or termination of services, or of the event or circumstances with which the person is dissatisfied. The Office for the Aging or the provider agency may grant an extension for good cause shown.
- The Letter of Grievance should include a written statement setting forth in detail the date, time and circumstances that are the basis for the complaint.

##### Investigation and Response to a Grievance

- The designated reviewer will investigate the complaint. The reviewer will determine whether the action was in accordance to applicable Older Americans Act and State laws and regulation and are supported by facts.
- The reviewer will prepare and send written response to the grievant and to the Office for the Aging Director within fifteen (15) working days after the grievance is filed. The response will set forth the circumstances relating to the grievance, the action requested by the grievant, the findings of the reviewer, a proposed remedial action and, if any, the reason(s) for and facts relied on in the determination.

##### Appeal of Initial Response/Decision

If the grievant is not satisfied with the determination, s(he) has the right to further review as follows:

- S(he) may initiate a request for subsequent review by the Office for the Aging Director within ten (10) calendar days following receipt of notification from the provider agency of its decision.
- The Office for the Aging Director will request, and the provider agency shall provide, copies of the initial file on the complaint in question. The Office for the Aging Director will review the materials to ensure that pertinent policies and procedures have been applied and followed.
- If the policies and procedures have been adhered to, the Office for the Aging Director will not overturn the decision of its contracting provider agency. If the proper policies and procedures have not been applied, the director reserves the right to overturn the decision.
- A written notification of the results will be made to the grievant within twenty (20) working days of receipt of the appeal request.

Record Keeping

The provider agency will keep a file, for six years, of all relevant documents and records of a grievance. The file shall include at a minimum: the initial grievance; any investigative reports; any and all written responses; any documents or other records submitted by any party; and, if applicable, the notice to the grievant of the right to appeal.

Confidentiality

No information, documents or other records relating to a grievance shall be disclosed by program staff or volunteers in a form that identifies the grievant without the written informed consent of the grievant, unless the disclosure is required by court order or for program monitoring by authorized agencies.

APPENDIX C

Oneida County Office for the Aging  
2018-2019  
Voucher Instructions  
For Units of Services Contracts

Complete the Oneida County voucher (3-part white, yellow, and pink form) as follows:

1. **Department:** Office for the Aging and Continuing Care
2. **Claimants Name and Address:** Contractor name and address (checks will be payable to the name given and sent to the address listed).
3. **Date:** List month this claim covers.
4. **Vendor's Invoice Number:** leave blank
5. **Quantity/Description of Material or Service/Unit Price/Amount:**
  - ✓ State the number of units of service and the description of services performed during the month.
  - ✓ List the Unit Price as stated in the Contract Budget.
  - ✓ Place the amount (Units X Unit Price) in the Amount column.
  - ✓ Place the amount to be reimbursed in the Total block.
  - ✓ Specify program funds (III-E, EISEP, CSE, III-B etc.) in the space after the Contract Number.
6. **Claimant's Certification:**

Fill out completely, Note that Oneida County will not pay a voucher without an original signature, Federal ID Number or Social Security Number.
7. **Voucher Backup**
  - ✓ Attach CAARS monthly report.
  - ✓ Master list of clients billed for on voucher (with individual total monthly amount billed).
  - ✓ Attach appropriate backup:
    - Payroll certification sheets and time sheets signed by Agency employee.
    - Legal Assistance Program – case numbers, DOB, Legal Assistance Referral, Type of Service, Fax Date and Unit of Services.
    - Housekeeper/Chore (PCA Level I) or Homemaker/personal care (PCA Level II), Housekeeper/chore (Level I) – Contract EISEP voucher backup. Copies of PCA daily logs including date and times of service and all must be signed by client.
    - Adult Day Care – OFFICE approved sign-in log sheet with dates and times of service and all must be signed by client.
    - Emergency Response Systems – (Original Invoice)

Have all accounting records, receipts and supporting documentation readily available for review by the County, State and/or Federal personnel authorized to examine and/or audit program accounts. Ref: US Code of Federal Regulations 45-74 amended in 1980. Check numbers, dates paid and amounts paid must be written on each receipt.
8. **Timely Submissions:**
  - ✓ Submit monthly vouchers by the 10<sup>th</sup> day of the month following the reporting month.
  - ✓ Checks are issued by Oneida County Audit and Control only on Fridays - approximately 30 days after submission.
  - ✓ If all documentation is not included, the voucher will be returned unpaid with a request for proper backup and documentation.

9. Changes To The Budget (including personnel):

- ✓ Submit a Budget Revision and a justification for the change.

10. Technical Assistance:

- ✓ If you have fiscal questions regarding your program or require technical assistance, please contact the OFA-OCC Fiscal Unit directly at 315-798-5456.

Susie Perritano, Accounting Supervisor



APPENDIX D  
Standard Contract Clauses Addendum

THIS ADDENDUM, 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.**
  - a. 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.**
  - a. 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. **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, and 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 tension, 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 clients 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 indicated 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 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:

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 (1), (0), (0), (d), (0), (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.
  3. Place of Performance (street, address, city, county, state, zip code).
- 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 "HIPPA," as well as all regulations promulgated by the Federal Government in furtherance hereof, 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. **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 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.**

- a. 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.
- b. 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.

- a. 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.
- b. 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.

- a. 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).
- 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.
- c. 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.

- d. 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.