



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

Timothy Julian
Minority Leader

COMMUNICATIONS WITH DOCUMENTATION FOR THE February 9, 2022 MEETING

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

<u>FILE NO.</u>	<u>COMMITTEE</u>	<u>PAGES</u>
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AVAILABLE ON WEBSITE ONLY
www.ocgov.net



ONEIDA COUNTY
WORKERS' COMPENSATION DEPARTMENT
ONEIDA COUNTY OFFICE BUILDING, 800 PARK AVENUE, UTICA, NY 13501

Oneida County
Board of Legislators
Gerald J. Fiorini, Chairman

PHONE: (315) 798-5688 FAX: (315) 798-5924
Alicia M Caternolo-Viscardi, Director
Email: acaternoloviscardi@ocgov.net

Workers' Compensation
Committee
Norman Leach, Chairman

January 12, 2022

FN 20 22-035

Gerald J Fiorini, Chairman
Oneida County Board of Legislators
800 Park Ave
Utica, NY 13501

READ & FILED

Dear Chairman Fiorini,

Pursuant to Local Law, The Workers' Compensation Committee voted last night to reappoint Alicia M Caternolo-Viscardi to serve at the pleasure of the Legislature for another 2-year term as the Director of Workers' Compensation.

I respectfully ask that this be forwarded for consideration.

Sincerely,

Norman Leach, Chairman
Workers' Compensation Committee

ACV



**Memorializing Petition by
Board of Legislators,
Oneida County, New York**

FN 20 22-036

FN-2022

READ & FILED

A MEMORIALIZING PETITION urging the Governor and Legislature to remove the state-mandated levying of Fashion Institute of Technology chargebacks on counties for students working toward bachelor's and master's degrees.

SPONSORS: Messrs. Flisnik, DiMaggio, Myers, Rogers-Witt, Newton, Waterman

WHEREAS, New York City's Fashion Institute of Technology is a renowned specialty college that offers undergraduate and graduate degrees.

WHEREAS, it is classified as a community college within the State University of New York and is the only one that offers expensive four-year and graduate-level degrees and therefore the students' home counties have to share part of the cost, just like with any two-year traditional community college.

WHEREAS, counties are currently being charged for students attending FIT for bachelor's and master's degrees, which was not the intent of the community college chargeback funding requirement; and

WHEREAS, Section 6305 of the State education law requires the state to reimburse counties for Fashion Institute of Technology chargebacks, but the state no longer provides the necessary appropriations to comply with this state law requirement; and

WHEREAS, the FIT chargeback rate is substantially higher than for traditional community colleges across the state, \$15,610 versus \$8,360 at Herkimer County Community College or \$2,570 at Onondaga Community College, and

WHEREAS, from 2019 to 2021 Oneida County taxpayers paid nearly \$550,000 to FIT; and

WHEREAS, the FIT chargeback comes with an exorbitant price tag for Oneida County and other counties across the state that is fiscally irresponsible and unsustainable and it is long past time that FIT be treated like any other SUNY school that offers bachelor and graduate degrees; and

NOW, THEREFORE, BE IT RESOLVED, the Oneida County Board of Legislators calls on the Governor and State Legislature to restore the full funding of FIT chargebacks to counties related to all educational instruction provided after two years (coursework necessary for a four-year and/or master's degree) or eliminate them entirely; and

BE IT FURTHER RESOLVED, that the Clerk of the Legislature is hereby directed to forward copies of this petition to Governor Kathy Hochul, state Senators Joseph A. Griffo and Rachel May, Assembly members Marianne Buttenschon, Brian D. Miller, Kenneth Blankenbush, Robert Smullen and John Salka, and all others deemed necessary and proper.

Jan. 12, 2022

Date

Legislators Supporting Petition

Legislators Opposing Petition

Donna Lewis

D. Chad D...

Dez Lewis

[Signature]

Caroline V. G. K...

[Signature]

[Signature]

Wendy Leach


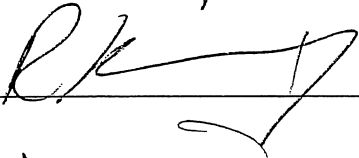

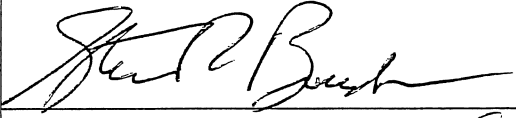
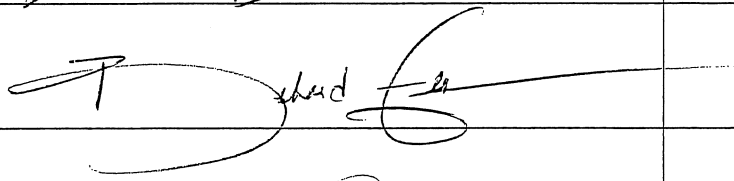




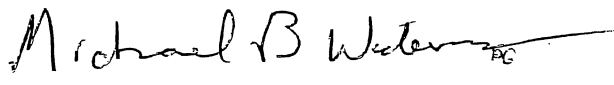
[Signature]

Cynthia Fogarty

Steph D...

Jan E. ...

[Signature]

Legislators Supporting Petition	Legislators Opposing Petition
	
	
	
	
	
	
	
	
	
	

The enclosed petition represents the opinion of those members of the Oneida County Board of Legislators signing the same regarding the contents or subject matter of the petition. Under the Rules of the Board, a Legislator may sign said petition or may, in the alternative, elect not to sign the petition. There are 23 members of the Oneida County Board of Legislators.

Preserving the environment through integrated recovery and disposal.

MEMORANDUM

FN 20 22 037

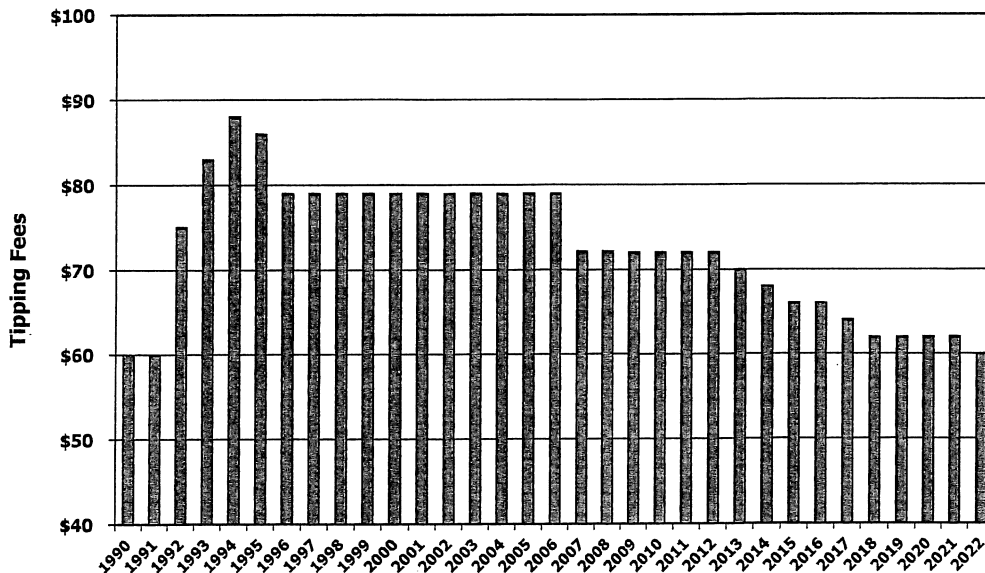
TO: Elected Officials, ABO, Investors, Contractors, and Interested Individuals **READ & FILED**
FROM: William A. Rabbia, Executive Director
DATE: December 22, 2021
RE: Adopted 2022 Budget

On December 20, 2021, the Oneida-Herkimer Solid Waste Authority adopted the proposed 2022 budget and rate schedule. The adopted 2022 budget summary and rate schedule are posted on the Authority’s website at www.ohswa.org.

Highlights of the Authority’s adopted budget and rates for 2022 include:


- The Authority will reduce tipping fees \$2.00 per ton for municipal solid waste (MSW), sludge, and local solid waste (LSW). All other rates will remain the same.
- The Authority will maintain rate for source separated organics (SSO) [food waste] of \$40 per ton. The Authority’s SSO processing facility became operational in second quarter 2019 and will process SSO to be diverted from the landfill and converted to electricity.
- In 2022, the Authority will continue to offer two reduced tip fee programs to assist Oneida-Herkimer Counties and its municipalities. The first program provides for reduced tip fees for disposal of debris following a disaster, such as a flood (\$42.00 per ton). The second program provides for reduced tipping fees to assist Industrial Development Agencies and Developers related to Brownfield clean-up and Industrial Development Projects (\$42.00 per ton). Both programs require an application and Board approval.

ONEIDA-HERKIMER SOLID WASTE AUTHORITY
Historical MSW Tipping Fees 1990-2021



BOARD OF DIRECTORS

Kenneth A. Long <i>Chairman</i>	Harry A. Hertline <i>Treasurer</i>	James M. D’Onofrio	Nancy A. Novak	William A. Rabbia <i>Executive Director</i>
Vincent J. Bono <i>Vice Chairman</i>	Neil C. Angell	James A. Franco	Richard G. Redmond	Jodi M. Tuttle <i>Authority Board Secretary</i>
		Barbara Freeman	James M. Williams	

Find us on 

MEMORANDUM

December 22, 2021

Page 2

REVENUE HIGHLIGHTS

- 2022 projected tonnage estimates based upon 8-month actual tonnage in 2021 and a review of historical data.
- Sale of recyclables revenues forecasted with 8-month data from 2021, historical review and market projections for 2022.
- The out of county recyclables processing revenue has slightly increased with the projected annual tonnage from Oswego, Lewis and Fulton Counties. Projected revenue is \$890,000.
- The Authority will continue to operate two engines at its power facility as per its agreement with WM Renewable Energy.
- Carbon credit revenue is budgeted through December 2022. Projected revenue is \$540,000.
- The Authority will continue to waive the permit fee for the haulers/businesses and municipalities for 2022.

EXPENSE HIGHLIGHTS

- Health insurance expense budgeted at 8.5% increase over 2021 premiums.
- Budget reflects \$460,000 of contracted direct payments made to the Town of Ava and the Town and Villages of Boonville, consistent with our Host Community Agreements.
- Fuel expense was budgeted at \$3.00 per gallon as the result of industry forecasts.
- Capital projects funded through tipping fees will be \$1,321,000 for 2022.
- Public education expenses are projected to be \$75,000.
- Workers' compensation budget is based upon 5-year average of the Authority's actual claims.
- The annual contributions to the NYS Retirement System will stay consistent with 2021 costs as rates have remained relatively the same.
- Reduced Debt Service based upon redemption of the Authority's 2011 bonds in March 2021.

MUNICIPAL BUDGETS

- The Authority manages the waste and recyclables collection systems for the City of Utica and the Village of Ilion, Frankfort, Mohawk, Herkimer and Doigeville. The Authority currently maintains a separate accounting system for each municipality.

Please feel free to contact me if you have any questions.

WAR/jmt



ONEIDA COUNTY DIVISION OF BUDGET

ANTHONY J. PICENTE, JR.
County Executive

Thomas B. Keeler
Budget Director
TKeeler@ocgov.net

January 14, 2022

FN 20 22-038

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

PUBLIC SAFETY

Dear County Executive Picente:

WAYS & MEANS

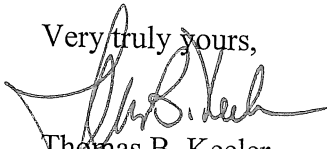
Oneida County was notified of the award of program funding to support the improved quality of representation and services from the NYS Office of Indigent Legal Services (OILS). This award is for the three-year distribution of funds for program support. Funds provide services through the office of the two Public Defenders, Criminal and Civil.

This grant award was for a period of three years, beginning January 1, 2019 through December 31, 2021. NYS Office of Indigent Legal Services has granted an extension to spend these grant funds through December 31, 2022. This grant was originally a renewal of Distribution #6. Funding for the three-year cycle is a total grant award of \$538,146. ***There are no County Match dollars required.***

At this time, I respectfully request your approval of the extension to spend this grant, and if you agree, please forward to the Board of Legislators for action at the next regularly scheduled meeting.


Thank you for your consideration.

Very truly yours,


Thomas B. Keeler
Budget Director

Encl.

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


Anthony J. Picente, Jr.
County Executive

Date 1-18-22

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>STATE AGENCY (Name & Address):</p> <p>NYS Office of Indigent Legal Services A. E. Smith Building, 11th Floor 80 South Swan Street Albany, NY 12210</p>	<p>BUSINESS UNIT/DEPT. ID: OLS01 1350200</p> <p>CONTRACT NUMBER: C900030</p> <p>CONTRACT TYPE:</p> <p><input checked="" type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input type="checkbox"/> Fixed Term Agreement</p>
<p>CONTRACTOR SFS PAYEE NAME:</p> <p>Oneida, County of</p>	<p>TRANSACTION TYPE:</p> <p><input type="checkbox"/> New <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Amendment</p>
<p>CONTRACTOR DOS INCORPORATED NAME:</p>	<p>PROJECT NAME:</p> <p>Distribution #9</p>
<p>CONTRACTOR IDENTIFICATION NUMBERS:</p> <p>NYS Vendor ID Number: 100002595 Federal Tax ID Number: 15-6000460 DUNS Number (if applicable):</p>	<p>AGENCY IDENTIFIER:</p> <p>CFDA NUMBER (Federally funded grants only):</p>
<p>CONTRACTOR PRIMARY MAILING ADDRESS:</p> <p>Oneida County Office of the Public Defender 250 Boehlert Center at Union Station 321 Main Street Utica, NY 13501</p> <p>CONTRACTOR PAYMENT ADDRESS: <input type="checkbox"/> Check if same as primary mailing address</p> <p>Oneida County Division of Budget 800 Park Avenue Utica, NY 13501-2926</p> <p>CONTRACTOR MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address</p>	<p>CONTRACTOR STATUS:</p> <p><input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: 300100000000 <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit</p> <p>Charities Registration Number:</p> <p>Exemption Status/Code:</p> <p><input type="checkbox"/> Sectarian Entity</p>

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

CONTRACTOR:

STATE AGENCY:

NYS Office of Indigent Legal Services

By: _____

By: _____

Printed Name

Patricia J. Warth

Printed Name

Title: _____

Title: Director-Office of Indigent Legal Services

Date: _____

Date: _____

STATE OF NEW YORK

County of _____

On the _____ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

(N/A)

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

Anthony J. Picente Jr.
Oneida County Executive



Amanda L. Cortese-Kolasz
Commissioner of Personnel

**ONEIDA COUNTY
DEPARTMENT OF PERSONNEL**

County Office Building ♦ 800 Park Avenue ♦ Utica, New York 13501-2986
Phone: (315) 798-5726 ♦ Fax: (315) 798-6490

January 14, 2022

FN 20 22-039

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

PUBLIC SAFETY

WAYS & MEANS

Dear County Executive Picente:

Attached for your review and approval is correspondence from Oneida County District Attorney, Scott D. McNamara, requesting the creation of one (1) part-time Senior Confidential Investigator at Grade 32W, Step 2, at \$27.45 per hour. District Attorney McNamara indicates that this position will be funded by the Crimes Against Revenue Program (CARP) grant.

If you concur, I respectfully request that this recommendation be forwarded to the Board of Legislators for consideration at their next meeting.

Very truly yours,

A handwritten signature in cursive script, reading "Amanda L. Cortese-Kolasz".

Amanda L. Cortese-Kolasz
Commissioner of Personnel

Enclosure

cc: Scott D. McNamara, District Attorney
Peter M. Rayhill, County Attorney

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

Anthony J. Picente, Jr.
County Executive

Date 1-18-22



Sandra J. DePerno
County Clerk

Diane B. Abraham
1st Deputy Clerk

Deputy County Clerks
Gary Artessa
Brenda Breen
Lynarda J. Girmonde
Stephanie L. Tighe

CLERK OF ONEIDA COUNTY

County Office Building ♦ 800 Park Avenue ♦ Utica, New York 13501

Phone: (315) 798-5776 ♦ Fax: (315) 798-6440

January 3, 2022

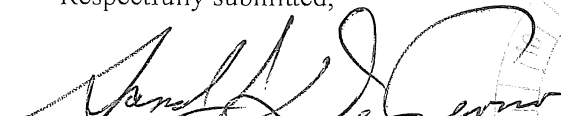
Hon. Anthony J. Picente Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue
Utica, NY 13501

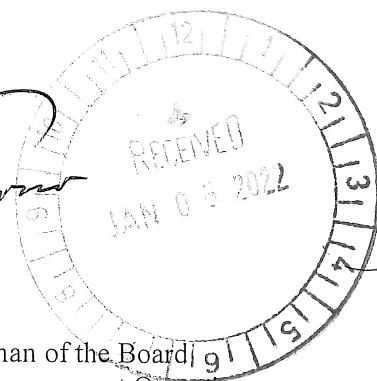
Dear County Executive Picente:

I am respectfully requesting the Board of Legislators consideration and approval of an increase in the expenses necessary to collect the mortgage tax receipts, this is based on Section 262 of the Tax Law. As provided in Tax Law Section 262, the requested reimbursement must be approved by the tax commission and accompanied by a resolution approved and passed by the Board before April 1, 2022. This process was developed to make yearly increases based on the rate of inflation rather than make larger increases at longer intervals. The expenses the Clerk's Office incurs went up this year and the current rate does not adequately reimburse the Clerk's Office for the cost of collecting this tax.


The Clerk's Office is requesting that we be allowed to charge the State of New York the actual cost of annually collecting the mortgage tax proceeds. We are requesting that the current charge be raised based on the yearly cost incurred by the County to \$521,815.34. As stated above, this increase requires Board action and must be to the STATE OF NEW YORK BY APRIL 1, 2022 in order to take effect.

Respectfully submitted,

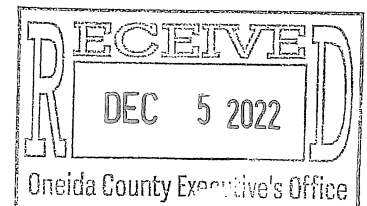

Sandra J. DePerno
Oneida County Clerk



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


Anthony J. Picente, Jr.
County Executive
Date 1-5-22

Cc: Hon. Gerald J. Fiorini, Chairman of the Board
Hon. Colin Idzi, Chairman, Government Operations



FN 20 22-040

GOVERNMENT OPERATIONS

WAYS & MEANS



ONEIDA COUNTY
OFFICE OF THE COUNTY EXECUTIVE

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

January 18, 2022

Board of Legislators
Oneida County
800 Park Avenue
Utica, New York, 13501

FN 20 22-041
GOVERNMENT OPERATIONS

WAYS & MEANS

Re: Appointment of Director of Purchase

Honorable Members:

In accordance with Section 306 of the Oneida County Charter, Section 306 of the Oneida County Administrative Code, I submit to you my appointment of Alfred Barbato as Director of Purchase at Grade 44H, Step 7 with a salary of \$90,107, effective January 20, 2022.

I request that this appointment be placed on the Agenda for consideration at your next meeting.

Thank you for the Board's kind attention to this matter.

Very truly yours,

Anthony J. Picente, Jr.
Oneida County Executive



**ONEIDA COUNTY
DEPARTMENT OF PLANNING**

Boehlert Center at Union Station
321 Main St., Utica NY 13501
Phone: (315) 798-5710 Fax: (315) 798-5852

ANTHONY J. PICENTE, JR.
County Executive
James J. Genovese II
Commissioner

January 5, 2022

FN 20 22-072

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

**ECONOMIC DEVELOPMENT
& TOURISM**

WAYS & MEANS

Re: SUNY Polytechnic Institute – Professional Services for Survey Creation and Data Analysis

Dear County Executive Picente:

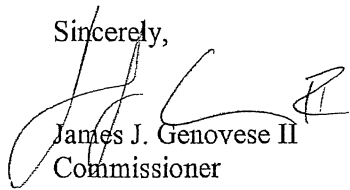
In a continuing effort to assess the impacts of COVID-19 on the youth of Oneida County, the Department of Planning will be administering a special abbreviated Teen Assessment Project (TAP) Survey to students who are and will be in in seventh, ninth, and eleventh, grades during the 2021 and 2022 academic year. This survey will be distributed to participating schools throughout Oneida County.

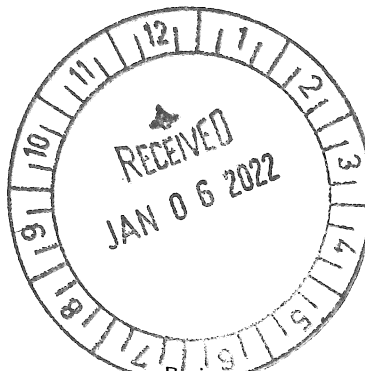
Survey questions will be generated in collaboration with SUNY Poly Technic Institute (SUNY). The data gathered will be quantitatively analyzed by SUNY as well. The data and analysis gathered by the TAP survey will be utilized to inform youth programming and grant applications for years to come.

Therefore, we respectfully request that you submit to the Oneida County Board of Legislators a request to authorize you to enter into an agreement with SUNY Polytechnic Institute to allow the County to work with SUNY Polytechnic on this survey project.

Should you have any questions regarding this matter please contact me.

Sincerely,


James J. Genovese II
Commissioner
Oneida County Department of Planning



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


Anthony J. Picente, Jr.
County Executive

Date 1-12-22

Oneida Co. Department: Planning

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name & Address of Vendor: SUNY Polytechnic Institute
100 Seymour Ave.
Utica, NY 13502

Title of Activity or Service: Survey and Data Analysis Professional Services

Proposed Dates of Operation: January 13, 2022– July 13, 2022

Client Population/Number to be Served: Oneida County students in grades 7th, 9th, and 11th.

Summary Statements

1) **Narrative Description of Proposed Services:** The contract amount is for SUNY Polytechnic Institute to create 60 survey questions, and conduct analytics from a survey that will be distributed to 7th, 9th, and 11th school aged children in schools throughout Oneida County.

2) **Program/Service Objectives and Outcomes:** Develop baseline data

3) **Program Design and Staffing:** Economic Development Project

Total Funding Requested: \$16,000 **Account #** KA8221.495

Oneida County Dept. Funding Recommendation: N/A

Proposed Funding Sources (Federal \$/ State \$/County \$): County: \$16,000

Cost Per Client Served: N/A

Past Performance Data: N/A

O.C. Department Staff Comments: None

Boilerplate Revenue Contract – SUNY Providing Services

STATE UNIVERSITY OF NEW YORK
CONTRACT NUMBER _____

AGREEMENT (the “Agreement”) made this ____ day of __ 2022 , by and between the STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, and with SUNY Polytechnic Institute, 100 Seymour Road, Utica, New York, 13502 directly providing the services under this Agreement (hereinafter collectively referred to as "SUNY") and the COUNTY OF ONEIDA, a municipal corporation, organized and existing under the laws of the State of New York, having its principal office located at 800 Park Avenue, Utica, New York 13501 hereinafter referred to as “Client.” SUNY and Client collectively, may hereinafter be referred to each as a “Party,” and collectively as the “Parties” to this Agreement.

W I T N E S S E T H:

WHEREAS, the Client requires services to assess the impacts of COVID-19 on the youth of Oneida County, SUNY will collaborate with the Client to generate survey questions to produce a special abbreviated Teen Assessment Project (TAP) Survey to students who are and will be in seventh, ninth, and eleventh, grades during the 2021 and 2022 academic year, to be distributed to participating schools throughout Oneida County. The data and analysis gathered by the TAP survey will be utilized to inform youth programming and grant applications for years to come; and

WHEREAS, the Client has determined that it is necessary to have SUNY provide such services; and

WHEREAS SUNY is experienced and well qualified to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the Parties hereto agree as follows:

1. **Description of Services.** SUNY agrees that it shall provide the services as fully set out in the Statement of Work (the “SOW”) attached hereto as *Exhibit B* and made part of this Agreement (“the Services”). SUNY agrees to provide the Services at the cost and by the completion date(s) set forth in the *Exhibit B*.
2. **Copyright.** Client will retain the copyright for all material created through this Agreement.

3. **Payment Terms.** Client shall pay SUNY \$16,000.00 (sixteen thousand dollars) for the completed Services as shown on the SOW provided at *Exhibit B*. SUNY shall submit a monthly invoice for Services rendered during the preceding calendar month. Payments will be made on the basis of actual Services completed, shall cover a period of not less than thirty (30) days, and shall be paid following Client's receipt of properly documented invoices. Interest for any unpaid balance that is due 30 days past Client's receipt of the monthly invoice will accrue pursuant to Section 179g of New York State Finance Law.
4. **Term and Termination.** This Agreement shall commence on January 13, 2022 and terminate on July 13, 2022. Client may terminate this Agreement upon ten (10) days written notice to SUNY. In the event Client terminates the Agreement in accordance with the terms of this paragraph, Client shall pay SUNY for all Services performed up to the date of termination, and for any expenses SUNY has incurred for Services not yet performed; said expenses to be documented and presented to Client in SUNY's final invoice. The term of Agreement may be extended upon the mutual written consent of the Parties and with the approval of the New York Attorney General and Office the State Comptroller, if applicable.
5. **Amendments.** This Agreement may be amended only upon the mutual written consent of the Parties and with the approval of the New York Attorney General and the Office of the State Comptroller, if applicable.
6. **Liability, Indemnity and Insurance.**
 - a. **Client:** Client shall be fully liable for the actions of its officers, employees, subcontractors, agents, licensors, or affiliates and shall fully indemnify and save harmless SUNY and the State of New York from suits, actions, damages and costs of every name and description presented, brought, or recovered against SUNY and the State of New York for or on account of any liability which may be incurred by reason of Client's performance of this Agreement. The State of New York reserves the right to join such action, at its sole expense, when it determines there is an issue involving a significant public interest.
 - b. **SUNY:** (i) Subject to the availability of lawful appropriation and consistent with the New York State Court of Claims Act, SUNY shall hold the Client harmless from and indemnify it for any final judgment of a court of competent jurisdiction for its failure to perform its obligations hereunder or to the extent attributable to the negligence of SUNY, its officers or employees when acting within the course and

scope of their employment in connection with this Agreement; (ii) SUNY represents and warrants that it is self-retained for general liability and automobile liability, and insured for workers compensation. SUNY agrees to notify the Client of any material change of the status of SUNY's self-retention by written notice given at least thirty (30) consecutive days prior to the change.

7. **Compliance.** SUNY and Client shall comply with all applicable laws, rules, orders, regulations and requirements of federal, state and municipal governments, including the provisions of *Exhibit A*, attached hereto and made a part of this Agreement.
8. **Relationship between Parties.** The relationship of the Parties arising out of this Agreement shall be that of independent contractor. The Client shall not, as the result of this Agreement, be considered an employee, partner or affiliate of the State of New York or the State University of New York, nor shall either Party represent that any relationship except that of independent contractor exists arising out of this contract.
9. **Dispute Resolution.** Any dispute arising under this Agreement shall be amicably resolved by the Parties. If the Parties are unable amicably to resolve the dispute within thirty (30) days, then either Party may seek legal or equitable redress.
10. **Venue and Jurisdiction.** The laws of New York will govern this Agreement, without regard for New York's choice of law statute. The Parties agree to bring any action to construe, interpret or enforce this Agreement in a New York court of competent jurisdiction. Client agrees to submit itself to such court's jurisdiction.
11. **Waiver.** Any provision of this Agreement may be waived by mutual written consent of the Parties hereto, provided, however, that no such waiver of any of the provisions hereof shall be binding unless in writing and signed by the Party against whom the same is sought to be enforced.
12. **Approval of New York Oversight Agencies.** In the event that this Agreement is subject to the approval of the New York State Office of Attorney General and New York Office of State Comptroller, it shall not be valid and enforceable until such approval is given.
13. **Severability and Enforceability.** If any provision of this Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, unless it prevents accomplishment of the objectives and purposes of the Agreement, which determination shall be submitted as a dispute in accordance with the terms of this Agreement. In the event of any holding that the illegality or invalidity

prevents accomplishment of the objectives and purposes of the Agreement, the Parties will immediately commence negotiations to remedy such illegality or invalidity.

14. **Notice.** Any notice to Parties hereunder must be in writing, signed by the Party giving it and shall be served either personally or by registered mail, return receipt requested, addressed as follows:

TO SUNY

**TO CLIENT:
Oneida County Department of Law
800 Park Avenue
Utica, New York 13501**

15. **Merger, Integration and Precedence.** This Agreement constitutes the entire agreement of the Parties hereto and all previous communications between the Parties, whether written or oral, with reference to the subject matter of this Agreement are hereby superseded. In the event of any inconsistency or conflict among the documents comprising this Agreement, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

- i. Exhibit A, State University of New York Standard Contract Clauses;
- ii. Exhibit A, State University of New York Standard Affirmative Action Contract Clauses;
- iii. This Agreement;
- iv. Exhibit B, Statement of Work

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IN WITNESS WHEREOF, the Parties hereto have executed this agreement the day and year first above written.

**THE STATE UNIVERSITY OF
NEW YORK**

CLIENT

By: _____

By: Anthony J. Picente, Jr.

Title: _____

Title: Oneida County Executive

Approved as to form:

Approved and filed:

Letitia James
ATTORNEY GENERAL

Thomas DiNapoli
STATE COMPTROLLER

Date: _____

Date: _____

By: _____
Assistant Attorney General

By: _____
For the State Comptroller

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) SS.:

On this _____ day of _____ 20____, before me personally came _____ to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) SS.:

On this _____ day of _____ 20____, before me personally came _____ to me known, who duly being sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF) SS.:

On this _____ day of _____, 20____, before me personally
came _____ to me known and known to me to be the person
who executed the above instrument, who, being duly sworn by me, did for himself/herself
depose and say that he/she is a member of the firm of
_____ and that he/she executed the foregoing
instrument in the firm name of _____, and that
he/she had authority to sign same, and he/she did acknowledge to me that he/she executed the
same as the act and deed of said firm of _____, for
the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGEMENT BY CORPORATION)

STATE OF NEW YORK)
COUNTY OF) SS.:

On this _____ day of _____, 20____, before
me personally came _____ to me known, who duly being
sworn, did depose and say that he/she resides in _____;
that he/she is the _____ of the _____
_____, the corporation described in and which executed the
foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said
instrument is such corporate seal, that was so affixed by the order of the Board of Directors of
said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

Exhibit A
State University of New York Standard Contract Clauses

Exhibit A-1

State University of New York Standard Affirmative Action Contract Clauses

Exhibit B
Statement of Work

1. SUNY shall create and complete in a reasonably satisfactory and proper manner a survey that identifies the social, emotional, psychological, behavioral, and educational impacts of COVID-19 Pandemic. Said survey shall include the following:

a.) SUNY shall develop 60 unique questions to include on the survey instrument;

b.) SUNY shall submit one (1) electronic copy of the final draft of the survey questions to the Client.

2. SUNY shall conduct and complete in a reasonably satisfactory and proper manner an analysis of survey data provided by the Client, consisting of statistical and predictive modeling methods. Said analysis shall include the following:

a) SUNY shall submit all data produced through the utilization of statistical software including, but not limited to, Sklearn, Minitab, Python, and SPSS;

b) SUNY shall submit one (1) electronic copy of any/all general statistics documentation sourced from the utilization of SurveyMonkey;

c) SUNY shall submit one (1) electronic copy of an executive report that details the results of the quantitative analyses.

3. SUNY shall communicate with the Client at a minimum of a bi-weekly basis via either email, video, or phone. Bi-weekly communications between the Parties shall address the following points:

a) SUNY shall provide a verbal progress report related to the development of the survey, quantitative analyses, and/or any other related documents or data.

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. PROHIBITION AGAINST ASSIGNMENT. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of SUNY and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law and Section 355 of the Education Law, if this contract exceeds \$250,000, or, if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office, or the pertinent pre-audit review period has elapsed. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission

of competitive bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as SUNY and any other agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this

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

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

(b) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992.

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

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

NYS Department of Economic Development
Division for Small Business

Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

email: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or

political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.

NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

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

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this contract is a contract as defined by

Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the contract, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

28. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. Hospital Retained Authority: Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services, management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.

EXHIBIT A-1

March 31, 2020

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; (c) and (d) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken

or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned

business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East

Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

I(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for

employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a

quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of

DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women

employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with

plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the

participation by NYS Certified minority- and women-owned enterprises on the State contract;

- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the

occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. MWBE Contractor Compliance Report.

Contractor is required to submit an MWBE Contractor Compliance Report (Form 7557-112) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Compliance Reports for construction contracts (Form 7557-110) must be submitted on a monthly basis.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of _____ percent (____%) for Certified Minority-Owned Business Enterprises and _____ percent (____%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a

finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.



ONEIDA COUNTY DEPARTMENT OF LAW

Oneida County Office Building
800 Park Avenue ♦ Utica, New York 13501-2975
(315) 798-5910 ♦ fax: (315) 798-5603
www.ocgov.net

ANTHONY J. PICENTE, JR.
COUNTY EXECUTIVE

PETER M. RAYHILL
COUNTY ATTORNEY

December 17, 2021

The Honorable Anthony J. Picente, Jr.
Oneida County Executive
Oneida County Office Building
800 Park Avenue, 10th Floor
Utica, New York 13501

FN 20 22-043

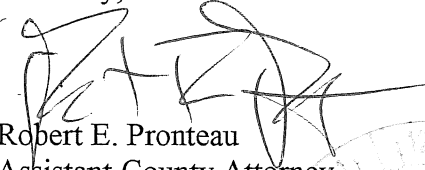
ECONOMIC DEVELOPMENT
& TOURISM
WAYS & MEANS

Dear County Executive Picente:

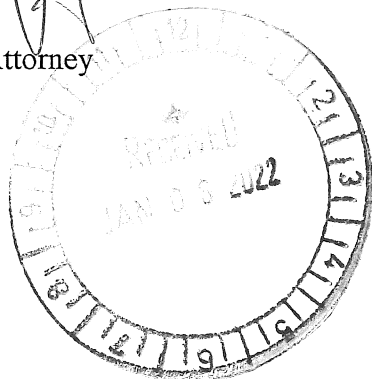
Please find enclosed, for your review and consideration, an agreement between Oneida County and Mohawk Valley EDGE. The term of this agreement is January 1, 2022 thru December 31, 2022. The purpose of this agreement is to provide support, expertise and other initiatives that showcase the advantages of Oneida County and the Mohawk Valley as a desirable area for businesses to locate and expand. The total value of the agreement is three hundred and forty-nine thousand, eight hundred and seventy-four dollars (\$349,874) over the course of the 2022 calendar year.

If the enclosed meets with your approval, I respectfully request that you forward to the Board of Legislators for approval at their next meeting. Should you have any questions or concerns, or should you require any additional information, please do not hesitate to contact me.

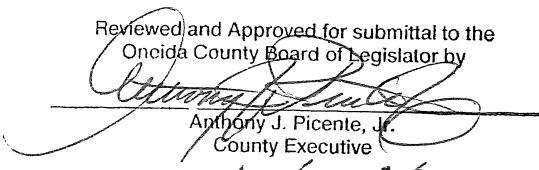
Sincerely,


Robert E. Pronteau
Assistant County Attorney

Enclosures



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


Anthony J. Picente, Jr.
County Executive

Date 1-6-22

Oneida Co. Department: County Attorney

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name & Address of Vendor: Mohawk Valley EDGE
584 Phoenix Drive
Rome, New York 13441

Title of Activity or Service: Annual Appropriation - Staff Services

Proposed Dates of Operation: January 1, 2022 – December 31, 2022

Client Population/Number to be Served: Oneida County

Summary Statements

- 1) **Narrative Description of Proposed Services:** Funding provided to carry out initiatives to improve the region's economy.
- 2) **Program/Service Objectives and Outcomes:** To attract new investment and growth as well as assisting Oneida County business with new opportunities.
- 3) **Program Design and Staffing:** N/A

Total Funding Requested: \$349,874.00 **Account # A6432.495 & A6436.495**

Oneida County Dept. Funding Recommendation: \$349,874.00

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

Cost Per Client Served: N/A

Past Performance Data: N/A

O.C. Department Staff Comments: Included with the 2022 proposed budget. The contract is also subject to approval by the Board of Legislators.

AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of January 1, 2022 is by and between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 800 Park Avenue, Utica, New York 13501 (hereinafter the "County"), and the **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION** (doing business as Mohawk Valley EDGE), a not-for-profit corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 584 Phoenix Drive, Griffiss Business & Technology Park, Rome, New York 13441 (hereinafter "EDGE").

WITNESSETH:

WHEREAS, EDGE is a New York not-for-profit corporation located within Oneida County and formed for the objects and the purposes, among others, of publicizing the advantages of Oneida County and the region by advancing, fostering and promoting general economic and industrial development within Oneida County and the region; and

WHEREAS, the Oneida County Board of Legislators (the "Board of Legislators"), by Resolution No. _____ of 2020 (the "Resolution") has authorized the expenditure of certain monies to pay for the services to be rendered by EDGE to the County pursuant to this Agreement; and

WHEREAS, the County Executive and Board of Legislators, as the policy making branches of County government, desire that the services described herein be consolidated under the aegis of, and be performed by, a single economic development organization, to wit: EDGE, in order to better facilitate the growth and development of Oneida County and represent the interests of all residents of Oneida County.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in accordance with the provisions of Section 224 of the County Law, it is agreed by and between the parties hereto as follows:

1. The term of this Agreement shall be for one (1) year beginning on **January 1, 2022 and ending December 31, 2022**. The County reserves the right to terminate this Agreement upon thirty (30) days' written notice to EDGE in the event that EDGE shall fail to perform any of its obligations set forth herein, and such failure shall not have been rectified by EDGE within said thirty (30) day period.
2. Pursuant to this Agreement, EDGE shall act as an independent contractor providing services to the County, in return for which EDGE shall receive payment from the County as hereinafter described. Such payment will constitute part of EDGE's total 2022 revenue, which revenue EDGE will use to further its corporate purposes including, without limitation, serving as the lead economic development organization in Oneida County. To that end, EDGE's goals in providing the herein described services to the County shall be to form and implement economic development policies that will help Oneida County and the region retain population and attract people, increase the number of jobs, particularly jobs that are career opportunities, and increase, by improving general economic conditions, the standard of living for residents of Oneida County. The parties acknowledge that EDGE, as an independent contractor, shall have control over the means and methods used to make and implement economic development policies designed to achieve the aforesaid goals. However, EDGE recognizes the strong interest and role of the County Executive and the Board of Legislators in the making

of policy with regard to general economic development in Oneida County and shall consult with the County Executive and the Board of Legislators in the formulation of such policy. More particularly, without limiting the scope of services to be provided hereunder, EDGE acknowledges downtown development, the nanoscale technology industry and associated and affiliated businesses, and the Oneida County Business Park and the New York State Emergency Preparedness Center, both located in Oriskany, New York, as specific priority sectors/projects for the economic development services to be provided hereunder.

3. EDGE shall, upon the request of the Board of Legislators and/or the Economic Development and Tourism Committee thereof, provide periodic updates, in writing and/or in person, to the Board of Legislators and/or the Economic Development and Tourism Committee thereof, as the case may be, on its activities pursuant to this Agreement, excepting from such updates information which is subject to a confidentiality agreement and/or confidential or proprietary information belonging to and/or regarding a business prospect or existing employer. EDGE's President shall also participate fully in economic and community development meetings with the County Executive, the Director of Workforce Development, the Commissioner of Planning and others invited by the County Executive, which said meetings shall occur on a monthly basis. The Economic Development and Tourism Committee of the Board of Legislators and the County Executive shall monitor EDGE's performance under the terms of this Agreement and make recommendations with regard to such performance.
4. EDGE shall provide, on request, reports on its activities to the County Executive, members of the Board of Legislators, or any duly appointed committee thereof, excepting from such reports information which is subject to a confidentiality agreement and/or confidential or proprietary information belonging to and/or regarding a business prospect or existing employer. At least once each quarter, EDGE shall report to the County Executive on any companies that have received financial assistance through EDGE. Specifically, EDGE shall report on the total employment among these companies and whether these companies are in compliance with applicable job creation and job retention requirements. EDGE shall also report to the County Executive on other major changes in business activities in the County of which EDGE is aware, excepting from such reports information which is subject to a confidentiality agreement and/or confidential or proprietary information belonging to and/or regarding a business prospect or existing employer.
5. Pursuant to this Agreement, EDGE shall, as part of its duties to publicize the advantages of Oneida County and the region by overseeing and facilitating overall general economic development:

5.1.1 Collaborate and assist in the preparation and updating of the Regional Economic Development Council (REDC) Strategy to establish goals, missions, and visions which are interconnected and work with the REDC to outline the Mohawk Valley Region's Priority Projects - striving to have a comprehensive approach to improving the region's community development (e.g., education, culture and arts, health, work force development, transportation, and community development initiatives) as an integral component of an overarching economic development strategy.

5.1.2 Publicize the advantages of Oneida County and the Mohawk Valley as a desirable area for businesses to locate and expand by targeting marketing efforts to strategic industry clusters as identified in the 2020 Mohawk Valley REDC Report. Through its marketing and promotional activities, attract and encourage industry

and businesses to locate or expand in Oneida County and thus facilitate the general economic growth and development of Oneida County. EDGE shall provide to the County Executive and the leadership of the Board of Legislators, no later than February 1, 2022, a targeted marketing and promotion plan regarding how EDGE intends to publicize and promote Oneida County and the Mohawk Valley as a location for business expansions within key industry clusters being targeted by EDGE.

5.1.3 Maintain a systematic program for visiting area businesses and firms and communicating with them on (i) the available programs and services offered by and through conduits of Oneida County, (ii) the identification of issues or problems that may adversely impact a business' or firm's economic well-being and the maintenance of its operations and continued presence within Oneida County, and (iii) the opportunities for growth and expansion within Oneida County and/or the Mohawk Valley that may occur as a result of assistance provided through EDGE, other economic development agencies, and/or state and/or local government support. EDGE shall make the County Executive aware of key business outreach visits that would warrant his participation. EDGE shall coordinate business outreach activities, visits, and business development projects with the Regional Office of Empire State Development, the Workforce Investment Board, and, to the extent necessary or desirable, its other economic development and educational partners.

5.1.4 Notify the County Executive, at the earliest possible time, invoking, when necessary or appropriate, the protective exemptions set forth in Public Officers Law §87(2), with regard to (a) potential economic development projects in Oneida County, and/or (b) whether an existing employer in Oneida County may relocate elsewhere in or outside of Oneida County.

5.1.5 Provide prompt attention to, and follow-up on, leads regarding new economic development, businesses or industries and participate with the County in an outreach to existing businesses and industries in Oneida County and maintain a record of all leads, contacts and follow-up efforts with existing businesses and prospects and, upon request, provide County officials, except for confidential information on clients or leads, reports on potential economic development projects.

5.1.6 Prepare proposed financing assistance and economic development incentives packages for businesses that are looking to expand or locate within Oneida County, and develop funding strategies for special economic development projects and initiatives.

5.1.7 Administer and monitor the Oneida County Empire Zone Program approved by New York State for specific sites in Oneida County in cooperation with the County Executive's Office and assist Empire State Development with matters involving the Excelsior Jobs Program.

5.1.8 Make itself available to administer various federal and state grants obtained by the County for various economic development projects upon such terms and conditions as may be mutually satisfactory to the County and EDGE. Such grants include, but are not be limited to, grants received through the NYS Office of Community Renewal for projects within Oneida County.

5.1.9 EDGE oversees the marketing and development of the Marcy Nanocenter at SUNY POLY (the "Project") through that certain Amended and Restated Project Development Agreement among EDGE, the State University of New York "SUNY"), and The Research Foundation for the State University of New York ("Research Foundation"), dated as of May 1, 2010, as the same may be amended and/or restated from time to time (the "PDA") by, among other things, (i) acquiring such fee interests and/or easements in real property as may be necessary or desirable to further the Project; (ii) finalizing remaining permitting for the Project site; (iii) developing plans and specifications for road, site, wetlands mitigation, relocation/reconfiguration of National Grid Power Lines, and infrastructure improvements at and/or to the Project site and arranging for the construction and/or installation thereof; (iv) assisting in the development of proposed financing scenarios to satisfy requirements under the County sewer consent order so that the Project site can be developed, and, (v) overseeing the implementation of the capital improvements programming for the Project site, and (vi) furthering development of facilities and techspace to support the presence of key industry companies at the Marcy Nanocenter facility. EDGE will also continue its global marketing of the Project site as the premier development site in Upstate New York for semiconductor, nanoelectronics, and nanotechnology manufacturing, and building state partnerships necessary to realize transformational economic development of this site.

5.1.10 Provide necessary technical support for key development sites in Oneida County, and provide technical assistance and necessary staff support for pre-permit approval and development of other key development sites and vacant/underutilized facilities.

5.1.11 EDGE shall continue to work with the County at the Oneida County Business Park in Oriskany, New York to address opportunities at available sites for long-term economic development and to work with current businesses within the Oneida County Business Park.

5.1.12 Maintain implementation of a communications program that conveys information to the general public on EDGE projects and activities. EDGE's communications program will (i) maintain a website and provide other means of communicating with strategic audiences, (ii) prepare an Annual Report for EDGE, (iii) prepare collateral marketing materials and other reports that inform the community about EDGE-sponsored or EDGE-supported projects and activities, (iv) provide regular presentations and updates to community and civic organizations, and governmental officials on economic development matters, (v) arrange for the issuance of press releases, and (vi) respond to inquiries from the media regarding economic development projects and activities.

5.1.13 Undertake special projects, enter into technical assistance contracts with local governments, develop and administer community and economic development initiatives, and complete or cause to be completed studies that will further the economic growth and development of Oneida County and the Mohawk Valley. In addition, EDGE will facilitate the reaching out to and development of contacts with various community groups, Chambers of Commerce and other strategic publics in the region on the regional effort to encourage economic

development.

5.1.14 Assist the County, Cornell Cooperative Extension, and other federal and state government agencies on implementing the County's Agricultural and Rural economic development programs and enhance the agribusiness sector.

6. EDGE shall provide to the County Executive and/or his designee(s) a list of staff (with their contact information) assigned to perform the services hereunder, including, but not limited to, those priority sectors/projects identified in Section 2 above.
7. EDGE shall use its best faith efforts to raise private sector monies or lending commitments in an amount equal to or in excess of funds appropriated by the County for economic development purposes in 2020 with a goal that each party hereto shall raise and/or commit appropriate funds for an incentive effort for economic development. Any and all economic development incentive funds shall be administered by EDGE pursuant to a written protocol that shall include loan and grant criteria and conflict of interest provisions. The County may contribute to the fund-raising effort as indicated.
8. For the services actually provided by EDGE to the County pursuant to the terms of this Agreement, the County agrees to pay EDGE the sum of **Three Hundred and Forty-Nine Thousand Eight Hundred Seventy-Four Dollars (\$349,874.00)** in semi-annual payments of **One Hundred and Seventy Four Thousand Nine Hundred Thirty-Seven Dollars (\$149,937.00)**.

Anything to the contrary contained in this Agreement notwithstanding, no County money shall be paid to EDGE hereunder until a memorandum receipt, signed by EDGE's principal officer and disbursing officer, to wit: its President and Chief Financial Officer, respectively, agreeing to comply with the terms of the Resolution, is delivered to the County Treasurer.

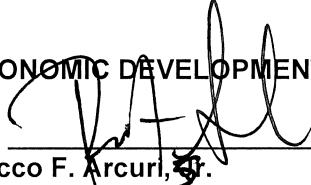
9. EDGE shall file its annual activity report for 2021 with the Clerk of the Board of Legislators on or before January 31, 2022. EDGE shall file its annual audited financial statements for 2021 with the Clerk to the Board of Legislators on or before June 30, 2022.
10. EDGE shall indemnify and hold harmless the County and its officers, agents, and employees from any claims, demands, causes of action and judgments arising out of injuries to person or property of whatever kind or nature caused by the negligence of EDGE, its employees or agents, in the performance of its duties under the terms of this Agreement.
11. In the performance of this Agreement, EDGE will at all times act in its own capacity and rights as an independent contractor, and nothing contained herein shall be construed to make EDGE an agent or partner of, or joint venturer with, the County.
12. The County acknowledges that it did not "create" EDGE. Moreover, nothing contained in this Agreement shall be deemed to make the County a "sponsor" or "affiliate" of EDGE.
13. Whenever EDGE shall use the funding provided herein for the procurement of goods and services, EDGE shall be governed by the EDGE Procurement Policies set forth in **Exhibit A**, attached hereto and made a part of this Agreement.
14. The Addendum attached hereto as **Exhibit B** is hereby incorporated into and made a part of this Agreement to the extent applicable.

IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of the respective parties hereto as of the day and year first above written.

COUNTY OF ONEIDA:

By: _____
Anthony J. Picente, Jr.
County Executive

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION:

By:  _____
Rocco F. Arcuri, Jr.
Chairperson

EDGE PROCUREMENT POLICIES

Economic Development Growth Enterprises Corporation (“EDGE”) is a New York not-for-profit corporation. EDGE is exempt from federal income tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. At present, EDGE is managed by its Board of Directors.

EDGE has two directly-held, wholly-owned subsidiaries (1) 5900 Success Drive Realty, LLC, and (2) 394 Hangar Road Corporation (the “Subsidiaries”).

EDGE is charged with responsibility for promoting and overseeing economic development within Oneida County. EDGE also provides services to Herkimer County. EDGE’s mission is to attract new businesses and residents to, and to retain existing businesses and residents in, the Mohawk Valley. In support of its mission, EDGE develops and implements an annual work plan at the beginning of each year against which it measures its performance.

In the course of its day-to-day operations, EDGE has occasion to procure various goods and services. To facilitate the acquisition of goods and services of maximum quality at the lowest possible cost, EDGE has adopted the procurement policies (the “Procurement Policies”) hereinafter set forth and has asked its Subsidiaries to adopt the same Procurement Policies.

The Procurement Policies are intended to establish guiding principles and internal procedures relating to EDGE’s procurement activities. They are not intended to and shall not create in or convey to third parties any substantive rights.

Notwithstanding anything to the contrary contained in the Procurement Policies, EDGE shall comply with the terms and conditions of each grant or contract it has with any federal or state funding source including terms and conditions relating to procurement.

As part of its procurement process, EDGE shall make an initial determination as to whether a proposed contract involves (1) the purchase and/or leasing of Commodities and/or Services or (2) a Construction/Renovation Project. Once EDGE makes that determination, it shall follow the applicable procurement policy set forth below.

1. Definitions.

As used herein, the following capitalized words shall have the following meanings:

“Commodities” shall mean goods, materials, equipment and supplies.

“Services” shall mean all services except for Exempt Services.

“Exempt Services” shall mean professional services and services requiring special technical skill, training, expertise or, in some instances, a license in order to render such services. Exempt Services shall include, without limitation, the services of attorneys, accountants, architects, surveyors, engineers,

consultants, financial advisors, appraisers, real estate brokers, real property managers, insurance brokers, bond underwriters, computer specialists, printers, investment managers, and public relations specialists.

“EDGE” shall mean Economic Development Growth Enterprises Corporation.

“Subsidiaries” shall mean EDGE’s directly-held, wholly-owned subsidiaries: (1) 5900 Success Drive Realty, LLC and (2) 394 Hangar Road Corporation.

“Construction/Renovation Project” shall mean a project for the construction and/or renovation of buildings or other improvements on real property owned and/or leased by EDGE.

2. Purchases of Commodities and/or Services.

Unless provided otherwise by EDGE’s Executive Committee, all purchases and/or leases of Commodities and/or Services are subject to the approval of EDGE’s President, who shall make a good faith effort to solicit at least three (3) written quotes/proposals for any such purchase and/or lease involving an expenditure of more than \$5,000.00. EDGE shall not be bound to award a purchase contract or lease to a vendor or supplier solely based on price. Quality and reliability of product, compliance with stated specifications, including proposed substitutions, service and warranties, delivery and installation schedules, and other factors deemed appropriate by EDGE are factors that EDGE may consider in selecting a vendor or supplier for the purchase and/or lease of Commodities and/or Services. In cases where a purchase contract or lease is awarded for reasons other than price, EDGE shall make a reasonable effort to document the rationale for its decision.

There may be instances where EDGE is able to acquire Commodities that are advertised by the State of New York under State contract administered by the Office of General Services (“OGS”) or by the Federal Government under a federal contract overseen by the General Services Administration (“GSA”). In either event, the OGS or GSA list price shall be deemed to be the lowest price and EDGE shall not be required to solicit multiple quotes/proposals for the purchase and/or lease of such Commodities.

Purchases and/or leases of Commodities and/or Services involving an expenditure of \$5,000.00 or less shall not require multiple price quotes/proposals. However, EDGE may consider making periodic solicitations to determine that its purchase and/or leasing of such Commodities and/or Services are based on competitive pricing and other considerations beneficial to EDGE.

3. Construction and/or Renovation Projects.

EDGE shall competitively bid all Construction and/or Renovation Projects involving an expenditure of more than \$25,000.00. If specific State and/or federal procurement or contracting requirements apply, EDGE shall comply with such requirements. All other competitively bid Construction and/or Renovation Projects involving the expenditure of more than \$25,000.00 shall be either by formal advertisement in a newspaper of record in Oneida County (Rome Sentinel or Observer Dispatch) or in the Dodge Report or, where applicable, in other federal and state bid publications.

Formally advertised construction and renovation work should include a pre-bid meeting for all interested bidders upon terms and conditions set forth in the EDGE bid documents. All competitive bids shall be submitted to EDGE in a sealed envelope and delivered to the EDGE offices by regular mail, overnight express mail, or in person before the scheduled bid opening date. EDGE, at its option, reserves the right to reject any bids received after the deadline set forth in the bid proposal. EDGE shall not consider bid proposals that are not sealed in an envelope, delivered by fax, or a verbal quotation from a potential bidder if sealed bid process is required. The bid opening shall be open to all interested parties.

EDGE shall document the bids received and then canvass the bids to ensure that the bidders have complied with the terms and conditions set forth in the bid specifications. After the canvas of bids is complete, EDGE, through its Executive Committee, shall review the canvas of bids and select the lowest responsible bidder to award a contract. If the lowest responsible bidder is unable to enter into a contract then EDGE may, at its option, either enter into a contract with the next lowest responsible bidder, or cancel the bid process and advertise for new bids. Where a winning bidder is unable or unwilling to enter into a contract with EDGE, then EDGE shall have the right to demand that such bidder forfeit its bid security, and may, upon advice of legal counsel, pursue all other remedies available to recover any documented damages.

Notwithstanding the above, in instances where a particular Construction and/or Renovation Project has an aggressive delivery schedule which, in EDGE's opinion, requires it to use "design-build" procedures or to retain the services of a construction manager to oversee the procurement of contractors and subcontractors, EDGE may, at its option and as an alternative to competitively bidding such Construction and/or Renovation Project, solicit written quotes/proposals from at least three (3) contractors who meet eligibility requirements established by EDGE.

Construction and/or Renovation Projects undertaken by EDGE involving an expenditure of \$25,000.00 or less shall be handled by soliciting price quotations from multiple contractors selected by EDGE (i.e., invitations to at least three firms deemed by EDGE as having the capability and qualifications to perform the work as required by EDGE). For these types of projects, EDGE will accept written proposals and price quotations from such contractors based on a written proposal provided by EDGE. EDGE shall base its award on the lowest responsible price received.

4. Other Procurement Provisions.

EDGE may make emergency purchases without following the Procurement Policies set forth above where Commodities and/or Services must be purchased immediately and a delay in order to secure alternate proposals may threaten someone's life, health, safety, property or welfare. Emergency purchases will be made at the discretion of EDGE's President with appropriate documentation as to the nature of the emergency.

ADDENDUM

THIS ADDENDUM, entered into on this ___ day of _____, 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. Executor 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. 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 extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.

b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,

1. The Contractor certifies that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contracts under a public transaction, violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently 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 (a),(b),(c),(d),(e),(f).

2. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.
Place of Performance (street, address, city, county, state, zip code).

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

1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. Health Insurance Portability and Accountability Act (HIPAA).

When applicable to the services provided pursuant to the Contract:

a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:

1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.

b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
2. The Contractor may provide data aggregation services relating to the health care operations of the County.

- c. The Contractor shall:
1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
 2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
 3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
 4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
 5. Make available protected health information in accordance with 45 CFR §164.524;
 6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.528;
 7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
 8. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Contractor on behalf of, the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
 9. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by the Contractor on behalf of, the County that the Contractor still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Contract to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 2. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 3. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. Non-Assignment Clause.

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

6. 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.

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

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

15. Compliance with New York State Information Security Breach and Notification Act.

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

16. Gratuities and Kickbacks.

a. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

b. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. Audit

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

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

18. Certification of compliance with the Iran Divestment Act.

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

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

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

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

IN WITNESS WHEREOF, the parties hereto have signed this document on the day and year first above written.

County of Oneida

Contractor

By: _____

By: _____

Oneida County Executive

Name:

Approved as to Form only

Oneida County Attorney

EDGE PROCUREMENT POLICIES

Economic Development Growth Enterprises Corporation (“EDGE”) is a New York not-for-profit corporation. EDGE is exempt from federal income tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. At present, EDGE is managed by its Board of Directors.

EDGE has two directly-held, wholly-owned subsidiaries (1) 5900 Success Drive Realty, LLC, and (2) 394 Hangar Road Corporation (the “Subsidiaries”).

EDGE is charged with responsibility for promoting and overseeing economic development within Oneida County. EDGE also provides services to Herkimer County. EDGE’s mission is to attract new businesses and residents to, and to retain existing businesses and residents in, the Mohawk Valley. In support of its mission, EDGE develops and implements an annual work plan at the beginning of each year against which it measures its performance.

In the course of its day-to-day operations, EDGE has occasion to procure various goods and services. To facilitate the acquisition of goods and services of maximum quality at the lowest possible cost, EDGE has adopted the procurement policies (the “Procurement Policies”) hereinafter set forth and has asked its Subsidiaries to adopt the same Procurement Policies.

The Procurement Policies are intended to establish guiding principles and internal procedures relating to EDGE’s procurement activities. They are not intended to and shall not create in or convey to third parties any substantive rights.

Notwithstanding anything to the contrary contained in the Procurement Policies, EDGE shall comply with the terms and conditions of each grant or contract it has with any federal or state funding source including terms and conditions relating to procurement.

As part of its procurement process, EDGE shall make an initial determination as to whether a proposed contract involves (1) the purchase and/or leasing of Commodities and/or Services or (2) a Construction/Renovation Project. Once EDGE makes that determination, it shall follow the applicable procurement policy set forth below.

1. Definitions.

As used herein, the following capitalized words shall have the following meanings:

“Commodities” shall mean goods, materials, equipment and supplies.

“Services” shall mean all services except for Exempt Services.

“Exempt Services” shall mean professional services and services requiring special technical skill, training, expertise or, in some instances, a license in order to render such services. Exempt Services shall include, without limitation, the services of attorneys, accountants, architects, surveyors, engineers,

consultants, financial advisors, appraisers, real estate brokers, real property managers, insurance brokers, bond underwriters, computer specialists, printers, investment managers, and public relations specialists.

“EDGE” shall mean Economic Development Growth Enterprises Corporation.

“Subsidiaries” shall mean EDGE’s directly-held, wholly-owned subsidiaries: (1) 5900 Success Drive Realty, LLC and (2) 394 Hangar Road Corporation.

“Construction/Renovation Project” shall mean a project for the construction and/or renovation of buildings or other improvements on real property owned and/or leased by EDGE.

2. Purchases of Commodities and/or Services.

Unless provided otherwise by EDGE’s Executive Committee, all purchases and/or leases of Commodities and/or Services are subject to the approval of EDGE’s President, who shall make a good faith effort to solicit at least three (3) written quotes/proposals for any such purchase and/or lease involving an expenditure of more than \$5,000.00. EDGE shall not be bound to award a purchase contract or lease to a vendor or supplier solely based on price. Quality and reliability of product, compliance with stated specifications, including proposed substitutions, service and warranties, delivery and installation schedules, and other factors deemed appropriate by EDGE are factors that EDGE may consider in selecting a vendor or supplier for the purchase and/or lease of Commodities and/or Services. In cases where a purchase contract or lease is awarded for reasons other than price, EDGE shall make a reasonable effort to document the rationale for its decision.

There may be instances where EDGE is able to acquire Commodities that are advertised by the State of New York under State contract administered by the Office of General Services (“OGS”) or by the Federal Government under a federal contract overseen by the General Services Administration (“GSA”). In either event, the OGS or GSA list price shall be deemed to be the lowest price and EDGE shall not be required to solicit multiple quotes/proposals for the purchase and/or lease of such Commodities.

Purchases and/or leases of Commodities and/or Services involving an expenditure of \$5,000.00 or less shall not require multiple price quotes/proposals. However, EDGE may consider making periodic solicitations to determine that its purchase and/or leasing of such Commodities and/or Services are based on competitive pricing and other considerations beneficial to EDGE.

3. Construction and/or Renovation Projects.

EDGE shall competitively bid all Construction and/or Renovation Projects involving an expenditure of more than \$25,000.00. If specific State and/or federal procurement or contracting requirements apply, EDGE shall comply with such requirements. All other competitively bid Construction and/or Renovation Projects involving the expenditure of more than \$25,000.00 shall be either by formal advertisement in a newspaper of record in Oneida County (Rome Sentinel or Observer Dispatch) or in the Dodge Report or, where applicable, in other federal and state bid publications.

Formally advertised construction and renovation work should include a pre-bid meeting for all interested bidders upon terms and conditions set forth in the EDGE bid documents. All competitive bids shall be submitted to EDGE in a sealed envelope and delivered to the EDGE offices by regular mail, overnight express mail, or in person before the scheduled bid opening date. EDGE, at its option, reserves the right to reject any bids received after the deadline set forth in the bid proposal. EDGE shall not consider bid proposals that are not sealed in an envelope, delivered by fax, or a verbal quotation from a potential bidder if sealed bid process is required. The bid opening shall be open to all interested parties.

EDGE shall document the bids received and then canvass the bids to ensure that the bidders have complied with the terms and conditions set forth in the bid specifications. After the canvas of bids is complete, EDGE, through its Executive Committee, shall review the canvas of bids and select the lowest responsible bidder to award a contract. If the lowest responsible bidder is unable to enter into a contract then EDGE may, at its option, either enter into a contract with the next lowest responsible bidder, or cancel the bid process and advertise for new bids. Where a winning bidder is unable or unwilling to enter into a contract with EDGE, then EDGE shall have the right to demand that such bidder forfeit its bid security, and may, upon advice of legal counsel, pursue all other remedies available to recover any documented damages.

Notwithstanding the above, in instances where a particular Construction and/or Renovation Project has an aggressive delivery schedule which, in EDGE's opinion, requires it to use "design-build" procedures or to retain the services of a construction manager to oversee the procurement of contractors and subcontractors, EDGE may, at its option and as an alternative to competitively bidding such Construction and/or Renovation Project, solicit written quotes/proposals from at least three (3) contractors who meet eligibility requirements established by EDGE.

Construction and/or Renovation Projects undertaken by EDGE involving an expenditure of \$25,000.00 or less shall be handled by soliciting price quotations from multiple contractors selected by EDGE (i.e., invitations to at least three firms deemed by EDGE as having the capability and qualifications to perform the work as required by EDGE). For these types of projects, EDGE will accept written proposals and price quotations from such contractors based on a written proposal provided by EDGE. EDGE shall base its award on the lowest responsible price received.

4. Other Procurement Provisions.

EDGE may make emergency purchases without following the Procurement Policies set forth above where Commodities and/or Services must be purchased immediately and a delay in order to secure alternate proposals may threaten someone's life, health, safety, property or welfare. Emergency purchases will be made at the discretion of EDGE's President with appropriate documentation as to the nature of the emergency.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through October 22, 2019.

Selected Entity Name: ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

Selected Entity Status Information

Current Entity Name: ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

DOS ID #: 161604

Initial DOS Filing Date: NOVEMBER 26, 1963

County: ONEIDA

Jurisdiction: NEW YORK

Entity Type: DOMESTIC NOT-FOR-PROFIT 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)

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

ATTN PRESIDENT

584 PHOENIX DRIVE

ROME, NEW YORK, 13441

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.](#)

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).

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

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

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

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

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

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

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

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

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

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

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

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

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

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

13. GOVERNING LAW.

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

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

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

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

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

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

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

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

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

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter “OGS”) website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

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

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

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

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

- a. For the purposes of this provision, the “use of tobacco” shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
 - i. Upon all real property owned or leased by the County of Oneida; and
 - ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.
- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

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



Griffiss International Airport

660 Hangar Road, Suite 223
Rome, NY 13441

Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE
County Executive

Edward A. Arcuri
Commissioner of Aviation

FN 20 22-074

AIRPORT

WAYS & MEANS

January 4, 2022

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

RE: Lease Agreement - Navmar Applied Sciences Corporation - Office Space in Building 41

Dear County Executive Picente:

Please consider acceptance of this Lease Agreement between Griffiss International Airport and Navmar Applied Sciences Corporation.

The lease agreement shall be for a period of ten (10) years, commencing on November 1, 2021, and ending on October 30, 2031. The revenue from the entire lease term shall be Three Hundred Thirty-Eight Thousand Sixty-Eight Dollars (\$338,068.00). The initial rent to be charged in the first two (2) years is \$31,833.50 per year, and the rent will escalate by 3% every 2 years.

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

Sincerely,

Edward A. Arcuri
Commissioner of Aviation

EAA/rae

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

Anthony J. Picente, Jr.
County Executive

Date 1-20-22

Oneida Co. Department: Airport

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: Navmar Applied Sciences Corporation
65 West Street Road
Warminster, Pennsylvania 18974

Title of Activity or Service: Lease

Proposed Dates of Operation: November 1, 2021 to October 30, 2031

Client Population/Number to be Served: N/A

Summary Statements

1) Narrative Description of Proposed Services: This is a lease agreement for 1,190 +/- square feet of office space and 4,750 +/- square feet of hangar space within the building commonly referred to as Building 41, situated at 752 Hangar Road, Rome, New York.

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

3) Program Design and Staffing: N/A

Total Funding Requested: N/A -Revenue **Account #:** A1783.10

Oneida County Dept. Funding Recommendation: \$338,068 in revenue for the entire 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

EDWARD A. ARCURI
Commissioner of Aviation

LEASE AGREEMENT

This LEASE AGREEMENT (hereafter referred to as the "Lease Agreement") is made and entered into this _____ day of _____, 2021, 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 **NAVMAR APPLIED SCIENCES CORPORATION**, with its principal place of business located at 65 West Street Road, Building C, Warminster, Pennsylvania 18974 (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 1,190 +/- square feet of office space and 4,750 +/- square feet of hangar space within the building commonly referred to as Building 41, situated at 752 Hangar Road, Rome, New York, as more particularly shown on Exhibit "A" annexed hereto, hereinafter referred to as "Demised Premises."

b. The Demised Premises shall be used by Tenant for the conduct of its business.

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.

d. 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."

2. Term.

a. The Term of this Lease Agreement shall be for a period of ten (10) years, commencing on November 1, 2021 or upon issuance of a certificate of occupancy, whichever is sooner ("Effective Date"),

and terminate 10 years from the Effective Date, unless this Lease Agreement is sooner terminated in accordance herewith by either party providing sixty (60) days advance written notice.

b. In the event the Tenant remains in possession of the Demised Premises after the expiration of the Lease Agreement, 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 November 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 two (2) year period of this Lease Agreement in the total sum of Sixty-Three Thousand Six Hundred Seventy-Seven and 00/100 Dollars (\$63,677.00), payable over twenty-four (24) equal monthly installments of Two Thousand Six Hundred Fifty-Three and 21/100 Dollars (\$2,653.21) each.

b. The Rent to be charged during second two (2) year period of this Lease Agreement shall be the total sum of Sixty-Five Thousand Five Hundred Eighty-Seven and 00/100 Dollars (\$65,587.00), payable in twenty-four (24) equal monthly installments of Two Thousand Seven Hundred Thirty-Two and 17/100 Dollars (\$2,732.79).

c. The Rent to be charged during third two (2) year period of this Lease Agreement shall be the total sum of Sixty-Seven Thousand Five Hundred Fifty-Five and 00/100 Dollars (\$67,555.00), payable in twenty-four (24) equal monthly installments of Two Thousand Eight Hundred Fourteen and 79/100 Dollars (\$2,814.79).

d. The Rent to be charged during fourth two (2) year period of this Lease Agreement shall be the total sum of Sixty-Nine Thousand Five Hundred Eighty-Two and 00/100 Dollars (\$69,582.00), payable in twenty-four (24) equal monthly installments of Two Thousand Eight Hundred Ninety-Nine and 25/100 Dollars (\$2,899.25).

e. The Rent to be charged during fifth and last two (2) year period of this Lease Agreement shall be the total sum of Seventy-One Thousand Six Hundred Sixty-Nine and 00/100 Dollars (\$71,669.00), payable in twenty-four (24) equal monthly installments of Two Thousand Nine Hundred Eighty-Six and 21/100 Dollars (\$2,986.21).

f. All monthly installment payments shall be due, in advance, on the 1st 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.

g. 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. Commercial Umbrella

1. Umbrella limits must be at least \$5,000,000.

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

3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

iii. Workers' Compensation and Employers Liability

1. Statutory limits apply.

iv. Business Auto Liability

Business 1. Coverage shall be in an amount equal to or greater than \$1,000,000.00. Auto Coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

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

Navinar Applied Sciences Corporation, Tenant

By:

Anthony J. Picente, Jr.
County Executive

By:

Daisy Walk
Name: Daisy walk
Title: Deputy Dir. of HR

Approved:

Assistant County Attorney

Exhibit A

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 Tenant's business. Aviation fuels, gasoline and other like products will be stored in designated locations and storage facilities and will comply with all Federal, State and Local laws, environmental compliance laws and regulations and comply with local fire codes. Tenant shall indemnify, protect, and hold Landlord harmless from any environmental damage resulting from Tenant's use of the Demised Premises, and, if such environmental damage resulting from Tenant's use of the Demised Premises is discovered, Tenant shall promptly undertake and pursue diligently appropriate steps to repair the damage. Furthermore, Tenant shall notify Landlord, in writing, of any incident or occurrence which results in environmental damage within twenty-four (24) hours after such incident or occurrence or following the discovery of same.

b. The environmental indemnification provisions of this paragraph shall survive the expiration or termination of the Lease.

10. Obligations of Landlord. Landlord will maintain the structural components of the Demised Premises, including hangar doors and hangar door mechanisms, and Landlord will provide normal building maintenance without additional cost to Tenant. Tenant shall have at all times the reasonable right of ingress to and egress from the Demised Premises over and across the Landlord's adjoining premises, in common with others. To ensure this right, Landlord shall make all reasonable efforts to keep areas adjacent to the Demised Premises free and clear of all hazards and obstructions, natural or man-made.

11. Obligations of Tenant.

a. **Storage.** The Demised Premises shall be used only as described in this Lease Agreement.

b. **Maintenance and Repair.** Tenant shall maintain the Demised Premises in a neat and orderly condition, and shall keep all areas clean and clear of oil, grease or toxic chemicals. Tenant shall maintain only limited amounts of hazardous or flammable materials in approved storage containers within or about the Demised Premises. No boxes, crates, rubbish, paper or other litter shall be permitted to accumulate within or about the Demised Premises.

c. **Damage.** Tenant shall be responsible for all damage to the Demised Premises caused by use or negligence of Tenant, or Tenant's agents, employees, or invitees. Tenant shall be responsible for all damage to property, real or personal, located on or about the Demised Premises caused by the use or negligence of Tenant, or Tenant's agents, employees, or invitees. Landlord reserves the right to make such repairs, at Tenant's expense, which shall be deemed "additional rent" and shall become due and payable as part of Tenant's next monthly Rent payment. Tenant shall make no structural, electrical, or other modification to the Demised Premises without first obtaining Landlord's written permission and obtaining any permits, if required.

d. **Tenant's Personal Property.** All personal property placed or moved into the Demised Premises shall be at the risk of Tenant or owner thereof, and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from any act of negligence of any other tenant or occupant at the Airport. Tenant agrees and understands that Tenant is responsible for the proper securing of personal property and shall further indemnify and hold Landlord harmless for any damage or liability caused by improper securing of personal property. Landlord shall not be responsible for any loss from theft, vandalism, or act of God, and all personal property stored upon the Demised Premises is at Tenant's sole risk.

e. **Compliance with Laws.** Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by federal, state, or local government agencies or by Landlord. Tenant shall be responsible for obtaining and complying with all governmental permits required for Tenant's use and occupancy of the Demised Premises, if any. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all federal, state and local laws, ordinances, rules and regulations protecting the environment. Tenant agrees to keep itself reasonably informed of future changes in the existing environmental laws. Tenant agrees to

cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

f. **Fire Extinguisher.** Tenant shall maintain at all times, in the Demised Premises, a minimum of two (2) approved twenty (20) pound dry chemical portable fire extinguishers suitable for use on Class "A", "B", and "C" fires with a current inspection certificate from an approved fire equipment company affixed.

g. **Surrender upon Termination.** On the expiration or termination of the Lease Agreement, Tenant shall immediately surrender possession of the Demised Premises and shall remove aircraft and all other property therein, leaving the Demised Premises in the same condition as when received, ordinary wear and tear excepted. Tenant shall be liable for any and all damage to the Demised Premises caused by the use or negligence of Tenant or Tenant's agents, employees, or invitees, including, but not limited to, damage to doors or interior walls by being bent or broken or damage to floors due to fuel or oil spillage. If Tenant fails to remove such items from the Demised Premises and to repair such damage upon vacating the premises, then Landlord may remove the items and repair the damages, and Tenant shall promptly pay the costs and expenses of such removal and repairs upon proper demand by Landlord.

h. **Compliance with All Resolutions, Rules, Regulations, and Standards.** Tenant acknowledges that Landlord operates an airport, and resolutions, rules, regulations, and standards must be adopted by Landlord and modified from time to time in order to promote the orderly operation and development of the Airport. Therefore, Tenant agrees to be bound by all terms and provisions of any resolutions, rules, regulations, and standards that may from time to time be adopted by Landlord, provided that such resolutions, rules, regulations, and standards do not increase the Rent to be paid by Tenant. The parties agree that Tenant's use of the Demised Premises and any rights conferred to Tenant in this Lease Agreement shall be subject to Landlord's minimum standards, as amended from time to time; Tenant shall be given advance notice of any proposed change or addition to such rules, regulations, and standards, and Tenant shall be given an opportunity to be heard thereon. All the terms, conditions, and covenants of this Lease Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties.

i. **Signs.** Tenant shall not erect or post any signs without the Landlord's written permission.

j. **Covenant of Continuous Operations and Not to Abandon or Vacate.** Tenant hereby covenants that during the Term, the Tenant will continue its operations for the entire length of the Lease and not cease operations, and further covenants not to abandon, to continuously occupy, and not to vacate the Demised Premises prior to the expiration of the Term without a Surrender Agreement with the Landlord in place. Abandonment and/or vacation of the Demised Premises shall be defined to include but not be limited to the cessation of operations, or abandonment of Tenant-owned or third party-owned property at the Demised Premises unattended, or removal of substantial portions of Tenant's property from the Demised Premises, other than in the normal course of Tenant's business. The Tenant acknowledges that any failure to so continuously operate, and/or any abandonment or vacation of the Demised Premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to continuously operate its business in the Demised Premises and/or return to its business in the Demised Premises, and the Tenant hereby consents to such injunction or order, in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which causes expense to the Landlord, including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of the Term.

k. **Personnel Badging Requirement.** Tenant acknowledges that any personnel employed, contracted, visiting or conducting business with the Tenant that require airport movement area access require the appropriate badging or badged escort for entry onto the movement area. Badging of personnel must be coordinated through the Oneida County Department of Aviation Administrative offices. There is a fee for the badging process, and payment of said fee is the sole responsibility of the Tenant separate and apart from payment under this Lease Agreement.

12. **Nondiscrimination.** Notwithstanding any other provision of this Lease Agreement, during the Term of this Lease Agreement, Tenant for itself, its heirs, personal representatives, successors in interest, and/or assigns, as the case may be, as part of the consideration for this Lease Agreement, does hereby covenant and agree that:

a. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Demised Premises on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

b. In the construction of any improvements on, over, or under the Demised Premises, and the furnishing of services therein or thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

c. Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such regulations may be amended.

d. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease Agreement and to reenter and repossess the Demised Premises and hold the premises as if this Lease Agreement had never been made or issued. The provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, have been followed and completed, including the exercise or expiration of appeal rights.

13. Reservation of Rights by Landlord.

a. Development. Landlord reserves the right to further develop and improve the Airport as Landlord sees fit, without interference or hindrance, but taking into consideration the desires and views of Tenant, and for purposes of developing and improving the Airport, Landlord reserves the right upon reasonable notice to enter upon the Demised Premises and make improvements to same. Landlord shall make every effort to minimize the disruption of normal Airport usage during periods of repair or further development of the Airport.

b. Relocation. Landlord reserves the right upon thirty (30) days written notice to relocate Tenant to a similar size facility in other areas of the Airport at Landlord's sole expense.

c. National Emergency. Landlord further reserves the right, during time of war or national emergency, to lease the landing area or common areas of the Airport to the United States Government or the State of New York for military use or for natural disaster relief operations, and if such a lease is executed with the federal or state government, the terms of this Lease Agreement which are inconsistent with the lease to the government shall be temporarily suspended and rent shall be abated accordingly during the tenancy by the government.

14. Right of Access and Inspection.

a. Landlord will retain a key for access to the Demised Premises. Tenant will not change locks without prior notice and agreement of Landlord.

b. Landlord shall have the right to make reasonable inspections of the Demised Premises between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, exclusive of federal holidays. Landlord shall have the right at any other time to enter the Demised Premises for security, fire, other emergencies, or making repairs.

15. Assurance Agreements. This Lease Agreement is subordinate to the provisions of any and all existing and future agreements between the Landlord and the State of New York or the United States of America relative to the operation, maintenance, or development of the Airport, the execution of which may be required as a condition precedent to the expenditure of funds for the development of the Airport, or any part thereof.

16. Federal Aviation Administration Requirements. In the event that the Federal Aviation Administration (FAA) or its successors require modification or change in this Lease Agreement as a condition precedent to (1) the granting of funds for the improvement of the Airport, or (2) as a condition precedent to compliance with FAA regulations or standards, Tenant agrees to consent to such amendments, modifications, or changes to this Lease Agreement as may be reasonably required to either obtain such funds or comply with such regulations or standards. However, in no event shall Tenant be required pursuant to this paragraph to agree to a reduction in size of the Demised Premises, or a change in the authorized use to which Tenant has put the Demised Premises without an adjustment in Rent.

17. Airspace. As a condition of this Lease Agreement, Landlord reserves unto itself, its successors, and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Demised Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, or operating on the Airport. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Demised Premises to such a height in compliance with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Demised Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

18. **No Grant of Exclusive Right or Privilege.** Notwithstanding anything contained in this Lease Agreement that may be, or may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease Agreement are non-exclusive, and Landlord reserves the right to grant similar privileges to another tenant or other tenants on other parts of the Airport. Nothing in this Lease Agreement shall be construed as granting an exclusive right or privilege other than the right of Tenant to possess and to peacefully enjoy the use of the Demised Premises in accordance with this Lease Agreement.

19. **Sublease.**

a. Tenant shall not enter into any sub-agreement or sub-lease of the Demised Premises or assign its rights under this Lease Agreement without prior written approval of Landlord. Tenant shall not either voluntarily, or by operation of law, assign, or transfer the leasehold interest granted by this Lease Agreement or any interest therein, and shall not sublet the Demised Premises or any part thereof, or any right or privilege appurtenant thereto, nor allow the sale or transfer of a majority interest or majority ownership of Tenant, without first obtaining the written consent of the Landlord. The consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment, subletting, or encumbrance. Any such subsequent assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default of this Lease Agreement.

b. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or Guarantor, if any, from any obligations and/or liabilities of Tenant or Guarantor, if any, to pay the Rent and to perform all other obligations required of Tenant by this Lease Agreement. The acceptance of the Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease Agreement. In the event of a default by any assignee or subtenant of Tenant in the performance of any of the terms of this Lease Agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against an assignee or subtenant.

20. **Condition of Premises.** Tenant shall accept, and has accepted, the Demised Premises in its present condition, AS IS, without any liability or obligation on the part of either Landlord or Tenant to make any alterations, improvements or repairs of any kind on or about the Demised Premises.

21. **Disclaimer of Warranty and Responsibility for Securing Aircraft.** Tenant accepts all facilities on the Premises on an "as is" basis. Landlord hereby disclaims, and Tenant accepts such disclaimer, of any warranty, either express or implied of the condition, use, or fitness of the tie-down rings, ropes, chains, or other apparatus used to secure airplanes, and Tenant assumes full responsibility to furnish any equipment necessary to properly secure Tenant's aircraft. Tenant agrees and understands that Tenant is responsible for the proper tie down or securing of aircraft inside or outside of the Demised Premises and shall further indemnify and hold harmless the Landlord for any damage or liability caused by improper tie down or securing. Landlord shall not be liable for any loss from theft, vandalism or act of God, and all aircraft are stored or parked on the Demised Premises or Airport at Tenant's sole risk.

22. **Alterations; Liens.**

a. Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Demised Premises without the prior written approval of Landlord. All fixtures installed or additions and improvements made to the Demised Premises shall become Landlord's property and shall, at the election of the Landlord, remain in the Demised Premises at the expiration or termination of this Lease Agreement without compensation or payment to Tenant. Tenant shall not suffer or permit any lien to be filed against the Demised Premises or any part of Landlord's interest, by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the Demised Premises or any part thereof under Tenant. If any such lien is filed against the Demised Premises or Landlord's interest, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, and shall incur all charges in procuring the release of such lien.

b. Tenant agrees to pay all lawful and valid liens affecting Landlord's fee title to the 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)
10/19/2021

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 NSM Insurance Group 555 North Lane - Suite 8060 Conshohocken PA 19428	CONTACT NAME: Allison Wandling	
	PHONE (A/C, No, Ext): (610) 808-9769	FAX (A/C, No): (610) 941-9889
	E-MAIL ADDRESS: awandling@nsminsurancebrokers.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Federal Insurance Company	20281
	INSURER B: Bankers Standard Insurance Company	18279
	INSURER C: ACE American Insurance Company	22667
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 21-22 MASTER 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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			3602-66-49	10/01/2021	10/01/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADY INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Excluded \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			7359-09-06	10/01/2021	10/01/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			7989-05-64	10/01/2021	10/01/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	7174-69-98	10/01/2021	10/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input 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
C	Errors & Omissions/ Cyber Liability			D95613020	10/01/2021	10/01/2022	Each Claim/ Agg Limit \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Property In Transit; Carrier: Insurer A; Policy #3602-66-49; Policy Period: 10/01/21 - 10/01/22; Limit: \$500K

The County of Oneida is included as additional insured under the General Liability and Umbrella Liability policies where required by written contract. Waiver of Subrogation applies with respects to the General Liability, Workers Compensation, and Umbrella Liability policies where required by written contract and permitted by law.

CERTIFICATE HOLDER County of Oneida 800 Park Avenue Utica NY 13601	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 

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Griffiss International Airport

660 Hangar Road, Suite 223
Rome, NY 13441

Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE
County Executive

Edward A. Arcuri
Commissioner of Aviation

December 2, 2021

FN 20 22-045

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

AIRPORT

WAYS & MEANS

RE: Lease Agreement – N17426, LLC, Hangar Space in Building 100

Dear County Executive Picente:

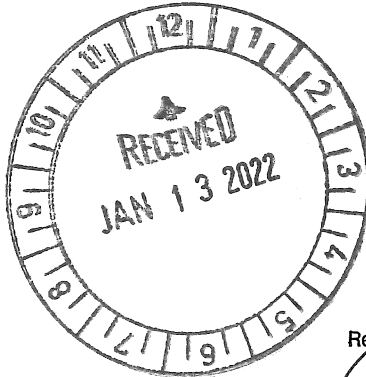
Please consider acceptance of this Lease Agreement between Griffiss International Airport and N17426, LLC.

The lease agreement shall be for a period of one (1) year, commencing on October 1, 2021 and ending on September 30, 2021. Following the expiration of the initial term, each year for four (4) consecutive years, this Lease Agreement shall automatically renew for an additional one (1) year term. The revenue from the initial lease term shall be Eighteen Thousand Dollars. A three percent annual escalator shall apply to subsequent terms.

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

Sincerely,

Edward A. Arcuri
Commissioner of Aviation



EAA/rae

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

Anthony J. Picente, Jr.
County Executive

Date: 1-12-22

Oneida Co. Department: Airport

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: N17426, LLC
25 Par Road
Monticello, New York 10901

Title of Activity or Service: Lease

Proposed Dates of Operation: October 1, 2021 to September 30, 2022 (Initial Term)

Client Population/Number to be Served: N/A

Summary Statements

1) Narrative Description of Proposed Services: This is a lease agreement for 3,659 +/- square feet of hangar space at 592 Hangar Road, Rome, New York in the building commonly referred to as Building 100. The lease has a one year initial term and automatically renews annually thereafter up four additional one-year terms, unless sooner terminated by the parties. A three percent escalator shall be applied to the annual rent for each subsequent renewal term.

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

3) Program Design and Staffing: N/A

Total Funding Requested: N/A -Revenue **Account #:** A1783.13

Oneida County Dept. Funding Recommendation: \$18,000.00 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

EDWARD A. ARCURI
Commissioner of Aviation

LEASE AGREEMENT

This LEASE AGREEMENT (hereafter referred to as the "Lease Agreement") is made and entered into this _____ day of _____, 2021, 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 NI 7426, LLC, with its principal place of business located at 29 Par Road, Montebello, New York 10901 (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 3,659 +/- square feet of hangar space within the building commonly referred to as Building 100, situated at 592 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 operation, storage and maintenance of its aircraft.

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 October 1, 2021 and ending on September 30, 2022 (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 four (4) 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 October 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 October 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 Eighteen Thousand and 00/100 Dollars (\$18,000.00), payable over twelve (12) equal monthly installments of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) each.

b. The Rent to be charged during the First Renewal Term would be the total sum of Eighteen Thousand Five Hundred Forty and 00/100 Dollars (\$18,540.00), payable in twelve (12) equal monthly installments of One Thousand Five Hundred Forty-five Dollars (\$1,545.00).

c. The Rent to be charged during the Second Renewal Term would be the total sum of Nineteen Thousand Ninety-Six and 20/100 Dollars (\$19,096.20), payable in twelve (12) equal monthly installments of One Thousand Five Hundred Ninety-One and 35/100 Dollars (\$1,591.35).

d. The Rent to be charged during the Third Renewal Term would be the total sum of Nineteen Thousand Six Hundred Sixty-Nine and 09/100 Dollars (\$19,669.09), payable in twelve (12) equal monthly installments of One Thousand Six Hundred Thirty-Nine and 09/100 Dollars (\$1,639.09).

e. The Rent to be charged during the Fourth Renewal Term would be the total sum of Twenty Thousand Two Hundred Fifty-Nine and 16/100 Dollars (\$20,259.16), payable in twelve (12) equal monthly installments of One Thousand Six Hundred Eighty-Eight and 26/100 Dollars (\$1,688.26).

f. All monthly installment payments shall be due, in advance, on the 1st 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.

g. 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. Aviation Commercial General Liability (ACGL) coverage with limits of Insurance of not less than \$10,000,000 each occurrence and \$10,000,000 Products/Completed Operations Aggregate limit.

1. Each Aircraft Limit of \$10,000,000; Each Loss Limit of \$10,000,000.

2. County 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 insureds.

iii. Commercial Umbrella

1. Umbrella limits must be at least \$5,000,000.

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

3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

iv. 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

N17426, LLC

By:

Anthony J. Picente, Jr.
County Executive

By:

Print Name: Jeff August
Title: CEO

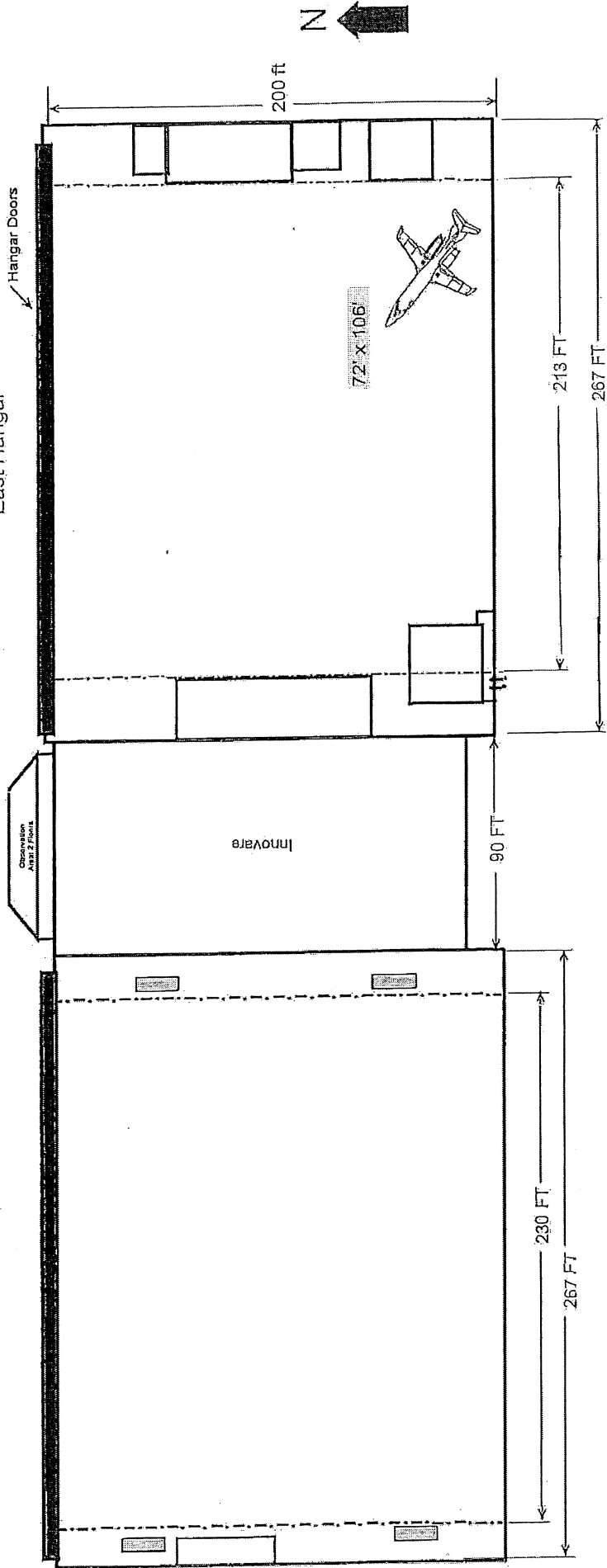
Approved:

Amanda L. Cortese-Kolasz, Esq.
Deputy County Attorney-Administration

Exhibit A

West Hangar

East Hangar



NOTE: North door height is 48 ft.

230 ft represents full unobstructed floor space with 48 ft ceiling clearance

NOTE: 213 Ft. represents clear unobstructed floor span between structures.

HANGAR 100

Griffiss International Airport

KRME

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: 668 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 Tenant's business. Aviation fuels, gasoline and other like products will be stored in designated locations and storage facilities and will comply with all Federal, State and Local laws, environmental compliance laws and regulations and comply with local fire codes. Tenant shall indemnify, protect, and hold Landlord harmless from any environmental damage resulting from Tenant's use of the Demised Premises, and, if such environmental damage resulting from Tenant's use of the Demised Premises is discovered, Tenant shall promptly undertake and pursue diligently appropriate steps to repair the damage. Furthermore, Tenant shall notify Landlord, in writing, of any incident or occurrence which results in environmental damage within twenty-four (24) hours after such incident or occurrence or following the discovery of same.

b. The environmental indemnification provisions of this paragraph shall survive the expiration or termination of the Lease.

10. **Obligations of Landlord.** Landlord will maintain the structural components of the Demised Premises, including hangar doors and hangar door mechanisms, and Landlord will provide normal building maintenance without additional cost to Tenant. Tenant shall have at all times the reasonable right of ingress to and egress from the Demised Premises over and across the Landlord's adjoining premises, in common with others. To ensure this right, Landlord shall make all reasonable efforts to keep areas adjacent to the Demised Premises free and clear of all hazards and obstructions, natural or man-made.

11. Obligations of Tenant.

a. **Storage.** The Demised Premises shall be used only as described in this Lease Agreement.

b. **Maintenance and Repair.** Tenant shall maintain the Demised Premises in a neat and orderly condition, and shall keep all areas clean and clear of oil, grease or toxic chemicals. Tenant shall maintain only limited amounts of hazardous or flammable materials in approved storage containers within or about the Demised Premises. No boxes, crates, rubbish, paper or other litter shall be permitted to accumulate within or about the Demised Premises.

c. **Damage.** Tenant shall be responsible for all damage to the Demised Premises caused by use or negligence of Tenant, or Tenant's agents, employees, or invitees. Tenant shall be responsible for all damage to property, real or personal, located on or about the Demised Premises caused by the use or negligence of Tenant, or Tenant's agents, employees, or invitees. Landlord reserves the right to make such repairs, at Tenant's expense, which shall be deemed "additional rent" and shall become due and payable as part of Tenant's next monthly Rent payment. Tenant shall make no structural, electrical, or other modification to the Demised Premises without first obtaining Landlord's written permission and obtaining any permits, if required.

d. **Tenant's Personal Property.** All personal property placed or moved into the Demised Premises shall be at the risk of Tenant or owner thereof, and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from any act of negligence of any other tenant or occupant at the Airport. Tenant agrees and understands that Tenant is responsible for the proper securing of personal property and shall further indemnify and hold Landlord harmless for any damage or liability caused by improper securing of personal property. Landlord shall not be responsible for any loss from theft, vandalism, or act of God, and all personal property stored upon the Demised Premises is at Tenant's sole risk.

e. **Compliance with Laws.** Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by federal, state, or local government agencies or by Landlord. Tenant shall be responsible for obtaining and complying with all governmental permits required for Tenant's use and occupancy of the Demised Premises, if any. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all federal, state and local laws, ordinances, rules and regulations protecting the environment. Tenant agrees to keep itself reasonably informed of future changes in the existing environmental laws. Tenant agrees to

cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

f. **Fire Extinguisher.** Tenant shall maintain at all times, in the Demised Premises, a minimum of two (2) approved twenty (20) pound dry chemical portable fire extinguishers suitable for use on Class "A", "B", and "C" fires with a current inspection certificate from an approved fire equipment company affixed.

g. **Surrender upon Termination.** On the expiration or termination of the Lease Agreement, Tenant shall immediately surrender possession of the Demised Premises and shall remove aircraft and all other property therein, leaving the Demised Premises in the same condition as when received, ordinary wear and tear excepted. Tenant shall be liable for any and all damage to the Demised Premises caused by the use or negligence of Tenant or Tenant's agents, employees, or invitees, including, but not limited to, damage to doors or interior walls by being bent or broken or damage to floors due to fuel or oil spillage. If Tenant fails to remove such items from the Demised Premises and to repair such damage upon vacating the premises, then Landlord may remove the items and repair the damages, and Tenant shall promptly pay the costs and expenses of such removal and repairs upon proper demand by Landlord.

h. **Compliance with All Resolutions, Rules, Regulations, and Standards.** Tenant acknowledges that Landlord operates an airport, and resolutions, rules, regulations, and standards must be adopted by Landlord and modified from time to time in order to promote the orderly operation and development of the Airport. Therefore, Tenant agrees to be bound by all terms and provisions of any resolutions, rules, regulations, and standards that may from time to time be adopted by Landlord, provided that such resolutions, rules, regulations, and standards do not increase the Rent to be paid by Tenant. The parties agree that Tenant's use of the Demised Premises and any rights conferred to Tenant in this Lease Agreement shall be subject to Landlord's minimum standards, as amended from time to time. Tenant shall be given advance notice of any proposed change or addition to such rules, regulations, and standards, and Tenant shall be given an opportunity to be heard thereon. All the terms, conditions, and covenants of this Lease Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties.

i. **Signs.** Tenant shall not erect or post any signs without the Landlord's written permission.

j. **Covenant of Continuous Operations and Not to Abandon or Vacate.** Tenant hereby covenants that during the Term, the Tenant will continue its operations for the entire length of the Lease and not cease operations, and further covenants not to abandon, to continuously occupy, and not to vacate the Demised Premises prior to the expiration of the Term without a Surrender Agreement with the Landlord in place. Abandonment and/or vacation of the Demised Premises shall be defined to include but not be limited to the cessation of operations, or abandonment of Tenant-owned or third party-owned property at the Demised Premises unattended, or removal of substantial portions of Tenant's property from the Demised Premises, other than in the normal course of Tenant's business. The Tenant acknowledges that any failure to so continuously operate, and/or any abandonment or vacation of the Demised Premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to continuously operate its business in the Demised Premises and/or return to its business in the Demised Premises, and the Tenant hereby consents to such injunction or order, in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which causes expense to the Landlord, including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of the Term.

k. **Personnel Badging Requirement.** Tenant acknowledges that any personnel employed, contracted, visiting or conducting business with the Tenant that require airport movement area access require the appropriate badging or badged escort for entry onto the movement area. Badging of personnel must be coordinated through the Oneida County Department of Aviation Administrative offices. There is a fee for the badging process, and payment of said fee is the sole responsibility of the Tenant separate and apart from payment under this Lease Agreement.

12. **Nondiscrimination.** Notwithstanding any other provision of this Lease Agreement, during the Term of this Lease Agreement, Tenant for itself, its heirs, personal representatives, successors in interest, and/or assigns, as the case may be, as part of the consideration for this Lease Agreement, does hereby covenant and agree that:

a. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Demised Premises on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

b. In the construction of any improvements on, over, or under the Demised Premises, and the furnishing of services therein or thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

c. Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such regulations may be amended.

d. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease Agreement and to reenter and repossess the Demised Premises and hold the premises as if this Lease Agreement had never been made or issued. The provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, have been followed and completed, including the exercise or expiration of appeal rights.

13. Reservation of Rights by Landlord.

a. **Development.** Landlord reserves the right to further develop and improve the Airport as Landlord sees fit, without interference or hindrance, but taking into consideration the desires and views of Tenant, and for purposes of developing and improving the Airport, Landlord reserves the right upon reasonable notice to enter upon the Demised Premises and make improvements to same. Landlord shall make every effort to minimize the disruption of normal Airport usage during periods of repair or further development of the Airport.

b. **Relocation.** Landlord reserves the right upon thirty (30) days written notice to relocate Tenant to a similar size facility in other areas of the Airport at Landlord's sole expense.

c. **National Emergency.** Landlord further reserves the right, during time of war or national emergency, to lease the landing area or common areas of the Airport to the United States Government or the State of New York for military use or for natural disaster relief operations, and if such a lease is executed with the federal or state government, the terms of this Lease Agreement which are inconsistent with the lease to the government shall be temporarily suspended and rent shall be abated accordingly during the tenancy by the government.

14. Right of Access and Inspection.

a. Landlord will retain a key for access to the Demised Premises. Tenant will not change locks without prior notice and agreement of Landlord.

b. Landlord shall have the right to make reasonable inspections of the Demised Premises between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, exclusive of federal holidays. Landlord shall have the right at any other time to enter the Demised Premises for security, fire, other emergencies, or making repairs.

15. **Assurance Agreements.** This Lease Agreement is subordinate to the provisions of any and all existing and future agreements between the Landlord and the State of New York or the United States of America relative to the operation, maintenance, or development of the Airport, the execution of which may be required as a condition precedent to the expenditure of funds for the development of the Airport, or any part thereof.

16. **Federal Aviation Administration Requirements.** In the event that the Federal Aviation Administration (FAA) or its successors require modification or change in this Lease Agreement as a condition precedent to (1) the granting of funds for the improvement of the Airport, or (2) as a condition precedent to compliance with FAA regulations or standards, Tenant agrees to consent to such amendments, modifications, or changes to this Lease Agreement as may be reasonably required to either obtain such funds or comply with such regulations or standards. However, in no event shall Tenant be required pursuant to this paragraph to agree to a reduction in size of the Demised Premises, or a change in the authorized use to which Tenant has put the Demised Premises without an adjustment in Rent.

17. **Airspace.** As a condition of this Lease Agreement, Landlord reserves unto itself, its successors, and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Demised Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, or operating on the Airport. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Demised Premises to such a height in compliance with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Demised Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

18. **No Grant of Exclusive Right or Privilege.** Notwithstanding anything contained in this Lease Agreement that may be, or may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease Agreement are non-exclusive, and Landlord reserves the right to grant similar privileges to another tenant or other tenants on other parts of the Airport. Nothing in this Lease Agreement shall be construed as granting an exclusive right or privilege other than the right of Tenant to possess and to peacefully enjoy the use of the Demised Premises in accordance with this Lease Agreement.

19. **Sublease.**

a. Tenant shall not enter into any sub-agreement or sub-lease of the Demised Premises or assign its rights under this Lease Agreement without prior written approval of Landlord. Tenant shall not either voluntarily, or by operation of law, assign, or transfer the leasehold interest granted by this Lease Agreement or any interest therein, and shall not sublet the Demised Premises or any part thereof, or any right or privilege appurtenant thereto, nor allow the sale or transfer of a majority interest or majority ownership of Tenant, without first obtaining the written consent of the Landlord. The consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment, subletting, or encumbrance. Any such subsequent assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default of this Lease Agreement.

b. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or Guarantor, if any, from any obligations and/or liabilities of Tenant or Guarantor, if any, to pay the Rent and to perform all other obligations required of Tenant by this Lease Agreement. The acceptance of the Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease Agreement. In the event of a default by any assignee or subtenant of Tenant in the performance of any of the terms of this Lease Agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against an assignee or subtenant.

20. **Condition of Premises.** Tenant shall accept, and has accepted, the Demised Premises in its present condition, AS IS, without any liability or obligation on the part of either Landlord or Tenant to make any alterations, improvements or repairs of any kind on or about the Demised Premises.

21. **Disclaimer of Warranty and Responsibility for Securing Aircraft.** Tenant accepts all facilities on the Premises on an "as is" basis. Landlord hereby disclaims, and Tenant accepts such disclaimer, of any warranty, either express or implied of the condition, use, or fitness of the tie-down rings, ropes, chains, or other apparatus used to secure airplanes, and Tenant assumes full responsibility to furnish any equipment necessary to properly secure Tenant's aircraft. Tenant agrees and understands that Tenant is responsible for the proper tie down or securing of aircraft inside or outside of the Demised Premises and shall further indemnify and hold harmless the Landlord for any damage or liability caused by improper tie down or securing. Landlord shall not be liable for any loss from theft, vandalism or act of God, and all aircraft are stored or parked on the Demised Premises or Airport at Tenant's sole risk.

22. **Alterations; Liens.**

a. Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Demised Premises without the prior written approval of Landlord. All fixtures installed or additions and improvements made to the Demised Premises shall become Landlord's property and shall, at the election of the Landlord, remain in the Demised Premises at the expiration or termination of this Lease Agreement without compensation or payment to Tenant. Tenant shall not suffer or permit any lien to be filed against the Demised Premises or any part of Landlord's interest, by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the Demised Premises or any part thereof under Tenant. If any such lien is filed against the Demised Premises or Landlord's interest, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, and shall incur all charges in procuring the release of such lien.

b. Tenant agrees to pay all lawful and valid liens affecting Landlord's fee title to the 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 therefor 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



AIG AEROSPACE INSURANCE SERVICES, INC.
CERTIFICATE OF INSURANCE

THIS IS TO CERTIFY TO:

COUNTY OF ONEIDA
 800 PARK AVE
 UTICA, NY 13501

THAT THE FOLLOWING POLICY/IES OF INSURANCE HAS/HAVE BEEN ISSUED TO:

N17426, LLC
 251 LITTLE FALLS DRIVE
 WILMINGTON, DE 19808

POLICY NO. GM 011403708-01
 POLICY PERIOD: From September 30, 2021 to September 30, 2022
 INSURANCE COMPANY NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

Coverage only applies as indicated by a specific limit and deductible.

FAA Cert. Number	Make & Model	Year Built	Seats Crew / Pass	Coverage N: Insured Value	Deductibles	
					Not In-Motion	In-Motion/Ingestion
N17426	Lear 60	2011	2 7	\$2,650,000	NIL	NIL

Coverage A: \$50,000,000 Each Occurrence
 Coverage X: \$50,000 Non-Crew Member Passenger \$50,000 Each Crew Member

Coverage Identified: Coverage A: Liability Coverage for Scheduled Aircraft, Coverage N: Physical Damage Coverage for Scheduled Aircraft, Coverage X: Medical Expenses

OTHER COVERAGES/CONDITIONS/REMARKS


ADDITIONAL INSURED, PRIMARY AND NON-CONTRIBUTORY, NOTICE OF CANCELLATION, WAIVER OF SUBROGATION SUBJECT TO FORM GLD563 ATTACHED TO THIS POLICY.

A certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder. A certificate of insurance does not amend, extend, or alter the coverage, terms, exclusions, conditions, or other provisions afforded by the policies referenced therein.

If the policy referenced above is cancelled before the expiration date, notice of cancellation shall be provided to the certificate holder if such notice of cancellation has been included within this policy and/or endorsements attached thereto.

Certificate No. 4

Date of Issue January 07, 2022

By 
 (Authorized Representative)



ONEIDA COUNTY
OFFICE OF THE COUNTY EXECUTIVE

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

01/18/2022

FN 20 22-046

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

HEALTH & HUMAN SERVICES
WAYS & MEANS

Dear Chairman Fiorini:

The County of Oneida has been fighting the various strains of COVID for approximately two years. The County has been incurring cost since the very beginning, fortunately a majority of the cost are reimbursable through FEMA. In the 2022, the County budgeted an amount that has been deemed way under budgeted. Cost for testing, vaccine pods are being incurred on a daily basis.

There is a need to add additional funding today and possibly more in the future. I would like to use \$500,000 of the fund balance to increase the COVID 19 budget with the hope that this will all be eligible for reimbursement.

I therefore request your Board approval for the following 2022 supplemental appropriation:

<u>Account #</u>	<u>Description</u>	<u>Amount</u>
A6446.495	COVID 19 – Emergency Costs	\$ 500,000

This supplemental appropriations will be fully funded by:

A599/599 – Appropriated Fund Balance	\$ 500,000
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Sincerely,

Anthony J. Picente, Jr.
County Executive

Anthony J. Picente, Jr.
County Executive



Colleen Fahy-Box
Commissioner

ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES
COUNTY OFFICE BUILDING ~ 800 PARK AVENUE ~ UTICA, NY 13501
PHONE: 315-798-5260 ~ FAX: 315-793-6044

November 9, 2021

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

FN 20 22-047
HEALTH & HUMAN SERVICES
WAYS & MEANS

Re: Contracts with Various Foster Care Institution Providers (#148882)

Dear Mr. Picente:

I am submitting this Purchase of Services Agreement for Foster Care Services for review and approval by the Board of Legislators. I request that this Agreement be approved for use with all the agencies that the Department of Family and Community Services contracts with for foster care services.

Foster Care Institutions provide placement services for children and offer various levels of care. These Institutions offer many different services, with each Institution specializing in one or two areas.

The Institutions provide specialized Institutional Foster Care for those children who are unable to remain at home with their biological parents due to a variety of issues, including abuse and neglect, behavioral issues, voluntary transfers of custody to Oneida County Department of Family and Community Services and children who have been determined by Family Court to be delinquent or persons in need of supervision.

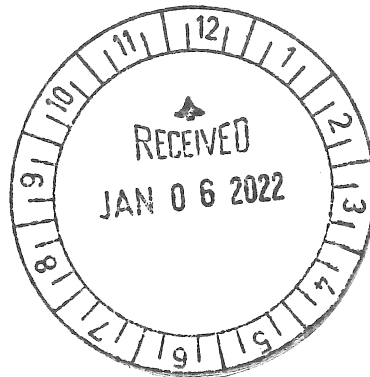
These Agreements are for a term of five years and run from July 1, 2021 through June 30, 2026. The New York State Office of Children and Family Services assign the rates for the facilities. The total cost in 2020 was \$15,971,225, with a local share of 30%, or \$4,781,367. The anticipated cost for five years is \$79,856,125, with a local cost of \$23,956,837.50.

If this Agreement meets with your approval, please forward to the Board of Legislators. Thank you for your consideration.

Sincerely,

Colleen Fahy-Box
Commissioner

CFB/tms
Enc.



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

Anthony J. Picente, Jr.
County Executive
Date 1-6-22

#XXXXX

Oneida Co. Department Social Services

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

Oneida County Board of Legislators
Contract Summary

Name of Proposing Organizations: Various Foster Care Service Providers

Title of Activity or Services: Personal Care Services

Proposed Dates of Operations: June 1, 2021 through May 31, 2026

Client Population/Number to be Served: Children in need of Institutional Foster Care up to age 18 or in some cases 21.

SUMMARY STATEMENTS

1). Narrative Description of Proposed Services

To provide institutional foster care for those children under the age 18 (or in some cases, 21) who have been adjudicated as a Person In Need of Supervision (PINS) or a Juvenile Delinquent (JD), those whose parents or legal guardians have voluntarily transferred custody to Oneida County Department of Social Services, and those children whose custody has been involuntary committed by the court to an authorized agency or a foster parent in accordance with Section 384-b of the Social Services Law or Article 6 or Article 10 of the Family Court Act.

2). Program/Service Objectives and Outcomes

Placement services including Family Foster Care and/or Institutional levels of care for children who are unable to remain at home with their biological parents due to behavior issues in the home or community, voluntary transfer of custody to Oneida County Department of Social Services or those children who the Family Court has placed after a finding of PINS, JD, or neglect/abuse.

3). Program Design and Staffing Level - N/A

Total Funding Requested: Rates determined by New York State

Oneida County Dept. Funding Recommendation: Account # A6119.495

Mandated or Non-mandated: Mandated service

Proposed Funding Source (Federal \$ /State \$ / County \$): 2020 costs for this service equated to \$15,971,225. Using this cost, this agreement is anticipated to cost \$ 79,856,125 over a five year period.

	Annual Cost	
Federal	36.5 % =	\$ 5,829,497
State	33.5 % =	\$ 5,350,361
County	30.0 % =	\$ 4,781,367

Cost Per Client Served: Rates vary based on the level of care required. The Department paid a total of \$15,971,225 for all Institutions in 2020. The estimated cost for five years is \$79,856,125.

Past performance Served:

O.C. Department Staff Comments: The Department contracts with a number of institutions to ensure the availability of services when needed. The Department is satisfied with the performance of all institutions.

The Institutions offer many varied services, and each Institution has specific areas of specialization.

**AGREEMENT
FOR PURCHASE OF FOSTER CARE FOR CHILDREN**

This AGREEMENT made this ___ day of _____, 20__, by and between the County of Oneida (hereinafter called the County) through the Oneida County Department of Social Services (hereinafter called the Department), located at 800 Park Avenue, Utica, New York, and _____ hereinafter called the Agency, located at ___, a foster care agency otherwise authorized by the New York State Office of Children and Family Services (OCFS) to provide foster care services.

WHEREAS, the Commissioner of Social Services of the County of Oneida, hereinafter Commissioner, is charged with the responsibility for the administration of all child welfare services in the County of Oneida pursuant to section 395 et seq. of Social Services Law; and

WHEREAS, the Agency, under the terms of its corporate authority, has the power to provide the services required to be performed pursuant to this Agreement; and

WHEREAS, the Department believes that the amount of funds to be paid to the Agency is reasonable and necessary to provide quality services;

NOW THEREFORE, in consideration of the mutual promises herein contained, the County and the Agency mutually agree as follows:

SECTION I – DEFINITIONS

Whenever the following terms are used in this Agreement and schedules attached hereto, they have the following meaning unless otherwise clearly noted:

1. **ADULT PERMANENCY RESOURCE** means a caring committed adult who has been determined by the Department to be an appropriate and acceptable resource for a child and is committed to providing emotional support, advice and guidance to the child and to assisting the child as the child makes the transition from foster care to responsible adulthood.
2. **AFTER CARE** means services provided to a youth and their family during a youth's stay in a congregate setting and extending for a period of time deemed necessary by the support team (or other relevant permanency team) after the discharge or step-down from a congregate setting.
3. **AGENCY BOARDING HOME**, as defined in 18 NYCRR 441.2(i) and as described in 18 NYCRR Part 447, means a family-type home for the care and maintenance of not more than six children operated by an authorized agency, in quarters or premises owned, leased

or otherwise under the control of such agency, except that such a home may provide care for more than six brothers and sisters of the same family.

4. **AGENCY WITH DESIGNATED CASE PLANNING RESPONSIBILITY** is the Department or voluntary authorized agency of the assigned case planner.
5. **ANOTHER PLANNED LIVING ARRANGEMENT WITH A PERMANENCY RESOURCE** means a permanency planning goal to assist foster care youth 16 years of age or older in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services.
6. **ASSIGNED ROLE** means the role in the family services stage designated for each caseworker in the stage. The assigned role determines worker responsibilities and contract obligations of the worker's department or agency. Assigned roles are always initially designated by the Department and include case manager, case planner, caseworker and child protective services monitor. After a role is assigned to an agency worker, it may be reassigned to another worker within that agency.
7. **ASSOCIATED CASEWORKER** is a caseworker, other than the case planner for the family, who is responsible for assessment, service provision and planning for one or more specific child(ren) placed with the worker's agency.
8. **AUTHORIZED AGENCY**, as defined in section 371(10)(a) and (b) of the Social Services Law, includes either a social services district, an Indian tribe that has entered into an agreement with OCFS to provide foster care, or a corporation organized under the laws of New York State and approved by OCFS to provide foster care.
9. **CASE CONSULTATION** means the steps taken to assist in the development of the permanency hearing report and preparation for the permanency hearing in accordance with the standards set forth in 18 NYCRR 428.9(b) and (c).
10. **CASE INITIATION DATE (CID)** means the earliest of
 - a. the initial date of application for foster care services, mandated or non-mandated preventive services for children;
 - b. the date that a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR) is determined to be indicated;
 - c. the date of placement of a child in foster care pursuant to Article 3 or 7 of the Family Court Act or the date of removal of a child from his or her home that led to placement in foster care either pursuant to Article 10, 10-B or 10-C of the Family Court Act or section 383-c, 384 or 384-a of the Social Services Law or placement in the direct legal custody of a relative or other suitable person by the court pursuant to Article 10 of the Family Court Act; or

- d. the date of a court-ordered preventive services or commitment of care, custody and/or guardianship of a child to the Department for placement with a voluntary authorized agency or foster parent.

11. **CASE MANAGEMENT** means those activities referenced in 18 NYCRR 428.2(b) related to overseeing all aspects of a case, including, but not limited to the making of timely and accurate eligibility determinations and service authorizations; following procedural safeguards regarding protection of the rights of the parents and child; providing care, maintenance and services appropriate to the child's needs; accepting voluntary placement agreements under appropriate circumstances; timely initiating of all appropriate judicial proceedings; approving each family assessment and service plan; and timely and accurate entry of all data required to be entered in the Welfare Management System (WMS), CONNECTIONS and any other statewide automated child welfare information system designated by OCFS. Case management is always the responsibility of the Department.
12. **CASE MANAGER** is an employee of the Department with responsibility to authorize the provisions of services; to approve client eligibility determinations according to 18 NYCRR 423.3(b), 430.9, 430.10 and 432.2; and to approve in writing or by electronic equivalent the family assessments and service plans, as defined in 18 NYCRR Part 428. The case manager is responsible for role assignment in the family services stage.
13. **CASE PLANNING** means those activities referenced in 18 NYCRR 428.2(c) necessary for provision, arrangement, coordination and evaluation of the services specified in the child and family's service plan. In addition, case planning includes referring the child and his or her family to providers of services as needed and delineating the roles of the various service providers. Case planning responsibility also includes documenting client progress and adherence to the service plan by recording in the Uniform Case Record (UCR) that such services are provided, as required by 18 NYCRR Part 428 and 18 NYCRR 430.9 through 430.12, and making casework contacts or arranging for casework contacts as required under 18 NYCRR 423.2(b)(3), 423.4(c)(1)(ii)(d)(2), 432.2 and 441.21.
14. **CASE PLANNER** is the caseworker with the primary responsibility for providing, or coordinating and evaluating, the provision of services to the family. The case planner delineates the roles of the various service providers and requires collaboration among all the caseworkers assigned to the family services stage so that a single-family assessment and service plan is developed. The case planner is responsible for the family assessment and service plan and its submission to the case manager for approval. There is a single case planner, who may be an employee either of the Department or the Agency, assigned per family services stage. The case manager may be assigned as the case planner and perform the dual roles of case manager and case planner, except for approval of the family assessment and service plan which becomes the responsibility of the case manager's supervisor in this instance.

15. **CASEWORKER** is any additional Department or Agency staff other than case manager or case planner directly involved in a child welfare case who provides services to any family member or assesses, evaluates, makes casework contacts and/or arranges or coordinates one or more aspects of service delivery. The caseworker contributes to the development of the family assessment and service plan as directed by the case planner. There may be multiple caseworkers assigned to a family services stage.
16. **CHILD PROTECTIVE SERVICES MONITOR** is an employee of the Department's child protective services unit who is monitoring services being provided by someone other than a child protective services employee to the children and family named in an indicated report of child abuse or maltreatment.
17. **DEEMED TO HAVE A GOAL OF DISCHARGE TO ANOTHER PLANNED LIVING ARRANGEMENT WITH A PERMANENCY RESOURCE** means any child 16 years of age or older who has resided in foster care for at least 12 months within the past 36 months and who has a goal of discharge to parents or relatives or adoption. The category "deemed to have a goal of discharge to another planned living arrangement with a permanency resource" requires the same services as if the child actually has a goal of discharge to another planned living arrangement with a permanency resource.
18. **DISCHARGE SERVICES** means supervision services and may include the provision of, referral to or coordination with other appropriate services when the child has been returned to the home of his or her parents, other relatives, primary resource person or an adult permanency resource, as described in 18 NYCRR 430.12.
19. **FAMILY ASSESSMENT AND SERVICE PLAN** means the assessment and analysis of the family members' strengths, needs and problems, and the plan for services, as required by 18 NYCRR Part 428.
20. **FAMILY SERVICES INTAKE** means the CONNECTIONS stage for documentation of family information and events prompting the opening of a family services stage. A family services intake must be completed before a family services stage can be opened.
21. **FAMILY SERVICES STAGE** means the CONNECTIONS stage for documentation of cases open for child welfare services. There can be only one open family services stage for a family per social services district. The family services stage is linked to a family case that is comprised of all past and current stages for the family.
22. **FOSTER CARE OF CHILDREN** means all activities and functions provided relative to the care of a child away from his or her home 24 hours per day in a foster family free home or a duly certified or approved foster family boarding home, or a duly licensed or certified

group home, agency boarding home, child care institution, supervised setting, health care facility or any combination thereof. Foster care of children also means activities and functions relative to the care of a child away from his or her home 24 hours per day in a home or facility operated or licensed by the New York State Office of Mental Health, New York State Office for People With Developmental Disabilities or the New York State Office of Addiction Services and Supports in accordance with the provisions of section 398(6)(g)(2) of the Social Services Law and the memorandum of understanding between OCFS and such Office in accordance with Title IV-E of the Social Security Act.

23. **FOSTER CHILD** means a child who meets the criteria of 18 NYCRR 441.2(a), including a child placed in the care and custody of the Department in accordance with Article 3 of the Family Court Act, as amended by Part WWW of Chapter 59 of the Laws of 2017.
24. **FOSTER FAMILY BOARDING HOME**, as defined in 18 NYCRR Part 443, means a residence owned, leased or otherwise under the control of a single person or family who has been certified or approved by an authorized agency or by the New York State Department of Mental Health to care for children, and such person or family receives payment from the Agency for the care of such children.
25. **FOSTER PARENT** means a person, other than the child's parent, stepparent or legal guardian, but including a relative within the third degree to the child's parent or stepparent, who is certified or approved to board children who are in the care, custody or guardianship of an authorized agency or OCFS and who are placed for temporary or long-term care.
26. **FUNDING ELIGIBILITY** means the initial determination of a family's eligibility for foster care services and required periodic redeterminations consistent with provisions of federal and state statutes and regulations, including, but not limited to, Title IV-E of the Social Security Act.
27. **GROUP HOME**, as defined in 18 NYCRR 441.2(h) and as described in 18 NYCRR Part 448, means a family-type home for the care and maintenance of not less than seven, nor more than 12 children who are at least five years old, operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, except that the minimum age limitation is not applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.
28. **INSTITUTION**, as defined in 18 NYCRR 441.2(f) and as addressed in 18 NYCRR Part 442, means any facility operated by an authorized agency for the care and maintenance of 13 or more children.
29. **LIFE SKILLS SERVICES** means services designated to assist foster children and former foster children to prepare for employment and post-secondary education, and to make the

transition to responsible adulthood. Life skills services include, but are not limited to, structured programs of vocational training, life skills instruction, post-discharge services and supervision until 21 years of age.

30. PERMANENCY HEARING REPORT means a sworn report as defined in section 1087 of the Family Court Act prepared in accordance with section 1089 of the Family Court Act in the form and manner as required by OCFS. The permanency hearing report must be filed with the court and submitted to the parties and other persons set forth in section 1089 of the Family Court Act no later than 14 days prior to each permanency hearing that includes, but is not limited to, information regarding the health and well-being of the child, the reasonable efforts that have been made since the last permanency hearing to finalize the child's permanency plan and the recommended permanency plan for the child.

For a child who remains placed in a Qualified Residential Treatment Program (QRTP), the permanency report must document the placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment; the specific treatment or service needs that will be met for the child in the QRTP; the length of time they are expected to be needed; and the efforts made to prepare the child to return home, or to be placed with a fit and willing relative, legal guardian or adoptive parent, or in a foster family home

31. PUBLIC CHARGE means a child whose income and resources, including available parental support, are insufficient to meet the total cost of foster care, including the cost of clothing and providing for the child's special needs.

32. REFERRAL means a request made by the Department that the Agency provide a service for a public charge.

33. PRIMARY RESOURCE PERSON means any individual related or unrelated to a child who is determined by the Department and the Agency to be an actual or potential source of support, care or assistance for the child.

34. QUALIFIED INDIVIDUAL (QI) means a trained professional who is a licensed clinician acting within their scope of practice who must have current or previous relevant experience in the child welfare field and who conducts the assessment required for a child in accordance with section 409-h of the Social Services Law. An individual functioning as a QI includes a licensed clinician who holds a professional clinical license, in accordance with 14 NYCRR 823.6, and/or a social work license in accordance with section 7704 of New York State Education Law in one of the following disciplines: physician, psychiatrist, psychologist, nurse practitioner, psychoanalyst, registered nurse, clinical social worker, marriage and family therapist, mental health counselor, master social worker or licensed creative arts therapist. Such individual must have at least two years of relevant experience in the child welfare field and have worked for or under contract with a child welfare program

in their professional capacity as a licensed clinician for a minimum of two (2) years within the last fifteen (15) years. Such individual may not be an employee of the OCFS and may not have a direct role in case management or case planning decision-making authority for the child for whom such assessment is being conducted.

- 35. QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP)** means a congregate non-foster family residential program in accordance with 42 USC §§672 and 675a, New York's Title IV-E State Plan, section 409-h of the Social Services Law and OCFS regulations and policies, including 21-OCFS-ADM-04.
- 36. REASONABLE AND PRUDENT PARENT STANDARD** means the standard, as prescribed by OCFS, characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a foster child, while at the same time encouraging the emotional and developmental growth of the child, that a foster parent or child care facility must use when determining when to allow a foster child to participate in extracurricular, enrichment, cultural and social activities.
- 37. SERVICE PLAN REVIEW** means a case conference, including at least the case planner or the child's caseworker and a third-party reviewer. Efforts must be made to involve the child's parent(s), unless their rights to the child have been terminated, the child's guardian(s); the child who is at least 10 years old but younger than 14, unless there is a documented reason related to the current necessity of placement why the child should not be involved; the child who is 14 years old or older; the child's current foster parent, caretaker relative or pre-adoptive parent; members of the child's case planning team chosen by the foster child who is 14 years old or older and not rejected by the Department or Agency with case management responsibility in accordance with 18 NYCRR 428.3; and other participants to review and develop a service plan for the case in accordance with the standards set forth in 18 NYCRR 428.9 and 430.12(c)(2). A service plan review conference is required to complete the comprehensive assessment and service plan and family reassessment when a child is in foster care, except that a permanency hearing satisfies the requirements for a service plan review if such permanency hearing is held and completed within six months of the previous service plan review.
- 38. SUPERVISED INDEPENDENT LIVING PROGRAM** means one or more of a type of agency boarding home operated or certified by an authorized agency in accordance with 18 NYCRR Part 449 to provide a transitional experience for older foster children who, based on their circumstances, are appropriate for transition to the level of care and supervision provided in the program.
- 39. SUPERVISED SETTING** means a residential placement in the community approved and supervised by the Department or a voluntary authorized agency in accordance with OCFS regulations to provide a transitional experience for older youth in foster care in which such

youth may live independently. A supervised setting includes, but is not limited to, a supervised independent living program.

- 40. **SUPERVISION SERVICES** means referral to or coordination with other appropriate available services for a child until the child becomes 21 years old, when the child has been discharged to another planned living arrangement with a permanency resource as described in 18 NYCRR 430.12.
- 41. **SUPPORT TEAM** means the team of individuals working with the youth and family toward identified service goals as defined in 18 NYCRR 441.22.
- 42. **THIRD PARTY REVIEWER** means an administrator or other person not responsible for the case management or delivery of services to a case or in the direct line of supervision for that case. The third-party reviewer is a required participant in service plan reviews.
- 43. **UNIFORM CASE RECORD (UCR)** means all documentation, both electronic and external, as required by 18 NYCRR Parts 428 and 466.

SECTION II – TERM OF AGREEMENT AND RENEWAL

1. The term of this Agreement is from _____ through _____. If the Agreement is for a period in excess of 12 months, the Department must review the Agreement on at least an annual basis for verification of conformance by the Agency and is continued for subsequent periods only if the Department determines that the Agreement continues to be in the best interest of the Department.
2. The parties hereto are under no obligation to renew this Agreement or to purchase or provide any care after the expiration of the term set forth herein or any renewal thereof, except as herein provided. Either party should give notice in writing of its intention not to renew the Agreement at least six months prior to the expiration of this Agreement.
3. If negotiations for a new Agreement have not been completed upon expiration of this Agreement or subsequent renewal, the parties must enter into a written interim continuation Agreement covering the period until negotiations are completed and a new Agreement is executed.

SECTION III – SCOPE OF SERVICES

1. It is mutually agreed between the Department and the Agency that the Agency will provide foster care services and provide or obtain appropriate medical services in accordance with the standards prescribed by OCFS and as prescribed by federal and New York State laws and regulations, including, but not limited, to Article 6 of the Social Services Law; 18

NYCRR Parts 427, 428, 430, 431 and 441-451; and the Program Narrative, which is attached hereto and incorporated herein as Schedule A.

2. The Agency warrants that it and its staff have all the necessary licenses, approvals and certifications currently required by the laws of any applicable municipality or local, state or federal government. The Agency further agrees to keep such required licenses, approvals and certificates in full force and effect during the term of this Agreement, or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames. The Agency shall promptly notify the Department of any enforcement action taken with respect to such license, approval or certificate and any action the Agency is taking with respect thereto. The Department agrees to thereafter notify OCFS of such enforcement action and Agency remediation.
3. The Department is responsible for the determination of eligibility of children for foster care through all applicable funding streams pursuant to the regulations, policies and procedures of OCFS and applicable federal requirements. The Department is also responsible for the determination of eligibility for federal adoption assistance, state adoption subsidy or kinship guardianship assistance in accordance with applicable federal and state standards.
4. The Department is responsible for the initial and continued authorization of medical assistance eligibility and verification of citizenship or qualified immigration status of children in foster care pursuant to the regulations, policies and procedures of OCFS, the New York State Department of Health and applicable federal requirements. The Department is responsible for the review of the status of medical assistance eligibility and authorization of continuous coverage for medical assistance for children in foster care at the time of discharge from foster care.
5. The Agency agrees to provide foster care for children in accordance with the Program Narrative and rates of payment appended to this Agreement as Schedules A and B. These rates are to be negotiated in accordance with the regulations of OCFS.
6. The Agency and the Department must cooperate in collecting and entering data into the child welfare information systems (WMS and/or CONNECTIONS and any other statewide automated child welfare information system designated by OCFS) in the form and manner required by OCFS. The Agency will provide such information to said data system as is required by the Department. The Agency, at the option of the Department, agrees to record information in WMS and CONNECTIONS as required.
7. As determined by OCFS, CONNECTIONS is the system of record and the Agency must enter and maintain required child welfare information, including, but not limited to, person and family information, periodic family assessment and service plans, plan amendments and progress notes in CONNECTIONS. The Agency must review all current information about its cases that is recorded by other workers in the family services stage. As additional components of CONNECTIONS are implemented in the district, as determined by OCFS, during the duration of this Agreement, CONNECTIONS will be the system of

record regarding such components and the Agency must enter and maintain required child welfare information in CONNECTIONS.

The Agency may not use its own internal system in lieu of CONNECTIONS. The Agency agrees to comply with applicable statutory and regulatory standards for recording child welfare information including, but not limited to, 18 NYCRR Parts 428 and 466.

8. The Agency must keep all CONNECTIONS equipment secure from theft and unauthorized use.
9. The Agency will not discriminate against employees, applicants for employment, or applicants for or recipients of services because of race, creed, color, national origin, gender, age, disability, marital status or sexual orientation.
10. The Department and Agency agree to provide the following in relation to each child covered by this Agreement. Department options are identified in Schedule C, which is attached hereto and incorporated into this Agreement.

A. STANDARDS RELATED TO PLACEMENT

1. Intake for Family Services

The Department, or the Agency at the option of the Department, will complete the family services intake, including, but not limited to

- a. completion of the Application for Services (DSS-2921),
- b. entry of demographic information into CONNECTIONS to create the Uniform Case Record (UCR) Face Sheet,
- c. completion of all required CONNECTIONS Intake components and
- d. performance of a person and case search to relate known persons and cases, unless the Department specifically retains this responsibility.

In the event the Agency completes the family services intake, it must submit it to the Department for acceptance within five (5) days of taking the intake or the day upon which the child entered the Agency, whichever is earlier.

In the event that a child in the custody of the Department is placed by the court directly into the care of the Agency, or in the event a child in the custody of OCFS is placed directly into the care of the Agency, the Agency must complete the family services intake as described above and submit it to the Department for acceptance within five (5) days of the day upon which the child entered that agency.

2. Opening of a Family Services Stage and Designation of Case Planner

Only the Department can open a family services stage. When the Department completes or accepts a family services intake, the Department will then assign a family services stage and a worker role to the Agency that identifies Agency responsibilities in this stage.

The worker will act as either case planner for the family or caseworker for the child at the time of the child's admission to the Agency or within five (5) days of submission of the family services intake.

The Department will enter in CONNECTIONS the names and roles of any other caseworkers and service providers assigned to the case.

The provisions of this paragraph also apply to a child placed solely in the legal custody of the commissioner of OCFS who is placed directly in the care of the Agency. For foster children placed solely in the legal custody of the commissioner of OCFS and cared for by the Agency, the Department shall assign a role of case planner or caseworker, as appropriate, in the family services stage to the Agency and a role of caseworker to OCFS within five days of the family services intake. For those children in the legal custody of the commissioner of the Department who are subsequently also placed into the legal custody of the commissioner of OCFS and placed by the court in the care of the Agency, the Department shall determine and assign the case planner and the role of caseworker to any other Agency and OCFS staff, as appropriate, within five days of intake. Such children shall be identified to be in the "joint custody" of the Commissioners of the Department and OCFS.

3. Case Initiation Date (Day 1)

CONNECTIONS will calculate the Case Initiation Date (CID) in accordance with 18 NYCRR Part 428. The CID will be designated and displayed in CONNECTIONS as soon as a child protective services report is indicated or upon worker entry of the date of application for services, date of removal/placement (depending on the category of foster care placement) or date of court-ordered services. The system will use the earliest of these dates as the CID.

4. Designation of Program Choice and Permanency Planning Goal

The Department or the Agency with designated case planning responsibility, at the option of the Department, must initially set child program choice(s) and a permanency planning goal consistent with applicable statutory and regulatory standards. Where the Agency with designated case planning responsibility must initially set child program choice(s) and a permanency planning goal, the Agency with designated case planning and the Agency of the associated caseworker must review and update program choice(s) and a permanency

planning goal in CONNECTIONS, as appropriate, prior to opening each family assessment and service plan. The case planner, or the associated caseworker at the direction of the case planner, must record programmatic eligibility for foster care placement and preventive services within each family assessment and service plan, while the Department must determine eligibility for all applicable funding streams.

The Department will remain responsible for reviewing the child's permanency planning goal throughout the foster care episode and will determine whether the permanency plan goal for each child is appropriate and that the Agency has considered all appropriate options for discharge, including

- a. return to parent or guardian
- b. adoption
- c. legal guardianship or legal custody
- d. placement with a fit and willing relative or
- e. placement in another planned living arrangement that (1) includes a significant connection to an adult who is willing to be a permanency resource for the child 16 years of age or older, if there is a compelling reason for determining that it is not in the best interests of the child to have any of the discharge options noted in a-d above, or (2) Another planned living arrangement includes either discharge to another planned living arrangement with a permanency resource or adult residential care.

The Department will notify the Agency with designated case planning responsibility if the Department requires a change to the permanency planning goal or if the permanency goal is modified by the court.

5. Initial Family Assessment and Service Plan

The Agency with designated case planning responsibility must complete the initial family assessment and service plan and submit it to the case manager for approval no later than 10 days prior to the due date of the initial family assessment and service plan. The family assessment and service plan must be approved by the case planner's supervisor prior to its submission to the case manager.

The Agency of the associated caseworker must complete the initial family assessment and service plan components including case update, child strength, needs and risk scales, foster care issues, assessment analysis and service plan outcome and activity blocks for the associated child, within the time period directed by the case planner.

Where there is a program choice of child protective, the case planner is responsible for the completion of the safety and risk assessment components of the family assessment and

service plan, unless the child protective services worker/monitor is so designated by the Department. Completion of the safety and risk assessments is the responsibility of the case planner in non-protective cases.

If the Department places the child with the Agency within 15 days prior to the due date, or after the due date, of the initial family assessment and service plan, the Department will retain the role of case planner and such designated worker will complete the initial family assessment and service plan and submit it to the case manager for approval before assigning the Agency as designated case planner. A worker designated by the Agency will be assigned the role of caseworker in the interim. Where the Department case manager is also serving as case planner, the family assessment and service plan must be submitted to the case manager's supervisor for approval.

The provisions of this paragraph and paragraphs (6) and (7) of the section dealing with "Standards Related to Placement" also apply to a foster child solely in the legal custody of the OCFS who is placed directly in the care of the Agency. For a foster child placed solely in the legal custody of OCFS and cared for by the Agency, the Agency shall submit the family assessment and service plan to both the Department and OCFS for approval. The Department will have the ministerial CONNECTIONS role of case manager and OCFS will have the programmatic and functional role of case manager over such children. For children in the "joint custody" of the commissioners of the Department and OCFS, the Agency shall submit the family assessment and service plan to both the Department and OCFS for approval. To the extent that the child is in the legal custody of the commissioner of the Department, the Department, in cooperation with OCFS, retains the programmatic and functional role of case manager.

6. Comprehensive Family Assessment and Service Plan and Subsequent Reassessment Family Assessment and Service Plans

The Agency with designated case planning responsibility must complete the 90-day comprehensive family assessment, the first family reassessment and service plan no later than 210 days from the case initiation date and each six-month subsequent family assessment and service for the case as long as the Agency is the designated case planner and the child remains in the care of that Agency, unless the child entered the care of the Agency within 30 days prior to the date the comprehensive or reassessment family assessment and service plan is due.

If the child was previously in the care of another Agency that had case planning responsibilities and entered the care of the Agency within 30 days prior to the date the family assessment and service plan is due, the Agency with previously designated case planning responsibility must complete the family assessment and service plan for that period, and reassignment of the case planner role will be delayed until after its approval. If the child was not previously in care but entered the care of the Agency within 30 days prior to the date the family assessment and service plan is due, the Department will complete the family

assessment and service plan for that period and delay reassigning the case planner role until after its approval.

The Agency with designated case planning responsibility must complete the appropriate family assessment and service plan and submit it to the case manager for approval no later than 10 days prior to the date it is due as specified in 18 NYCRR Part 428. The family assessment and service plan must be approved by the case planner's supervisor prior to its submission to the case manager. The Agency of the associated caseworker must complete the family assessment and service plan components including case update, child strength, needs and risk scales, foster care issues, assessment analysis, and service plan outcome and activity blocks for the associated child, within the time period directed by the case planner.

Where there is a program choice of child protective, the case planner is responsible for the completion of the safety and risk assessment components of the family assessment and service plan, unless the child protective services worker/monitor is so designated by the Department. Completion of the safety assessment is the responsibility of the case planner in non-protective cases.

The Department case manager will review and either approve or reject the family assessment and service plan no later than five days following their submission of any family assessment and service plan.

If, after reviewing any family assessment and service plan, the Department disagrees with the assessment or the plan of services, it will contact the Agency with case planning responsibility within five days of submission of the family assessment and service plan to discuss the area(s) of disagreement and necessary revisions. The revised and modified family assessment and service plan, agreed to by both parties, must be resubmitted by the Agency with case planning responsibility to the case manager for approval within five days of the rejection of the family assessment and service plan. The assessment and service plan must be approved by the case planner's supervisor prior to its submission to the case manager.

The family assessment and service plan for a foster child 14 years of age or older must include a document that addresses the rights of such foster child, as prescribed by OCFS and in conformance with 18 NYCRR 428.6.

For a foster child with a permanency planning goal of discharge to another planned living arrangement with a permanency resource, the service plan review must address whether the child's foster parents or child care facility with whom or in which the child is placed is following the reasonable and prudent parent standard and is participating in age- or developmentally appropriate activities as set forth in 18 NYCRR 441.25 and as otherwise prescribed by OCFS.

7. Plan Amendment/Status Changes

If one of the following changes in program status occurs after completion of the initial, comprehensive or reassessment family assessment and service plan, and before the subsequent family assessment and service plan can be opened on the system, a plan amendment must be completed and submitted to the case manager for approval as required by 18 NYCRR Part 428:

- a. Preventive services are started for a child
- b. Preventive services are ended for a child
- c. Case open to CPS
- d. Case closed to CPS
- e. A child is removed from his or her home and enters or reenters foster care
- f. A child is moved from one foster care setting to another
- g. A child is removed from his or her home and is placed in the direct custody of a relative or other suitable person pursuant to Article 10 of the Family Court Act
- h. A child becomes legally freed for adoption
- i. A child is discharged (trial or final) from foster care, including finalization of adoption
- j. At the Department's option, the Agency must complete a plan amendment for a change to the visiting plan for a child or for any other status change the Department so delegates

The Agency with designated case planning responsibility or the Agency of the associated caseworker of the relevant child, as determined by the Department, must complete the plan amendment as appropriate in accordance with the standards set forth in 18 NYCRR 428.7. The Agency with designated case planning responsibility must submit the plan amendment, which must be approved by the case planner's supervisor prior to its submission to the case manager.

If a status change occurs subsequent to completion of the initial family assessment and service plan, it must be documented and approved by the Department within 30 days of the change, except when a case is opened for child protective services or child protective services are ended for a case, which must be documented and approved by the social services district having case management responsibility for the case within seven days of the

change. Except for the status changes referenced in (e) and (g) above, any other status change that occurs at the time of, or within 60 days prior to, the due date of the next family assessment and service plan may be documented and approved as part of the next family assessment and service plan. Documentation within the family assessment and service plan must include all information regarding the status change required by OCFS. Such documentation must be provided in the form and manner as required by OCFS and, where appropriate or where a child has been removed from his or her home, must include a visiting plan and an update of the service plan for the family.

Documentation of status changes, whether on the plan amendment or within the family assessment and service plan, must include all information regarding the status change required by OCFS and, where appropriate, an update of the service plan for the family.

8. Progress Notes

The Agency must maintain progress notes as required by 18 NYCRR 428.5, and they must be recorded in CONNECTIONS. The Agency must also review all current information about its cases that is recorded by other workers in the family services stage.

9. Documentation of Child Placed in a QRTP

For a child placed in a QRTP, the uniform case record must also document the requirements set forth in 18 NYCRR 428.3(b), including details regarding the family and permanency team and the assessment conducted by the QI, court findings of the review of the QRTP placement and information regarding the appropriateness of continued placement in the QRTP, including but not limited to all the necessary information pertinent to any child identified, or potentially becoming a “long-stayer.”

10. Maintenance of Current Information

The Agency is responsible for keeping demographic and tracked child detail information regarding the child and his/her family updated in CONNECTIONS. This includes designation of primary and secondary caretakers, maintenance of the family relationship matrix and recording of child program choice(s) and a permanency planning goal.

11. CONNECTIONS/UCR

The intake, family assessment and service plan, plan amendments, service plan reviews, progress notes and all portions of the UCR must be recorded, submitted, approved and maintained through CONNECTIONS.

12. Provision of Client Services

When any approved family assessment and service plan identifies needed services that the Agency does not provide, the Department, upon confirmation of the need for services, will directly provide or arrange for provision of those services to the clients.

13. Legal Activities

a. 358-a Petitions

If the child enters foster care pursuant to a voluntary placement agreement executed pursuant to section 384-a of the Social Services Law or a surrender executed pursuant to section 384 of the Social Services Law, the Department is responsible for the filing of the 358-a petition for court approval of the voluntary agreement or surrender within the time frames specified in section 358-a of the Social Services Law.

b. Permanency Hearings

- i. Permanency hearings must be held in accordance with the standards set forth in the Social Services Law and the Family Court Act.
- ii. For foster children placed pursuant to Article 10 or Article 10-C of the Family Court Act, sections 384 and 384-a of the Social Services and all foster children completely freed for adoption, the following standards apply: 1) the initial permanency hearing for a child completely freed for adoption must be commenced no later than 30 days after the hearing at which the child was freed and must be completed no later than 30 days after commencement; 2) the initial permanency hearing for a child who is not completely freed for adoption must be commenced on the date certain established by the court that may be no later than six months from the date that is 60 days after the child was removed from his or her home and must be completed within 30 days after commencement; and 3) all subsequent permanency hearings must be commenced on the date certain established by the court that may be no later than six months from the completion of the previous permanency hearing and must be completed with 30 days after commencement.
- iii. The Department shall be responsible for the completion and the submission of the permanency hearing report required in accordance with Article 10-A of the Family Court Act, unless otherwise expressly specified by this Agreement.
- iv. For foster children placed pursuant to either Article 3 or 7 of the Family Court Act who are not freed for adoption the following standards apply: 1) the initial

permanency hearing must be held no later than 12 months of the date the child is considered to have entered foster care or at an earlier date as required by state law or the court (for the purposes of this Agreement, a child is considered to have entered foster care pursuant to Article 3 or 7 on the date that is 60 days after the child was removed from his or her home); and 2) all subsequent permanency hearings must be held every 12 months from the preceding permanency hearing or at an earlier date as required by state law or by the court. Unless otherwise specified, the Department will file the petition for a permanency hearing.

- v. For all categories of placements, the Agency agrees to provide the designated Department case manager with all requested documents determined by the Department as necessary to support a petition for a permanency hearing or the permanency hearing report, as applicable. The Agency must provide the Department with such documentation in support of the (permanency hearing/extension) petition or the permanency hearing report at least 30 days prior to the date the Department must submit the permanency hearing report or file the petition with the court.

c) Section 1089 Orders

The Department or Agency in receipt of an order of disposition issued pursuant to section 1089 of the Family Court Act must notify the other of such disposition. Such notice must be provided within 10 days of the receipt of the court's disposition or no later than five days prior to any necessary action, whichever is earlier. The Agency must comply with the dispositional decisions, unless such decisions involve an order to finalize an adoption proceeding, in which case compliance is the responsibility of the Department.

If the Department or the Agency receives an order from the family court pursuant to section 1089 of the Family Court Act requiring diligent efforts or an order to initiate a proceeding to legally free a child for adoption, the Department or the Agency will notify the other in writing or electronically of the order and send a copy of the order to the Department or Agency. Notification will take place within 10 days of the receipt of the order. Once the Agency is notified of the court order, it is the Agency's responsibility to comply with the court order through working with the child and the family regarding the exercise of diligent efforts. It is the responsibility of the Department or the Agency, at the option of the Department, to follow through on the necessary legal aspects of legally freeing a child for adoption.

d) Other Court Orders

The Department or Agency in receipt of any dispositional order of the court must notify the other of such disposition within 10 days of the receipt of the court's disposition, or no later than five days prior to any necessary action, whichever is earlier. The Department will determine whether the Department or the Agency is responsible for carrying out orders of the court and so notify the Agency. The Agency must comply with any such orders so designated as their responsibility.

e) Agency Cooperation

The Agency agrees to provide appropriate staff as requested by the Department to testify in court in support of permanency goals or petitions for the extension of, or challenges to, placement or in any other court proceedings where the testimony of staff of the Agency is deemed necessary by the Department. The Agency agrees to provide appropriate staff as requested by the Department to testify in court in support of a determination that reasonable efforts were made to finalize the foster child's permanency plan or to enable the foster child to return home safely.

f) Recording of Legal Activities

The Department, or the Agency at the option of the Department, must enter information regarding all filed legal petitions, court hearings and their resulting orders into CONNECTIONS.

14. Registration and Photo Listing

The Agency must register and/or photo list with the New York State Adoption Service (NYSAS) any child in its care who is freed for adoption after the child enters the care of that Agency consistent with the standards and within the time frames specified by law and regulation including 18 NYCRR Part 420. If the Agency requires information from the Department for such registration and/or photo listing, it must notify the Department in writing of the information required. At the time the appropriate forms are sent to NYSAS, copies of the forms must also be sent to the Department.

The Agency must register with NYSAS any person who has applied to adopt a handicapped or hard-to-place child in accordance with the standards set forth in section 372-b(2-a) of the Social Services Law and 18 NYCRR Part 424.

The Department, or the Agency at the option of the Department, must enter information regarding adoption activities into CONNECTIONS. Registration and photo listing must be

recorded, maintained, submitted and approved through CONNECTIONS, as specified in Schedule C.

B. STANDARDS RELATING TO NECESSITY AND APPROPRIATENESS OF PLACEMENT

1. Necessary Activities Prior to Placement

If a child at risk of placement is unknown to the Department or is a sibling of another child who is currently in the care of the Agency, the Agency must notify the Department of an impending foster care placement within five days of the identification of the child as being at risk of care so the Department can authorize the preventive services to be provided by the Agency and/or direct the Agency to locate alternative living arrangements for the child, as appropriate.

If authorized by the Department, the Agency must offer preventive services to the child and the child's family prior to the child's foster care placement and attempt to locate safe alternative living arrangements, pursuant to 18 NYCRR section 430.10.

2. Necessity and Appropriateness of Placement

The Department will require that the Agency with designated case planning responsibility, or the Agency of the associated caseworker, document sufficient assessment information as required by 18 NYCRR 430.10 and 430.11 in the family assessment and service plan to justify the placement of the child into foster care and to justify the placement of a child into a specific type or level of placement. Such assessment must address the issue of educational stability of the foster child in accordance with 18 NYCRR 430.11(c)(1)(i) regarding the initial and each subsequent foster care placement. If the placement does not meet the standards set out in 18 NYCRR 430.11 for that specific type/level of care, the Department will so notify the Agency and request modified and updated assessment information.

If a child is placed, or considered for placement, in a QRTP, a QI must complete an assessment of the appropriateness of placement of the child in the QRTP within 30 days of placement in accordance with the standards set forth in 42 USC §§672 and 675a, New York's Title IV-E State Plan, section 409-h of the Social Services Law and OCFS regulations and policies.

3. Continued Necessity and Appropriateness of Placement

The Department will require that the decision to continue a child in a foster care setting and the decision to transfer a child to a specific type/level of placement are made pursuant to 18 NYCRR 430.10 and 430.11.

The Agency with designated case planning responsibility, or the Agency of the associated caseworker, as determined by the Department, must document sufficient assessment information as required by 18 NYCRR 430.10 and 430.11 in the family assessment and service plan to warrant the continued placement of the child in foster care. If applicable, such documentation must justify the placement of the child in a more restrictive level of care than where the child was previously placed, and/or document compliance with the continuity of environment standards set forth in 18 NYCRR section 430.11 if a change in placement has occurred since the prior family assessment and service plan review.

If a child is placed in a QRTP and the plan is to continue placement in the QRTP for a period of time beyond 12 consecutive months or 18 non-consecutive months for youth 13 and older, or beyond six consecutive months or 12 non-consecutive months for youth younger than 13, the Department must work with the Agency designated with case planning responsibility to provide and document evidence of necessity for the youth to remain in a QRTP level of care, as required by 42 USC §675a, New York's Title IV-E State Plan, New York statute, 18 NYCRR 428.3(b) and OCFS regulations and policies.

The Agency also must provide, or arrange for, services that attempt to alleviate the circumstances or needs of the child or the child's family that may be causing the child's placement.

C. DILIGENCE OF EFFORT

1. Consistency

The Agency with designated case planning responsibility and the Agency of the associated caseworker must verify and document that the service goals and tasks included in the family assessment and service plan for the child and/or family are related to the specific needs exhibited by the child and/or family that contributed to the child's eventual placement in care. The Agency must complete the family assessment and service plan for the child and/or family with supporting, relevant documentation.

2. Service Plan Review

The Agency with designated case planning responsibility, or other agency specified by the Department, must convene and hold the review panel for each service plan review in compliance with 18 NYCRR 430.12(c)(2) no earlier than 60 days, but no later than 90 days, from the date the child was removed from his or her home, or where the child is placed in foster care pursuant to Article 3 or 7 of the Family Court Act, no earlier than 60 days, but no

later than 90 days, from the date the child was placed in foster care. The case planner or other convener is responsible for notifying the Department at least two weeks prior to the scheduled review date and for inviting the case manager and child protective services monitor, if applicable, to attend the service plan review.

The Agency with designated case planning responsibility, or the Department at its option, is responsible for locating an independent third-party reviewer to attend and participate at the service plan review. The Agency with designated case planning responsibility is responsible for inviting other caseworkers and service providers to the service plan review and obtaining their input into the service plan.

The Agency with designated case planning responsibility must make efforts to involve all required participants in the development and review of the service plan and any amendments thereto in conformance with 18 NYCRR 428.3, at the case service plan review conference in compliance with 18 NYCRR 430.12(c)(2)(i)(a) and at any case consultation in conformance with 18 NYCRR 428.9.

The Agency with designated case planning responsibility is responsible for inviting each participant in writing, or by electronic notice if the invitee has access to CONNECTIONS, at least two weeks prior to the service plan review. The Agency must hold service plan reviews by the family assessment and services plan submission date in all cases.

A permanency hearing satisfies the requirements for a service plan review if such permanency hearing is held and completed within six months of the previous service plan review.

In accordance with 18 NYCRR 430.12 (c)(2)(i)(b), when possible, the Agency with designated case planning responsibility's representative must, no later than 30 days after the date of the service plan review, make face-to-face contact with the invited participants who were unable to attend the service plan review. At the face-to-face contact, the Agency must provide the participants with the information required by 18 NYCRR 430.12 (c)(2)(i)(b).

If the face-to-face contact is not possible, the Agency must send the invited participants a letter informing them that the service plan review was held and that a copy of the service plan and all other information required by 18 NYCRR 430.1(c)(2)(i)(b) will be made available to them upon request, provided, however, a copy of the service plan must be given to the child's parent(s).

The Agency must document in CONNECTIONS that each of the above requirements has been met.

3. Case Consultation

The Agency with designated case planning responsibility, or other specified agency at the option of the Department, must satisfy the case consultation requirements set forth in 18 NYCRR 428.9 for each child defined in section 1087 of the Family Court Act in preparation for each permanency hearing held in accordance with Article 10-A of the Family Court Act, including those where the permanency hearing will satisfy the requirement for the service plan review.

The case consultation must be conducted no earlier than 60 days prior to the date certain of the permanency hearing and must be completed with sufficient time to finalize and submit the permanency hearing report at least 14 days before the date certain for the permanency hearing.

The Agency with designated case planning responsibility, or other agency specified by the Department, must comply with the standards relating to participation, purpose and documentation of the case consultation process, as set forth in 18 NYCRR 428.9(b)-(c).

4. Casework Contacts

The Agency with designated case planning responsibility and the Agency of the associated caseworker must maintain casework contacts with the child, the child's current foster care caretaker (or provider) and the child's parent or relative once the child enters the Agency's care. Casework contacts must be provided in accordance with 18 NYCRR 430.12(c)(3) and 441.21.

The Department has the option, on a case-by-case basis, to continue to provide case planning services and make casework contacts with the family. If the Department chooses to exercise this option, it will notify the Agency at the time the case is referred to the Agency and the Agency will be assigned the role of caseworker.

5. Visitation

The Agency with designated case planning responsibility and where there are one or more children placed in an Agency other than the Agency with case planning responsibility, the Agency of the caseworker associated with the child will be responsible for facilitating visitation between the child and the child's parent and/or sibling(s), as required by 18 NYCRR 430.12(d)(1) and 431.10(e).

The Department has the option on a case-by-case basis to continue to provide services to the parents, siblings or relatives and to maintain the responsibility for facilitating the parent-child visitation. If the Department chooses to exercise these options, the Department will so notify the Agency no later than 10 days after the child's admission to the Agency.

6. Time in Foster Care

If the child has a permanency planning goal of return to parents or relatives, the Department is responsible for reviewing the child's placement and court-related information in CONNECTIONS and/or CCRS to take required actions under federal and New York State statute and regulation, including, but not limited to, those requirements relating to permanency planning and/or the filing of a petition to terminate parental rights, as set forth in section 384-b(3)(l) of the Social Services Law and 18 NYCRR 430.12(e) and 431.9.

The Department will notify the Agency to review the case to determine if preventive services could aid in the discharge of the child and to make a recommendation to the Department. If preventive services are authorized by the Department and cannot be provided by the Agency, the Department will notify the Agency regarding which specific agency is to provide such services.

7. Unplanned Termination

Termination of Placement – The Agency must give the Department a minimum of a 15 days' prior written notice of its intention to request the removal of a child in the Agency's care. Should termination of placement be necessary for any reason for a child specifically placed with the Agency by court order, the Department will seek termination or modification of the placement order in the appropriate family court.

At the point that the Agency can no longer provide for a child at the appropriate type and level of placement needed by the child within its own facilities, the Agency must notify the Department. The Department will thereafter conduct a diligent search of potential placement resources appropriate for the child within New York State, refer the child to any appropriate identified resource and provide updates to the Agency. At the point the search has been exhausted, a conference will be held by the Department case manager with the Agency. Following such conference, a notice of termination of placement with the Agency may be given by the Agency to the Department pursuant to the agreements reached at the conference.

D. DISCHARGE TO ADOPTION/KINSHIP GUARDIANSHIP

1. Placement in Adoptive Home

If the child has a permanency planning goal of discharge to adoption, the Agency, at the option of the Department, will locate an appropriate adoptive home for the child and place the child in such home with the knowledge and consent of the Department within the time frames set forth in 18 NYCRR 430.12(e). The Agency must not delay or deny placement of a child freed for adoption with otherwise suitable approved adoptive parents on the basis that the approved adoptive parents reside in a state or county different from that of the authorized agency with custody and guardianship of the child. The Agency agrees to comply with the standards set forth in the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (P.L. 103-382), as amended by the Small Business Job Protection Act of 1996 (P.L. 104-188) relating to the placement of children in foster care and adoption.

2. Finalization of Adoption

- a. If the permanency plan for the child is adoption or placement in a permanent home other than that of the child's parent and the Agency is an approved adoption agency, the Agency must document in progress notes and in the family assessment and service plan the steps taken to:
 - i. find an adoptive family or other permanent living arrangement for the child;
 - ii. place the child directly or through another authorized agency with an adoptive family, a fit and willing relative, a legal guardian/legal custodian, including through a kinship guardianship arrangement, or in another planned permanent living arrangement; and
 - iii. finalize the adoption or legal guardianship/legal custody.

At a minimum, such documentation must include child-specific recruitment efforts such as the use of state, regional and national adoption exchanges including electronic exchange systems. Such documentation must reflect reasonable efforts to place the child in a timely manner and to finalize the placement of the child.

- b. If an Agency is not an approved adoption agency, the Department will conduct the adoption home study for the Agency foster parent. The Agency must make every effort to provide the Department with all documents necessary for approval of the foster home as an adoptive home, including, but not limited to, recent medical records, criminal history record summaries, Statewide Central Register database checks, the Justice Center for the Protection of People With Special Needs category one substantiated findings checks as set forth in section 495 of the Social Services Law, home study documentation, child social summary, and agency caseworker recommendations.
- c. The Agency must provide information regarding the adoption subsidy and non-recurring adoption expenses programs to foster parent(s) and prospective adoptive parent(s) upon request and at the time a proceeding to free the child for adoption has

been commenced or a child is identified to prospective adoptive parent(s), in accordance with 18 NYCRR 421.24 (b). At the time of an adoptive placement, the Agency must provide an adoption subsidy and non-recurring adoption expenses agreement to any person(s) who desires to apply for an adoption subsidy and must send the completed subsidy and non-recurring adoptions expenses agreement and all relevant agency documentation to the Department for final approval within 15 days of receipt of the completed subsidy agreement. The Department, if authorized, will approve or reject the adoption subsidy and non-recurring adoption expenses agreement within 30 days of its submission, or if the Department is not authorized, will send it to NYSAS for final approval.

- d. The Agency, or the Department at its option, must enter information regarding all adoption activities into CCRS until the implementation of CONNECTIONS Build 19. Once CONNECTIONS adoption functionality is implemented in the Department's district, as determined by OCFS, adoption activities must be recorded, submitted and approved in CONNECTIONS.

1. Kinship Guardianship Assistance

Where the foster child is placed with a kinship foster parent and the foster child's permanency plan is placement with such kin (actual or fictive kin) with the receipt of kinship guardianship assistance payments, the Agency must comply with the case documentation requirements set forth in 18 NYCRR 428.5(c)(12).

E. DISCHARGE TO ANOTHER PLANNED LIVING ARRANGEMENT WITH A PERMANENCY RESOURCE

1. Setting of Goal

The goal of "Place in another planned living arrangement with a permanency resource" may be set in accordance with the requirements of 18 NYCRR 430.12(f) and may only be set for youth who are 16 years of age or and older.

2. Preparation for Discharge

The Agency is responsible for assessing the life skills of all foster children 14 years and older at least every six months and documenting within the family assessment and service plan the child's progress toward attaining each life skill outcome.

The Department, or the Agency at the option of the Department, must provide, or arrange for the provision of, life skills services to all foster children 14 years of age and older, regardless of the child's permanency planning goal.

The Department, or the Agency at the option of the Department, must require that foster children 14 years of age and older participate directly in designing their own program activities to prepare them for discharge and that the child accept personal responsibility for satisfying his or her part of the program.

The Agency must document the type of service and/or instruction provided, and the provider of the service/instruction, in the case record, consistent with 18 NYCRR Parts 428 and 430.

The Department, or the Agency if authorized by the Department, must issue monthly stipend payments to each foster child 16 years of age or older with a permanency planning goal of discharge to another planned living arrangement with a permanency resource or deemed to have a goal of discharge to another planned living arrangement with a permanency resource and who is actively participating in life skills services according to his/her service plan in conformance with 18 NYCRR 430.12(f)(2)(i)(b). The Department will provide or arrange for the provision of a monthly stipend payment to each eligible child.

The Department, or the Agency at the option of the Department, must identify any people, services and agencies that will help the child maintain and support himself/herself in the community, and must help the child establish contact with such agencies, service providers and persons and prepare the child to use such community resources.

The Department, or the Agency at the option of the Department, must provide for regular and continuous exploration and development of permanency alternatives for all foster children, including foster children older than 14 who have previously refused adoption. The Department, or the Agency at the option of the Department, must document the specific efforts to identify and nurture a permanent family connection or other adult permanency resource who is determined to be an appropriate and acceptable resource for the child and is committed to providing emotional support, advice and guidance to the child and to assist the child as the child makes the transition from foster care to responsible adulthood.

The Department, or the Agency at the option of the Department, is responsible for providing a written notice of discharge to the child at least 90 days prior to the child's discharge in accordance with 18 NYCRR 430.12 (f).

At the time of the 90-day notice, the Department, or the Agency as determined by the Department, must address the following issues related to the child's safety, permanency and well-being upon discharge:

- a. Appropriate housing that is expected to be available for at least 12 months from the date of discharge is secured

- b. The child has a sufficient source of income
- c. Medical coverage is available to the child upon discharge for preventive health care and identified physical, mental, dental health and prescription needs
- d. Medical assistance coverage for the child will continue uninterrupted until a final determination that the child is ineligible has been made, with notice to the child of the final determination and of the right to a fair hearing to contest the determination
- e. Arrangements have been made for the child to receive essential documents such as, if eligible, an official or certified copy of the child's United States birth certificate, Social Security card, health insurance information, medical records, education records, documentation necessary to prove that the child was in foster care, and a driver's license or identification card issued in accordance with the requirements of federal law at the time of discharge
- f. An adult permanency resource is available or is being sought to provide emotional support/advice/guidance upon the child's discharge
- g. Any safety concerns related to the child's discharge from foster care are being addressed
- h. Arrangements have been made with service providers for services that the child will need upon discharge.
- i. The child has been advised of the services that will be available to him/her upon discharge from foster care until he/she attains the age of 21.

The information regarding these issues must be updated at the time of trial discharge, and again at final discharge. The Department or the Agency, as determined by the Department, is responsible for documenting the above information in a plan amendment or family assessment and service plan.

3. Trial Discharge

The Department, or the Agency at the option of the Department, and at a rate that is applicable with the provision of trial discharge/after care services, must provide trial discharge/after care services, as required in 18 NYCRR 430.12(f)(4)(i)(a), including casework contacts, to every child discharged to another planned living arrangement with a permanency resource and every child deemed to have been discharged to another planned living arrangement with a permanency resource for at least six months after discharge. The child will remain in the custody of the Department during the entire period of trial discharge. Trial discharge may continue at the discretion of the Department up to age 21 if the

reassessment and service plan review indicates either the need for continued custody or a likelihood that the child may need to return to foster care. Face-to-face contacts during the trial discharge period must occur at the same frequency as required prior to the child being placed on a trial discharge status.

If the child becomes homeless during the period of trial discharge, the Department will assist the child to obtain safe and stable housing. Such housing must reasonably be expected to remain available to the child for at least the first 12 months after the date of discharge. If appropriate housing is not available within 30 days of the date the child becomes homeless, the Department must place the child in a suitable foster family boarding home, agency boarding home, group home or institution. These provisions regarding trial discharge do not apply where a court order terminates the Department's custody of the child or where the child reaches age 21.

4. Post-Discharge

The Department, or Agency at the option of the Department, must provide supervision until the child reaches 21 years of age after the Department's custody has been terminated where the child has been discharged to another planned living arrangement with a permanency resource, deemed to have a goal of another planned living arrangement with a permanency resource or had remained in foster care until the age of 18 or older. During the period of supervision, the Department will be responsible for providing or arranging for financial, housing, counseling, employment, education, medical and other appropriate supports and services as needed and follow-up efforts. At the time custody of the child is terminated, the Department will advise the child in writing about how to obtain assistance, if needed, upon his or her discharge from foster care.

F. DISCHARGE TO ADULT RESIDENTIAL CARE

The goal of discharge to adult residential care may be set in accordance with the requirements of 18 NYCRR 430.10(c)(5) and 430.12 (g)(1)(i). The Department will review the decision to set that permanency goal in order to determine if there is compliance with the above regulatory standards.

The Agency must document compliance with the standards for setting the permanency goal. The Agency must plan for the discharge of the child as required in 18 NYCRR 430.12(g)(2) and, as applicable, 18 NYCRR 441.14 concerning additional requirements applicable to handicapped children in foster care who attain the age of 18.

G. PREVENTIVE SERVICES

The Department will make the initial decision to authorize mandated preventive services, as well as the decision to reauthorize the case as a mandated preventive services case, in compliance with the client programmatic eligibility standards presented in 18 NYCRR section 430.9.

The Agency with designated case planning responsibility or the Agency of the associated caseworker, as determined by the Department, must document initial and continuing client programmatic eligibility for mandated preventive services within each family assessment and service plan. The Department will review programmatic eligibility documentation in CONNECTIONS.

For those cases involving more than one service provider, the Department, through its case management responsibility, will assign a specific party as the case planner and the remaining providers as caseworkers.

H. THE AGENCY AGREES TO PROVIDE THE FOLLOWING IN RELATION TO EACH CHILD COVERED BY THIS AGREEMENT:

1. Care of the child in compliance with 18 NYCRR Parts 441 – 451, as applicable.
2. Intake

Regarding placements in other than a QRTP, utilizing the referral summary information provided by the Department, the Agency must determine whether the services it provides are appropriate to meet the needs of the child being referred. The Agency has 30 days) from the initial referral of the child to make this determination and notify the Department.

Prior to a child's placement in a QRTP, but at least within 30 days of the start of a placement in a QRTP of a child in the care and custody or the custody and guardianship of the LDSS or the OCFS that occurs on or after 9/29/21, a QI must assess for the appropriateness of placement in the QRTP. Utilizing the referral summary information provided by the Department, the Agency must determine whether the services it provides are appropriate to meet the needs of the child being referred. The Agency has 30 days from the initial referral of the child to make this determination and notify the Department.

3. Clothing

Upon placement, a child's clothing needs must be inventoried by the Agency and the Agency must purchase any clothing needs identified. The Department will authorize allowances to

buy necessary clothing and special allowances to buy additional clothing consistent with 18 NYCRR 427.16. The Agency must furnish all replacement clothing as needed during the child's placement and consistent with 18 NYCRR 427.16(a)(4). The Agency must furnish at the time of discharge a basic season-appropriate outfit. Upon discharge, the child is to take with him or her all of his or her possessions and clothing.

4. Medical Services

The Agency is responsible for providing or obtaining necessary and appropriate medical services for any foster child in its care. The Agency must comply with the standards set forth in 18 NYCRR 441.22 regarding health and medical services for foster children.

The Agency must transmit to the Department documentation necessary to establish citizenship or qualified immigration status to authorize categorical medical assistance eligibility for a child in foster care. The Agency must record required information in CONNECTIONS upon implementation of Build 19, as determined by OCFS. Responsibility for authorization and reauthorization for medical assistance remains with the Department.

The Agency agrees to comply with the requirements set forth in 18 NYCRR 357.3(b) relating to the dissemination of the comprehensive health history of a foster child. The Agency must provide the comprehensive health history to the Department and/or appropriate authorized agency within seven days of the request. The Agency must record required health and medical information in CONNECTIONS upon Build 19 implementation.

The parties agree that nothing in the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) prevents the Agency from sharing protected health information on foster children cared for by the Agency with the Department or OCFS or documenting such information in CONNECTIONS.

5. Notification of Death, Injury or Illness

The Agency must immediately notify the Department whenever a child in its care has suffered an injury, accident or illness that requires emergency medical treatment at a hospital on either an inpatient or outpatient basis, and whenever a child in its care has died, and to provide an autopsy report, if such reports exist. The Agency must also comply with the reporting requirements to OCFS set forth in 18 NYCRR 441.7(c) regarding the death or injury of foster children in its care.

The Agency must immediately notify the New York State Justice Center for the Protection of People With Special Needs, in a form and manner prescribed by the Justice Center, whenever a child placed in accordance with this Agreement dies while being cared for in an

agency boarding home, supervised independent living program, group home, group residence or institution operated by the Agency.

The Agency, in accordance with 18 NYCRR 441.22(p), must notify OCFS and the local health department if a foster child is discovered to have an elevated blood lead level. The Agency must also provide such notice to the Department.

With respect to a child placed outside of State of New York in accordance with this Agreement, the Agency agrees to immediately notify the New York State Justice Center for the Protection of People With Special Needs, in a form and manner prescribed by the Justice Center, whenever a child in its care has suffered an injury, accident or illness that requires emergency medical treatment at a hospital on either an inpatient or outpatient basis, and whenever such a child has died, and to provide an autopsy report, if such report exists.

6. Confidential HIV-Related Information

The Department and the Agency agree to comply with the requirements of 18 NYCRR 431.7(a) to formulate and implement a written management plan to protect health history information related to an individual who has been diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) or a Human Immunodeficiency Virus (HIV)-related illness or a HIV infection or laboratory tests performed on an individual for HIV-related illness.

The Agency agrees to require that staff, to whom confidential HIV-related information is disclosed as a necessity for providing services and in accordance with 18 NYCRR 431.7 and section 2782 of the Public Health Law, are fully informed of the penalties and fines for redisclosure in violation of New York State law and regulation.

The Agency and the Department will require that any disclosure of confidential HIV-related information must be accompanied by a written statement that includes the following or substantially similar language:

“This information has been disclosed to you from confidential records that are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure.”

7. Absent Without Consent

The Agency must notify the Department as immediately as practical, but in no circumstance later than 24 hours after the absence, when a child in the care and custody or guardianship and custody of such Department is absent without consent and must follow the requirements as set forth in 18 NYCRR 431.8. The Department or the Agency, as determined by the Department, must report any missing or abducted foster child to law enforcement and the National Center for Missing and Exploited Children in accordance with the standards set forth in 18 NYCRR 431.8. The Department or the Agency, as determined by the Department, must provide written notice to the family court that placed the child into foster care of the child's absence without consent within 48 hours of the reported absence.

8. Education Program

The Department will not reimburse the Agency for any educational costs for a child placed in a group home, agency boarding home or foster boarding home. These children must be enrolled in the public school educational system unless another educational option is detailed in the child's family assessment and service plan. The Agency must record required education information in CONNECTIONS upon Build 19 implementation. The Agency will comply with the standards set forth in 18 NYCRR 441.13 regarding education of foster children in its care.

9. Summer Education Program

The Department will not reimburse the Agency for summer school tuition costs unless the Agency receives the Department's prior authorization for such costs and the need for the summer program is detailed in the child's family assessment and service plan.

10. Education Tuition Reimbursement

Children placed in child care institutions must be educated in the least restrictive educational program, based on an evaluative process defined by the rules and regulations of the New York State Education Department, and tuition reimbursement for such a child will be at the rate calculated or approved for reimbursement by the New York State Education Department pursuant to Article 81 or other applicable sections of the Education Law governing tuition reimbursement for such children.

11. Removals

Removals from a foster family boarding home will be made in accordance with the requirements of section 400 of the Social Services Law and 18 NYCRR 443.5. The Agency must provide the required written notice to the foster parent(s).

12. Child Abuse and Maltreatment

The Agency agrees to comply with the provisions governing the reporting of suspected cases of child abuse or maltreatment, as set forth in sections 413-416, 418, 433 and 490-492 of the Social Services Law, and the requirements for Statewide Central Register database checks, as set forth in section 424-a of the Social Services Law, and for Justice Center for the Protection of People with Special Needs category one substantiated findings checks, as set forth in section 495 of the Social Services Law.

The Agency agrees to promptly notify the Department of any report of suspected child abuse or maltreatment occurring in the program regarding any child placed by the Department with the Agency, to notify the Department of the actions taken the Agency regarding the report and to confirm that, to the extent authorized by law, the parents of the child who is the alleged victim of such abuse or maltreatment will be notified by the appropriate investigative agency of such report.

With respect to a child placed outside of the State of New York in accordance with this Agreement, the Agency agrees to comply with the following requirements relating to the Justice Center for the Protection of People With Special Needs:

a. Reporting of Abuse and Neglect

In addition to complying with any applicable reporting requirements in the state in which the Agency or facility is located, the Agency agrees to immediately notify the New York State Justice Center for the Protection of People with Special Needs, OCFS and the Department of any allegation of abuse or neglect, as defined in section 488(1)(a)-(h) of the Social Services Law, involving a child placed in accordance with this Agreement as required by section 490(5) and in compliance with Article 11 of the Social Services Law.

b. Procedure for Reporting

The Agency further agrees that all reportable incidents of abuse and neglect, as defined in section 488(1)(a)-(h) of the Social Services Law, and all reportable incidents of injury or illness or death indicated in paragraph 5 on page 32 of this Agreement shall be submitted to the New York State Justice Center for the Protection of People With Special Needs. For notifications and reporting to the Justice Center for the Protection of People With Special Needs related to deaths, injuries or accidents and all allegations of abuse and neglect, required submissions shall be to the Justice Center 24-hour toll-free number:

(855) 373-2122 Suspected Abuse/Neglect Reporting Number

(855) 373-2123 TTY

(855)-373-2124 Reporting Death

c. Cooperation

The Agency further agrees to cooperate with any investigation conducted by the New York State Justice Center for the Protection of People With Special Needs under Article 11 of the Social Services Law. The Agency further agrees to cooperate with any investigation conducted by a state agency or other entity authorized or required to investigate complaints of abuse or neglect under the laws of the state in which the facility is located and further agrees that the findings of such investigation shall be forwarded to the New York State Justice Center for the Protection of People with Special Needs and each placing entity or funding agency in New York State within 90 days of the complaint of abuse or neglect, or if the investigation is not completed within 90 days, then notification of the status, any interim findings and expected date of completion must be provided during that time period, and the final findings shall be submitted as soon thereafter as possible.

The Agency agrees to submit periodic reports of all allegations of abuse and neglect regarding children from New York State to the Justice Center for the Protection of People With Special Needs in the form and manner requested by the Justice Center.

d. Access

The Agency agrees to provide the New York State Justice Center for the Protection of People With Special Needs with access at any and all times to any residential school, facility or provider agency, and consistent with federal law, to any books, records, logs, progress notes and data pertaining to such residential school, facility or provider agency regarding any child placed in accordance with this Agreement and any other information deemed necessary for the carrying out the Justice Center's functions, powers and duties.

e. Failure to Comply

Failure by the Agency to comply with the requirements delineated above shall be grounds for the termination of this Agreement.

13. Certification and Approval of Foster and Adoptive Parents

The Agency agrees to comply with all certification and approval requirements for foster parents set forth in 18 NYCRR Part 443 and all approval requirements for adoptive parents set forth in 18 NYCRR Part 421. This includes, but is not limited to, criminal history record

reviews, New York Statewide Central Register database checks, (where applicable) out of state child abuse and maltreatment registry checks, Justice Center for the Protection of People With Special Needs category one substantiated findings checks as set forth in section 495 of the Social Services Law and required medical exams for foster/adoptive parents and their family members. For foster parents, this also includes training and application of the reasonable and prudent parent standard in accordance with 18 NYCRR 441.25 and Part 443. The Agency agrees that children will not be placed in any foster or adoptive home unless applicable requirements for certification or approval, including emergency approval or certification, have been met.

14. Travel Expenses

If a transportation expense for home visits is not included in the board rate, the Department will authorize transportation in accordance with the visitation plan component of the child's family assessment and service plan.

If a transportation expense for home visits is included in the board rate, the Agency is responsible for transportation expenses if the destination is within 50 miles of the facility. If the destination is more than 50 miles from the facility, the Department is responsible for transportation costs, including the first 50 miles.

15. Transition Plan

Where directed to do so by the Department, the Agency agrees to develop a transition plan for foster children who will remain in care at age 18 or older in accordance with the standards set forth in 18 NYCRR 430.12(j).

16. Credit Report

Where directed to do so by the Department, the Agency agrees to provide or arrange for the provision of credit reports of a foster child who has attained 14 years of age and annually thereafter in accordance with the standards set forth in 18 NYCRR 430.12(k) until such child is discharged from foster care.

17. Criminal History Record Checks

- a. The Agency agrees to complete criminal history records checks as required by section 378-a of the Social Services Law (SSL) and applicable state regulations.
- b. The Agency agrees to provide to the Department a copy of the criminal history record summary issued to the Agency by OCFS in accordance with section 378-a of the SSL of all foster parents and other adult household members of any foster home in which foster

children in the care and custody, or guardianship and custody, of the Department are placed or will be placed.

18. Designation of Staff/Reasonable and Prudent Parent Standard

The Agency agrees that in each child care facility (institution, group residence, group home or agency boarding home) operated by the Agency, the Agency will have present onsite at least one employee who is designated and trained to apply the reasonable and prudent parent standard to decisions involving the participation of foster children in the child care facility in age or developmentally appropriate activities in conformance with 18 NYCRR 441.25 and as prescribed by OCFS.

19. Interstate Compact on the Placement of Children

- a. Where directed to do so by the Department, the Agency agrees to be responsible for the completion and processing of the application for approval of the placement of a foster child into another state in accordance with the Interstate Compact on the Placement of Children, as set forth in section 374-a of the Social Services Law.
- b. Where directed to do so by the Department, the Agency agrees to process applications for certification or approval of a foster home in accordance with 18 NYCRR Part 443 of persons and applications for the approval of adoptive parents in accordance with 18 NYCRR Part 421 referred to the Agency by the Department for the purpose of placement of a child into New York in accordance with the Interstate Compact on the Placement of Children, as set forth in section 374-a of the Social Services Law.

20. After Care/QRTP Placement

For each child cared for in a QRTP operated by the Agency, the Agency must provide after care for at least six months following either discharge of the child from foster care or as otherwise required by OCFS.

I. CLOSING A FAMILY SERVICES STAGE

The Department has sole responsibility for closing the family services stage.

SECTION IV – FAIR HEARINGS

Pursuant to 18 NYCRR Part 358, the Department will notify eligible applicants for, or recipients of, services of their right to a fair hearing to appeal the denial, reduction or termination of a service, or the failure of the Department to act upon an application within the appropriate time frames. The Department also will inform applicants for or recipients of

preventive, adoption services or kinship guardianship assistance how to make and submit a fair hearing request. The Department will provide the Agency with copies of the fair hearing decision it receives from the State of New York. The Agency, upon the request of the Department, must participate in fair hearings and any appeals thereof as witnesses when necessary for a determination of the issues.

SECTION V – REIMBURSEMENT

The Agency agrees that payment by the County is contingent upon the Agency submitting an appropriate claim form, which has been approved by the Department, to the person designated by the Department certifying the satisfactory completion of the Agency's performance and setting forth the payment to be made.

The County agrees to pay the Agency monthly, within 30 days of receiving a billing statement, an amount equal to the applicable per diem rate(s) set forth in Schedule A, multiplied by each day of care actually provided by the Agency for each public charge placed with it, in accordance with this Agreement; provided, however, payment is not to be made for a child when the child is absent from the Agency for reasons other than those set forth in 18 NYCRR 628.3 and as defined by OCFS in the Standards of Payment Manual, Chapter 10, Section F. Payment will not be made to the Agency for the day the child is discharged from foster care.

A per diem dollar amount for each program type – such as foster boarding home, agency boarding home, group home and institution – must be specified in Schedule A, which is attached and incorporated with this Agreement. When the negotiated per diem rate exceeds the state-established Maximum State Aid Rate (MSAR), the MSAR will be used for purposes of state and federal reimbursement. Such per diem dollar amount shall be subject to the standards set forth in section 398-a of the Social Services Law and 18 NYCRR Part 427.

The medical per diem rate(s) established by the New York State Department of Health constitutes the daily rate established to be paid to the Agency for health expenses and provision of health services to a foster child, with some specified exceptions. The medical per diem rate(s) must be set forth in Schedule B.

The applicable tuition rate for the appropriate educational services for children placed in child care institutions will be at the rate calculated or approved for reimbursement by the New York State Education Department pursuant to Article 81 or other applicable sections of the Education Law governing tuition reimbursement for such children.

The County agrees to pay on a monthly basis the after-care services rate established by OCFS for each youth placed in a QRTP from the first day of said placement, through at least six months of post-discharge/step down from the QRTP. These after care services and

the applicable rate can be applied to any placement in any level of care as agreed upon by the parties herein.

The anticipated total cost of the Agreement is an estimate and serves as the limit of obligation under this Agreement. Should it appear that the anticipated total cost may be exceeded, an amendment to the Agreement must be executed. The anticipated total cost serves only as an upper limit and in no way obligates the Department to purchase child foster care services, maintenance, medical and education costs up to this amount. The anticipated total cost can be based upon experience during the past Agreement year modified by the anticipated experience during the new Agreement period. This amount includes the estimated cost of maintenance, social services, medical and education costs to the Department.

The total cost of this Agreement may not exceed \$_____.

SECTION VII – GENERAL RESPONSIBILITIES FOR PARTIES

The Agency has the responsibility in accordance with this Agreement and with applicable OCFS regulations for the day-to-day provision of foster care services for each child placed with the Agency. It is recognized by the parties hereto, however, that ultimate responsibility for the welfare of each child rests with the Department.

The Agency must maintain sufficient staff, facilities and equipment, in full compliance with all applicable regulations of OCFS, to provide the services set forth in Schedule A of this Agreement.

The Agency agrees to provide the services described in Schedule A of this Agreement at the principal location listed in Schedule A of this Agreement and agrees to provide the Department with written notification of the location(s) of any additional support services that are provided outside of the aforementioned address(s) in conjunction with the applicable child service plan.

The Department agrees to notify the Agency of the identity of the person(s) assigned case management responsibility for each child receiving foster care services from the Agency.

The Department agrees to notify the Agency of the identity of the person(s) assigned as the child protective services monitor for the child protective services recipients receiving foster care services from the Agency.

The Department will determine, during the initial client eligibility process, the availability of any third-party insurance resources upon placement of the child into foster care, a process that must be conducted pursuant to the *Child Welfare Eligibility Manual* issued by OCFS.

When such resources are available, the Department agrees to properly code each case and provide the Agency with as much information as is available.

The Department will provide the Agency with a roster each month of the children in the Department's custody placed with the Agency. This roster will also provide information on third-party health insurance through the placement of a code in the column named "Other Insurance." The Agency must pursue all third-party health insurance available to children in its care. If the Agency contracts with a health care provider, it must require that the provider makes diligent efforts to determine if the foster children have third-party coverage and must attempt to utilize such coverage when applicable.

SECTION VIII - BOOKS, RECORDS AND REPORTS

All case-specific information contained in the Agency's files must be held confidential by the Department and the Agency pursuant to the applicable provisions of the state law and any regulations promulgated thereunder, including, but not limited to, sections 372 and 422 of the Social Services Law, section 2782 of the Public Health Law, and 18 NYCRR Parts 357, 423, 428, 431 and 466, as well as all applicable federal laws and regulations, including, but not limited to, the Civil Rights Act of 1964. Such information must not be disclosed except as authorized by law, and unauthorized disclosure may result in criminal and/or civil penalties (see section 422 (12) of the Social Services Law).

The records of individual recipients of services maintained by the Agency must be made available to the Department and OCFS upon request, in a form, manner and time as required by the Department or OCFS.

The Department and the Agency agree to comply with statutory and regulatory standards relating to disclosure of foster care information to birth parents of foster children, foster parents, pre-adoptive and adoptive parents and to current and former foster children to the extent authorized by law, including, but not limited to, sections 373-a and 409-e of the Social Services Law and 18 NYCRR 357.3 and 428.8.

The Department or the Agency may release foster care information to a person, agency or organization for purposes of a bona fide research project. Identifying information may not be made available unless it is essential to the research purpose and prior written approval has been issued by OCFS. Anyone given access to such information may not re-disclose such information except as otherwise permitted by law.

The Agency agrees to maintain financial books, records and necessary supporting documents as required by OCFS. The Agency must use accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of the services provided under this Agreement. The Agency agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal and statistical reports at the times prescribed by and on forms supplied by OCFS.

Such financial and statistical records are subject to inspection, review, excerpts, transcription or audit by authorized county, state and/or federal personnel.

The Agency and its subcontractor(s) agree to retain all books, records and other documents relevant to this Agreement for six years after the Agency receives final payment for the services to which they relate, during which time authorized county, state and/or federal auditors will be provided with full access to and the right to examine the same. In addition, the Agency and its subcontractor(s), must make available, upon written request, this Agreement and books, documents, papers and records of the Agency or subcontractor(s) that are necessary to certify the nature and extent of such costs involved to the Secretary of the United States Department of Health and Human Services, or upon request, to the New York State Office of the State Comptroller, New York Attorney General's Office or any of their duly authorized representatives.

SECTION IX - ACCOUNTABILITY

The Department will establish methods to evaluate the provision of foster care services by the Agency pursuant to this Agreement. All provisions of this section are to be interpreted consistent with New York State law and applicable regulations. In implementing the foregoing, the Agency recognizes that the commissioner of the Department, pursuant to statute, has ultimate responsibility for the protection and preservation of the welfare of all children within his or her jurisdiction and thus has the duty, ongoing throughout the term of this Agreement, to monitor the Agency regarding the foster care services provided to the children referred hereunder.

The Agency agrees that program and/or facility review pertaining to the delivery of foster care services under this Agreement may be conducted at any reasonable time by qualified personnel from those local, state and federal agencies with the required legal powers and statutory authority to conduct such activities. Such reviews may include, but not be limited to, meetings with recipients of services, review of the uniform case records including, but not limited to, all information in the CONNECTIONS case records, review of service policy and procedural issues, review of staffing and job descriptions, and meetings with staff directly or indirectly involved in the provision of foster care services.

The Department will conduct a contract review with the Agency at least twice a year to discuss the Agency's services purchased by the County. This review will include, but not be limited to, such items as frequency of contact and planning with families and significant others of foster children, scope of service plans and of achieving the goals stated therein, compliance with the state and federal laws, and the extent to which special mental health, remedial, tutorial and vocational services were provided after the Agency and the Department

determined these services were necessary. These semi-annual contract reviews will include determination of the Agency's compliance with this Agreement.

If the Agency violates this Agreement, the Department may, after due written notice, take such actions or invoke such sanctions under this Agreement and any applicable regulations issued by OCFS as it deems necessary.

The Agency must not make any subcontract for the performance of this Agreement without the prior written approval of the Department. The assignment of this Agreement, in whole or in part, or of any money due or to become due under this Agreement is void without the prior written approval of the Department. All authorized subcontractors are subject to federal and state requirements governing purchase of services contracts including, but not limited to, 18 NYCRR Part 405. The Agency is responsible for the performance of all subcontractor(s).

The Agency covenants and agrees that neither it nor any of its directors, officers, members or employees has any interest, nor will they acquire any interest, directly or indirectly, that would substantially or adversely conflict in any manner or degree with the Agency's performance of this Agreement. The names and addresses of the members of the board of directors of the Agency are to be annexed to this Agreement.

SECTION X – COMPLIANCE WITH LAW

The Agency represents and agrees to comply with all applicable federal laws, including, but not limited to, the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1967 as amended, the Federal Rehabilitation Act of 1973 as amended, the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (P.L. 103-382) as amended by the Small Business Job Protection Act of 1996 (P.L. 104-188), the Indian Child Welfare Act of 1978 (P.L. 95-608) and Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41 CFR Part 60. The Agency also agrees to observe all applicable federal regulations contained in 28 CFR Part 41; 45 CFR Parts 74, 84, 93; 1355 and 1356.

The Agency, its subcontractors and the Department agree to execute and comply with Appendix A, *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion*; Appendix B, *Certification Regarding Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions, from the Code of Federal Regulations*; and Appendix C, *Certification Regarding a Drug-Free Workplace*.

In addition, if the total cost of this agreement exceeds \$100,000, the Agency must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended.

If the Agency expends \$500,000 or more in a year in federal funds from all sources, audits must be conducted as required by OMB Circular A-133.

SECTION XI – TERMINATION OF AGREEMENT

The Agreement may be terminated by the mutual written agreement of the contracting parties.

The Agreement may be terminated by the Department, for cause, upon the failure of the Agency to comply with the terms and conditions of this Agreement, including the attachments hereto. The Department will give the Agency written notice specifying the Agency's failure.

In addition to the termination provisions set forth above, the Department has the right to terminate this Agreement, in whole or in part, if the Agency has failed, at any time, to comply with any applicable federal, state or local health, safety or fire code regulations; or in the event that any license, approval or certification of the Agency, required by federal, state or local government, is revoked, not renewed or otherwise not in full force or effect, or in the event that the Agency fails to secure a new such license, approval or certification during the term of this Agreement, if required.

Notice of termination will be given in writing specifying the reasons for termination and the effective date of termination. Such written notice will be delivered via registered or certified mail with return receipt requested or will be delivered by hand with receipt provided by the Agency. The Agency agrees not to incur any new obligations or to claim any expenses incurred after the effective date of the termination. The effective date of termination is not to be less than 30 days from the date of notice, unless substantial breach of contract is involved, in which case the effective date of termination may be immediate effective on delivery of the termination notice. In any event, the effective date of termination will not be later than the Agreement expiration date.

Upon termination or upon expiration of the term of this Agreement, the Department will arrange for the transfer to another Agency of all children covered by this Agreement then serviced by the Agency.

The Agency must comply with all Department close-out procedures, including, but not limited to, accounting for and refunding to the Department within six months any overpayments that have been paid to the Agency pursuant to this Agreement; not incurring or paying any further obligation under this Agreement beyond the termination date; transmitting to the Department or its designee, on written request, copies of all books, records, papers, documents and materials pertaining to the financial details of any services provided under the terms of this Agreement; and transmitting to the Department or its designee, on written request, copies of all case-specific information and documentation concerning children in the care of the

Agency. The Agency must comply with all close out procedures of OCFS regarding foster care facilities as set forth in 18 NYCRR 476.2 and regarding foster boarding home programs, including, but not limited to, the requirement to provide 90-day written advanced notice of the proposed closure of a foster care facility or program. The Agency must also comply with the requirements set forth in 18 NYCRR 441.7(f) regarding the proper transfer of case records and the submission of a timely plan relating to OCFS.

SECTION XII – INDEMNIFICATION AND INSURANCE

The County and the Agency agree that the Agency is an independent contractor and is not an employee of the Department or the State of New York. The Agency agrees to indemnify the County and the State of New York for any loss the County or the State of New York may suffer if such losses result from the claims of any person or organization (except the Department) injured by the negligent acts or omissions of the Agency, its officers and/or its employees or subcontractor(s). Furthermore, the Agency agrees to indemnify, defend and save harmless the State of New York, the County and their officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors and any other persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Agency in the performance of this Agreement, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance or use or disposition of any data furnished under this Agreement or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

The Agency further agrees to procure and maintain in force, for the duration of this Agreement, insurance in types and in the amounts as determined by the County. Such coverage must be identified and entered upon a Standard Insurance Certificate or its acceptable substitute and be signed by the Agency's insurance company, agent or broker.

The completed and signed Insurance Certificate is subject to approval by the Oneida County Department of Law and upon approval will be attached to this Agreement and become a part hereof.

The Agency further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Agency from the rotation list, the removal of clients, the cessation of client referrals and termination of this Agreement if the Agency fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

IN WITNESS HEREOF:

The parties hereto have executed this agreement as of the day and year first above written.

Oneida County Department of Social Services

By: _____
Anthony J. Picente, Jr.
County Executive

Date

By: _____
Collen Fahy-Box
Commissioner of Social Services

Date

Approved as to Form:

Kimberly A. Kolch
Assistant County Attorney

Date

Name of Agency

By: _____
Executive Director

Date

STATE OF NEW YORK
COUNTY OF ONEIDA

On this _____ day of _____, 20__,

personally came _____ before me, to be known, who being duly sworn, did depose and say that (s)he resides in _____; that (s)he is an (the) _____ of the corporation described herein and which executed the foregoing instrument; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was affixed by order of the Board of Directors of said corporation; and that (s)he signed her/his name thereto by like order.

Notary Public
My Commission expires:

Schedule A. PROGRAM NARRATIVE

(Instructions to Agency) The following narrative should be completed by the Agency, in order to present an accurate description of the agency's programs. This narrative will be used to substantiate claims for federal reimbursement.

A. Program Narrative

Agency's Name and Address

Foster Care Programs Provided by Agency

(Institution, group residence, group homes, agency boarding homes, foster family boarding homes, educational services, etc. Include details on all programs, including goals and objectives.)

List of locations of all agency facilities to be used in providing services.

Persons Served

(Ages, sex, geographic limitation, if any; number to be served by program, etc.)

Services of Agency Programs

(Include description of all those services that are provided, including those defined in the Consolidated Services Plan (CSP), as well as any other services, such as day services, educational services, medical care and adoption services. Indicate types and numbers of staff providing services.)

Self-evaluation Procedures

(Description of agency procedures for evaluating program effectiveness.)

Admission Policies and Procedures

(Description of referral process, agency requirements for reports, pre-placement visits, etc.)

Schedule C: DEPARTMENT OPTIONS

[The Department is to indicate which entity will be responsible for each task.]

Contract Task/Responsibility	Department	Agency With Case Planning Responsibility	Agency of Associated Caseworker
Family Services Intake (FSI)			
Completion of FSI			
# of days for Agency submission of FSI: (insert #)			
# of days for Dept. acceptance of FSI: (insert #)			
Completion of CPS safety and risk assessment – Initial Family Assessment and Services Plan (FASP)			
Completion of CPS safety and risk assessment – Comprehensive/Reassessment FASPs			
Completion of 30-day assessment for QRTP			
Required completion of plan amendment for a change to visiting plan (Department option)			
Convene and hold service plan review conference			
Arrange and hold case consultation			
Identification of third-party reviewer for Service Plan Review (SPR)			
Prepare permanency hearing report			
Number of days for Agency to accept/reject initial referral of child: (insert #)			
Set initial child program choice(s) and a permanency planning goal			
Foster Care Activities			
Continuing exploration and development of permanency alternatives for child older than 14			
Arrangement for/provision of life skill services for child older than 14			
Require child participation in design of activities to prepare for transition to self-sufficiency			
Issue monthly stipend payments to child, 16 years or older, with a Planned Permanency Goal (PPG) of discharge to another planned living arrangement with a permanency resource			
Assistance to establish contact with service providers and community resources			
Provision of written 90-day notice of discharge			
Services and supervision during trial discharge			
Post-discharge supervision			
Transition plans			
Credit reports			

Legal Activities			
File petition for permanency hearing			
Complete permanency hearing report			
File permanency hearing report			
1089 Orders: Follow through on the necessary legal aspects of legally freeing a child for adoption			
Adoption Activities			
Identification of appropriate adoptive home			
Recording of information (FASP, and movement, legal, adoption activities) in CCRS until implementation of CONNECTIONS Build 19			

Appendix A

Rev.4/15/05

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

A. By signing and submitting this contract or contract amendment, contractor certifies that the contractor:

(1) Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Children and Family Services for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

(2) Certifies to the best of its knowledge and belief, that the applicant and its principals: a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency; b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement 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 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 for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 19A. 2. (1) b) of this

certification; and d) Have not within a three-year period preceding this application/proposal had on or more public transactions (Federal, State, or local) terminated for cause or default. (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. (1) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions Instructions for Certification. a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(2) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B

Rev. 4/15/05

Certification Regarding Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions

By signing and submitting this contract or contract amendment, contractor certifies that the contractor:

Certifies that Title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. The requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93). The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than 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 contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.) (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Appendix C

Rev.4/15/05

Certification Regarding a Drug-Free Workplace

(A) 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. For grantees who are individuals, Alternate II applies. 5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6. Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

(B) Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee'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 grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant 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 grant, the employee will-(1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program

approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201.

(C) Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, 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 grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

APPENDIX D
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
 - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
 - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
 - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
 - (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:
 - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
 - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
 - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
 - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- * (d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

- * (e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order # 45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.
 - * (f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.
- VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.
- VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more a disclosure within the meaning of sub-paragraph VII (a)

****Note:** Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

APPENDIX E

STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CONTRACTS

PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
 1. By certified or registered United States mail, return receipt requested;
 2. By facsimile transmission;
 3. By personal delivery;
 4. By expedited delivery service; or
 5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.

- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
 - 1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
 - 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
 - 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
 1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
 2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
 3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
 4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
 5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
 6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
 7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:
http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/we_db_exemptions.jsp
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, from, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYS DSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social
Services
Contract Administration Office, 4th Floor
800 Park Ave
Utica, New York, 13501

PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment

purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established time-frame;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a time-frame within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the time-frame established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the time-frames established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from

contracting to provide services funded by any federal money.

The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State Funds for the purposes set forth in this AGREEMENT.

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 AGREEMENT, the Department shall have the option to immediately terminate this AGREEMENT upon providing written notice to the Contractor. In such an event, the Department 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 Department be responsible for any actual or consequential damages as a result of termination.

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or to bind any of the parties hereto. No waiver, alterations or modifications of and provisions of this AGREEMENT shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

This AGREEMENT shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above Standard Clauses.

NAME OF CONTRACTED AGENCY

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

**Oneida County Department of Social Services
Contractor and Contract Staff
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of _____, (the
Name of Contract Agency

“Service Provider”), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: _____

Signature: _____

Title: _____

Date: _____

Witness: _____

Created 4-24-12

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:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 11. 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.
 111. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
1. The Contractor certifies that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or 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;

11. 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 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.

11. 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).

- 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:

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
11. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

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

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

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 11. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 111. 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:

1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
11. 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;
11. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
111. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- 1v. 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;
- v1. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- v11. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- v111. 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:

1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;

11. 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

111. 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 I09 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 I 09-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section I08 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:
 1. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 11. 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:

1. Upon all real property owned or leased by the County of Oneida;
and

11. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

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



**ONEIDA COUNTY
OFFICE OF WORKFORCE DEVELOPMENT**

209 Elizabeth Street
Utica, NY 13501
Phone: (315)798-5908 Fax: (315)798-5909

ANTHONY J. PICENTE, JR.
County Executive

DAVID L. MATHIS
Director, Workforce Development

January 13, 2022

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

FN 20 22-048

HEALTH & HUMAN SERVICES
WAYS & MEANS

Dear County Executive Picente:

Attached for your approval and signature is a revenue-generating Lease Agreement between Oneida County Workforce Development and the New York State Office of General Services/New York State Department of Labor.

This is a renewal of a Lease Agreement which expired on April 30, 2020. The terms remain unchanged.

By means of this Lease Agreement, the NYS Department of Labor will pay Workforce Development \$20,364 annually for space DOL uses at the Rome Working Solutions One-Stop Center, located at 300 West Dominick Street, Rome. As you know, Workforce Development manages the Rome One-Stop Center on behalf of the Local Workforce Investment Area. The attached Lease Agreement is for a five-year term and is retroactive to May 1, 2020.

Board of Legislators' approval is required for you to sign the attached Lease Agreement. As this is a revenue-generating Lease, **no Oneida County dollars will be expended.** Once Board approval has been secured and you have affixed your signature, please return the lease my office for forwarding to the Office of General Services to complete the signature process.

Thank you for your assistance. As a matter of state policy, the state prefers original signatures in blue ink.

Sincerely,

David L. Mathis
Director

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

Anthony J. Picente, Jr.
County Executive

Date 1-14-22

Oneida Co. Department: Workforce Development

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name & Address of Vendor: New York State General Services
Corning Tower, 40th Floor
Albany, NY 12242

Title of Activity or Service: Rome Working Solutions Lease

Proposed Dates of Operation: May 1, 2020 – April 30, 2025

Client Population/Number to be Served: Client Population includes visitors to the Rome Working Solutions One-Stop Center, 300 West Dominick Street, Rome, NY 13440. Number to be served varies and cannot be accurately determined from year to year.

Summary Statements

1) Narrative Description of Proposed Services: By means of this Lease Agreement, the NYS Department of Labor will pay Workforce Development \$r space DOL uses at the Rome Working Solutions One-Stop Center, located at 300 West Dominick Street, Rome. Workforce Development manages the Rome One-Stop Center on behalf of the Local Workforce Investment Area.

2) Program/Service Objectives and Outcomes: Oneida County Workforce Development manages the Rome Working Solutions One-Stop Center and is charging NYS DOL rent as one of the “partner agencies” housed in the One-Stop.

3) Program Design and Staffing: N/A

Total Funding Requested: \$101,820

Account # #J6300

Oneida County Dept. Funding Recommendation: \$ 101,820

Proposed Funding Sources (Federal \$/ State \$/County \$): 100% from the state

Cost Per Client Served: N/A

Past Performance Data: N/A

O.C. Department Staff Comments: This program has proven to be a successful partnership between Oneida County Workforce Development and employers in helping to showcase job opportunities for college students.

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
THE NEW YORK STATE OFFICE OF GENERAL SERVICES
DIVISION OF REAL ESTATE SERVICES
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
CORNING TOWER, 40TH FLOOR
ALBANY, NEW YORK 12242



MEMORANDUM OF UNDERSTANDING

300 West Dominick Street
Rome, New York 13440

Oneida County Workforce Development
A Division of Oneida County
209 Elizabeth Street
Utica, New York 13501

Office of the New York State Comptroller's Lease No.: L-002408

Project No.: RK-22277
SFS Project No.: 00000000022277

The New York State Department of Labor

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STATE OF NEW YORK
EXECUTIVE DEPARTMENT
THE NEW YORK STATE OFFICE OF GENERAL SERVICES
DIVISION OF REAL ESTATE SERVICES
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
CORNING TOWER, 40TH FLOOR
ALBANY, NEW YORK 12242

PARTIES

This Memorandum of Understanding (hereinafter referred to as the "MOU") is made this _____ day of _____ in the year Two Thousand Twenty-One by and between Oneida County Workforce Development, a Division of Oneida County, having a principal place of business located at 209 Elizabeth Street, Utica, New York 13501, for itself, its heirs, executors, administrators, trustees, distributees, successors, assigns, and legal representatives (hereinafter referred to as the "County"), and The People of the State of New York, acting by and through the Commissioner of General Services (hereinafter referred to as the "Commissioner"), pursuant to Article 2, Section 3(12) of the New York State Public Buildings Law (hereinafter referred to as the "State"). The foregoing may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH; the Parties for the considerations set forth herein covenant and agree as follows:

1. LETTING / PREMISES / USE

The County hereby leases and grants exclusive possession to the State, and the State hereby hires from the County approximately 1,697 rentable square feet of office space in the building (hereinafter referred to as the "Building") located at 300 West Dominick Street, in the City of Rome, County of Oneida and State of New York as shown on the plan designated 300 W Dominick St Rome NY, which is annexed to this MOU as Exhibit 1 (hereinafter referred to as the "Premises" or the "Demised Premises"). The Demised Premises shall be used for the official business of the State by The New York State Department of Labor or by such other departments, commissions, boards or officers of the State of New York as may be entitled by law to use the same or to which the Premises may be allotted by the Commissioner as provided by the Public Buildings Law (the foregoing may be hereinafter collectively referred to as the "Occupying Agency").

2. TERM

The term (hereinafter referred to as the "Term" or the "MOU Term") of this MOU shall commence on May 1, 2020 (hereinafter referred to as the "Commencement Date") and shall expire, unless sooner terminated, on April 30, 2025 (hereinafter referred to as the "Expiration Date" or the "Termination Date").

Notwithstanding anything to the contrary contained in this section or elsewhere in this MOU, the MOU Term, and the obligation to pay Fixed Rent, shall commence upon the first day of the month following the date of full execution, approval and delivery of this MOU to the County in accordance with Section 46 of this MOU, unless such delivery occurs on the first day of the month, in which case the MOU Term and the obligation to pay Fixed Rent shall commence on that day (hereinafter referred to as the "Commencement Date"), and the MOU Term shall terminate on the last day of that calendar month immediately preceding the fifth (5th) anniversary of the Commencement Date (hereinafter referred to as the "Expiration Date" or the "Termination Date").

Effective as of the Expiration Date, Termination Date or the end of any extension or holdover of the Term of this MOU, the Parties (each hereinafter referred to as a "Releasing Party"), agree to enter into a mutual release agreement (hereinafter referred to as the "Mutual Release") whereby they shall confirm the date of the end of the tenancy and finalize their respective rights and obligations pertaining to the end of the tenancy. The Mutual Release shall be provided by the State to the County and the County agrees to promptly execute and return the same to the State.

3. FIXED RENT

Beginning on the Commencement Date and thereafter monthly, on the first day of each and every calendar month during the MOU Term, the Occupying Agency shall pay to the County rent (hereinafter referred to as the "Fixed Rent") for the Premises in a sum equal to Twenty Thousand, Three Hundred Sixty-Four and 00/100 Dollars (\$20,364.00) per annum, which equates to a monthly payment in the amount of One Thousand, Six Hundred Ninety-Seven and 00/100 Dollars (\$1,697.00).

In order to receive payment, the County shall provide invoices for the Fixed Rent to the Occupying Agency, in accordance with Section 51 of this MOU, and the name and address that should be used on those invoices for the County is: Oneida County Workforce Development, 209 Elizabeth Street, Utica, New York 13501.

The invoices must contain all information and supporting documents required by this MOU, the Occupying Agency, the State and/or the Office of the New York State Comptroller.

Counties are asked to accept electronic payments or request authorization for payment by paper check from the Commissioner. Such authorization may be granted, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices, including, but not limited to, Article 11-A of the New York State Finance Law. The County shall comply with the Office of the New York State Comptroller's procedures to authorize electronic payments. The County can register using the vendor self-service portal sign in page, which has a link "Don't have an account" at: <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. There is also a portal landing page with more information about the benefits of portal use:

https://esupplier.sfs.ny.gov/psc/fscm/SUPPLIER/ERP/c/NUI_FRAMEWORK.PT_LAND_INGPAGE.GBL?Page=PT_LANDINGPAGE&Action=U&LP=ERP.SUPPLIER.NY_SUP_PUB_HOME.PG_FL&If the County registered for a NYS Vendor ID but never received, or no longer has the enrollment email from the New York Statewide Financial System (hereinafter referred to as "SFS"), it can contact the SFS Helpdesk at helpdesk@sfs.ny.gov to obtain an Update Primary Contact Form AC-3327-S. The primary contact is granted access to the portal through the update and can initiate the banking request. The primary contact forms are only provided to registered NYS vendors through the SFS Helpdesk.

4. TAX ESCALATIONS

INTENTIONALLY DELETED

5. OPERATING EXPENSE ESCALATIONS

INTENTIONALLY DELETED

6. EXECUTORY PROVISION

As required by law, this MOU shall be deemed executory only to the extent of the monies available to the State or the Occupying Agency for the leasing of said Premises and no liability shall be incurred by the State beyond the monies available for such purpose. Notwithstanding the foregoing,

if the monies available therefor are monies appropriated for and made available to one or more departments, commissions, boards, or officers other than the State or the Occupying Agency, this MOU shall be deemed executory only to the extent of the monies available to the one or more departments, commissions, boards, or officers to which the Premises shall be allotted by the Commissioner and no liability in such cases shall be incurred by the State beyond the monies available for such purposes.

7. POSSESSION

INTENTIONALLY DELETED

8. RENEWAL

INTENTIONALLY DELETED

9. CANCELLATION

INTENTIONALLY DELETED

10. HOLDOVER

Any holdover after the expiration of the Term, or any extensions thereof, shall be construed to be a tenancy from month-to-month and shall to the extent not inconsistent with this provision be on the same terms and conditions as set forth in this MOU.

11. ELECTRIC SERVICE

The Commissioner encourages the Parties to take steps to reduce energy consumption with respect to this section. Floor plans and design shall, to the extent possible, be developed in a manner to maximize natural lighting and HVAC efficiencies that meet or exceed the Energy Conservation Construction Code and the specifications contained in the OGS Material Specifications for Leased Facilities (hereinafter referred to as the "MSLF"), attached to this MOU as Exhibit 2. These specifications require the use of energy conservation measures, such as: Energy Star rated products, programmable thermostats, motion and lighting sensors, low wattage fluorescent lighting, and high efficiency variable speed motors/controllers. The County and the State shall also work cooperatively together to improve building efficiency and operational procedures through the use of measures such as angling blinds to limit solar gains.

At its sole cost and expense, the County shall maintain, throughout the Term of this MOU, and any holdover or extension thereof, the following: electric service distribution equipment, lighting fixtures, wiring, electric service of sufficient capacity and quality for properly lighting the Premises and for the operation of the State and the Occupying Agency's occupancy including, in addition to normal building requirements, electrical services for the Occupying Agency's computer, data or telephone server and distribution rooms, electrical office equipment and appurtenances.

At its sole cost and expense, the County shall also maintain a revenue grade electric meter to clearly measure the consumption of all electrical power used within the Building and the Demised Premises.

The cost of electric current consumed in the Building and the Demised Premises, including that used for general lighting and operation of the Occupying Agency's office appliances and the air conditioning equipment serving the Building and the Demised Premises shall be paid for by the County.

At its sole cost and expense, the County shall provide and replace all electric ballasts, lamps, fluorescent tubes and bulbs in lighting fixtures in the Building and the Premises during the Term of this MOU, and any extension or holdover thereof. The County shall implement a program to appropriately recycle the replaced lighting ballasts, lamps and bulbs in an environmentally sensitive manner.

Lighting levels, electrical devices and the design of energy consuming equipment shall comply with the most current adopted version of the Energy Conservation Construction Code that is in place at the time the building permit is issued and the OGS MSLE, attached to this MOU as Exhibit 2. Within the limitations of the Energy Conservation Construction Code the following general levels of illumination, measured in foot candles, shall be provided and maintained:

- a. Office Areas: 30 - 50 foot candles (hereinafter referred to as "FC") at 30" above finished floor (hereinafter referred to as "AFF") (20 - 30 FC at 30" AFF when utilizing LED fixtures)
- b. Lobbies: 5 FC at floor
- c. Corridors/Stairs: 5 FC at floor
- d. Bathrooms: 5 FC at floor
- e. Copy Rooms: 10 FC at 30" AFF

The measurement of the actual foot candle levels will be accomplished in accordance with the Illuminating Engineering Society's standards and practices and procedures for measuring light level uniformity. Exit and emergency illumination shall be designed and installed in accordance with the latest adopted version of the New York State Uniform Fire Prevention and Building Code.

12. HEATING, VENTILATING AND AIR CONDITIONING (HVAC)

The Commissioner encourages the Parties to take steps to reduce energy consumption. The County shall provide a written description of the existing Building and/or Demised Premises HVAC system(s), including operating hours, energy management, maintenance schedules and any other pertinent requirements, and indicate any portion(s) of the HVAC system(s) that are serving other tenants or the common areas of the Building. The County shall furnish, install and operate an adequate and suitable year-round environmental control system and appurtenances that shall be capable of providing the following:

- a. The heating portion of the system shall be capable of maintaining heat when necessary for the proper comfort of the occupants, which shall be not less than sixty-eight (68) degrees Fahrenheit or more than seventy-five (75) degrees Fahrenheit, throughout the Demised Premises.
- b. The ventilation of the said system shall be provided in accordance with the New York State Uniform Fire Prevention and Building Code. The State and the Occupying Agency stipulate that for the purpose of this section the maximum number of people in the Demised Premises shall not exceed the limitations for occupancy and use set forth in the New York State Uniform Fire Prevention and Building Code.
- c. The air conditioning or cooling portion of the system shall be capable of maintaining indoor conditions of not more than seventy-eight (78) degrees Fahrenheit dry-bulb and not greater than fifty percent (50%) relative humidity during the cooling design peak hour of a cooling design day. Conference, training and hearing rooms shall be capable of maintaining temperature and ventilating conditions as stated above by means of an independent thermostatic control for each room. Use of a dedicated variable air volume box

will be acceptable if temperature and ventilating requirements can be maintained at full room occupancy load; otherwise a separate independent air conditioning system will be required. Outside air, tempered as required, shall be supplied for ventilation as stated in paragraph (b) above for the number of occupants calculated in accordance with the New York State Uniform Fire Prevention and Building Code for each conference, training and hearing room.

- d. Thermostatic controls in the Demised Premises shall allow the State and the Occupying Agency to lower the heating set point or raise the air conditioning set point beyond the above levels if directed to do so by the Commissioner or other appropriate authority in order to conserve energy.
- e. The cost of heating fuel consumed in the Building and the Demised Premises shall be paid for by the County, at its sole cost and expense. The County shall also, at its sole cost and expense, pay for all costs of service and maintenance, including filter changes for the HVAC system(s) servicing the Building and the Demised Premises.

13. BUILDING ACCESS FOR UTILITY SERVICES AND STATE AND OCCUPYING AGENCY ACCESS

The County shall at all times provide the State and the Occupying Agency with reasonably direct access from the Premises to the points of entry to the Building for all utility services usually and customarily utilized by office tenants and available at the Building, including, without limitation, telephone, electric, gas and cable (hereinafter referred to collectively as the "Utility Services").

The State, or the Occupying Agency on behalf of the State, shall have the right to install, use, repair, replace and maintain Utility Services between points of access to the Building and the Premises and shall have and enjoy continual rights of access, ingress and egress over the lands on which the Premises are situate, to enable the State, or the Occupying Agency on behalf of the State, to effectively access and use such Utility Services. These rights can be exercised by the State, the Occupying Agency or utility companies or other third parties acting on behalf of the State or the Occupying Agency.

To the extent necessary for access to and use of the Utility Services, the State, or the Occupying Agency on behalf of the State, shall have, appurtenant to the Premises, the non-exclusive right to use, in common, all necessary facilities, areas and spaces of the Building used or identified as common areas, including, without limitation, lobbies, corridors, stairways, loading docks, shafts, pipe chases, vents and ducts located in the Building or on the Premises, as the case may be.

The County shall, upon the State's request, afford utility companies or other third parties access to the Building and the Premises for the purpose of locating, installing and maintaining Utility Services, and the County shall execute, at its expense, any and all documents, agreements and instruments in order to effectuate the same. The State, or the Occupying Agency on behalf of the State, shall have the right to enter into reasonable agreements with utility companies or other third parties providing Utility Services creating easements in favor of such companies and/or other third parties as are required in order to service the Premises, and the County covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments, and to take all other actions, in order to effectuate the same, all at the Occupying Agency's cost and expense.

No action shall be taken by the Occupying Agency pursuant to this section without the prior, written consent of the State.

During the Term of this MOU, and any extension or holdover thereof, the County shall provide the State and the Occupying Agency access to the Building daily from 6:00 A.M. to 8:00 P.M., Mondays through Fridays, excluding State Legal Holidays, and from 7:00 A.M. to 5:00 P.M. on Saturdays, Sundays and State Legal Holidays. The Demised Premises shall be open daily from 8:00 A.M. to 5:00 P.M., Mondays through Fridays, excluding State Legal Holidays (hereinafter referred to as the "Normal Business Hours"). As used herein, the term "State Legal Holidays" shall mean the calendar of legal holidays as established and maintained by the New York State Department of Civil Service. Annual updates of the State Legal Holidays are available at http://www.cs.ny.gov/attendance_leave/index.cfm; once you are on the website, scroll down to *Calendars of Legal Holidays* and click on the year in question. Notwithstanding the foregoing, any day that is determined to be a floating holiday by the State shall not be considered to be a State Legal Holiday, but shall be considered to be a normal work day for the State and the Occupying Agency, and the County shall provide all services required to be provided by this MOU on such days.

14. PARKING

The County shall, at its sole cost and expense, provide the State with in-common, on-site, paved parking spaces, for the use of the Occupying Agency, and will keep such parking spaces free of ice, snow and debris during all times that the State and the Occupying Agency have access to the Building, at no additional charge to the State or the Occupying Agency.

15. WATER

The County shall furnish, at its own expense, hot and cold potable water from the local supply sufficient for drinking, washroom and cleaning purposes in the Demised Premises.

16. JANITORIAL SERVICE

The County shall, at its sole cost and expense, provide janitorial services in accordance with the provisions of this section and the specifications set forth in Schedule A annexed to and made a part of this MOU.

Governor Paterson's Executive Order 4 (hereinafter referred to as "EO-4"), which was continued by Governor Cuomo's Executive Order 2, directs all State agencies and authorities to purchase green products and promote sustainability. EO-4, a copy of which is annexed to this MOU as Exhibit 3, directs State agencies and authorities to develop and implement specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: the reduction or elimination of the use and generation of toxic substances, pollution and waste; the reduction, reuse, recycling and composting of solid waste; and the maximization of the use of environmentally preferable or "green" commodities, services and technology.

In an effort to assist State agencies and authorities in complying with these directives, the New York Interagency Committee on Sustainability and Green Procurement approved specifications for Pre-Packaged Snowmelt and Deicing Products, Trash Bags, Janitorial Paper Products, Solid Waste Recycling and Management Services, Disinfectants and Sanitizers, General Purpose Cleaners and Hand Cleaners, Hand Soaps, Consumer Antiseptic Hand Washes and Hand Rubs, and Personal Care Cleansing Products. These specifications, along with other approved specifications, can be found at: <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools#approved-eo-4-specifications>.

In order to comply with these directives, the County and the Occupying Agency have agreed that the County will make careful selection of effective janitorial cleaning products and equipment that reduce or eliminate the health and environmental risks from the use or release of toxic substances and minimize the risks of discharge of pollutants into the environment.

In addition, EO-4 requires State agencies and authorities, to the maximum extent practicable, to purchase janitorial paper and other paper supplies, including but not limited to bathroom tissue and paper towels, that are processed chlorine-free and composed of 100% post-consumer recycled content. EO-4 also requires State agencies and authorities, to the extent practicable, to implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery and reduce waste. The County agrees to assist the Occupying Agency in meeting these requirements by, to the maximum extent practicable, making careful selection of janitorial paper and other paper supplies, including but not limited to, bathroom tissue and paper towels, in order to use products that are composed of one hundred percent (100%) post-consumer recycled content and processed chlorine-free.

Additional information on these requirements and EO-4 are available from OGS, upon request.

The County acknowledges an understanding of these State policies and pledges to cooperate with the State in their implementation.

The County and the Occupying Agency shall also comply with local recycling laws enacted under New York State General Municipal Law §120-aa, requiring that solid waste be separated into recyclable, reusable or other components.

17. PEST CONTROL

The County shall implement and maintain, at its sole cost and expense, an Integrated Pest Management (hereinafter referred to as the "IPM") program for the Building and the real property of which the Building and the Demised Premises form a part. The IPM program shall provide for an overall plan that minimizes the use of toxic pesticides, and provides for an on-going, practical, least-toxic approach to preventing and/or treating pest infestation and shall comply with the requirements set forth at: <https://www.ogs.ny.gov/greenny/pest-management-indoor-spaces> and <https://www.ogs.ny.gov/greenny/pest-management-outdoor-spaces>. It shall provide for technical training for the County's employees directly involved in pest control; establish an inspection program to identify infested zones, type(s) of infestation, and pest population levels; and detail procedures to be implemented should a pest infestation problem develop.

The County shall initially employ non-chemical means to eliminate pest infestation, localizing treatment whenever necessary to a defined affected area, using baits and traps rather than traditional chemical applications. At a minimum, semi-annual inspections (spring and fall) shall be conducted by the County or its contractor to identify and correct structural conditions allowing pests access (interior and exterior cracks, openings, crevices and ledges, etc.). The preventative measures of this IPM program shall include controls to ensure proper cleaning/maintenance, handling and disposal of food and organic waste products, and reviews of environmental conditions or practices of the State or the Occupying Agency that increase the potential for pest problems.

Application of pesticides should be avoided unless subsequent inspection or monitoring indicates the continued presence of pests in a specific area after non-chemical means have been exhausted or have been found to be ineffective. An actual specimen or recent sign of the pest must be confirmed before pesticides are applied. The least toxic pesticide, of the

pesticides available to treat a specific problem, shall be selected. All pesticides used must be registered with the Environmental Protection Agency and appropriate State and/or local jurisdictions and use of all pesticides shall be in strict accordance with the manufacturer's label instructions and all applicable federal, State, and local laws and regulations.

The County and the Occupying Agency shall each designate an on-site liaison to review and coordinate necessary IPM program activities in the Building and the Demised Premises. The State and the Occupying Agency shall be given an opportunity to review, and reasonable time to comment on the content of, and coordinate with, the schedule of events specified in the IPM program. This opportunity will be provided through notification from the County prior to the implementation of the IPM program.

Pesticide and herbicide treatment(s), when necessary, shall be scheduled for late Friday afternoons or evenings unless alternative times for such treatment applications are scheduled by mutual agreement with the Occupying Agency's IPM program liaison. The State and the Occupying Agency shall be notified of the location(s) of planned pesticide and herbicide treatments twenty-four (24) hours prior to such chemical application(s). The County shall furnish the Occupying Agency's IPM program liaison(s) with Material Safety Data Sheets for all pesticides and herbicides prior to their use in the Building or on the real property of which the Building and the Demised Premises form a part.

18. REPAIRS

The County shall take good care of the Building, the Demised Premises, and the fixtures and appurtenances thereto, and shall make all repairs necessary to put and keep the same in good order and condition, at its own cost and expense. Notwithstanding the foregoing, repairs and maintenance of the foregoing required as a result of the negligence of the State and/or the Occupying Agency or their officers and employees, when acting within the course and scope of their employment, shall be performed by the County, at the State or the Occupying Agency's cost, as the case may be.

19. ISSUES / PROCESS

The County and the Occupying Agency shall each designate an on-site representative. All issues, complaints and requests for services shall be in writing, utilizing the "Request for Memorandum of Understanding Compliance Services" form attached to this MOU as Exhibit 4, which form shall be delivered electronically by the Occupying Agency's representative to the County's representative. A copy of such form shall be returned to the Occupying Agency's representative, electronically, at such time as the issue is resolved, indicating what, if any, action was taken and, if no action was taken, the reason therefor. The County's representative shall maintain a log in which shall be recorded the date and nature of the request, and the date and resolution of the request. Such log shall be available, electronically, upon request, for the State and the Occupying Agency's inspection. The provisions of this section shall not be construed as superseding the other notice requirements and provisions of this MOU.

20. COMPLIANCE WITH LAWS

The County shall, at its own cost and expense, ensure that the Building and the Premises comply with all applicable federal, State or local laws, rules, orders, ordinances and regulations at any time issued or in force, and the requirements of any insurance policy covering the Building, the Premises and the contents or improvements thereto, which requirements may be more restrictive than the applicable building code and/or municipal codes and laws. The State and the Occupying Agency agree that they will not use the Premises for any purpose that shall violate any applicable laws, rules, orders, ordinances and regulations.

21. COUNTY'S RIGHT OF ENTRY

The State and the Occupying Agency shall permit the County, at all usual and proper times, to enter the Premises for the purposes of inspection or sale, and to make repairs and improvements to all parts of the Building, and to comply with all governmental orders and requirements applicable to the Building and the Premises. The County, in exercising its rights under this section, shall not unreasonably interfere with the State and the Occupying Agency's access, use and occupancy of the Premises.

22. TO LET SIGNS

The State and the Occupying Agency shall permit the County, during the three (3) months immediately prior to the expiration of the Term, to place the usual notices of availability upon the exterior of the Demised Premises.

23. DESTRUCTION OF PREMISES AND DAMAGE TO THE STATE'S AND/OR THE OCCUPYING AGENCY'S PROPERTY

If the Building or the Demised Premises are destroyed or so injured by fire or the elements or any cause as to render the Premises untenable or unfit for the State's or the Occupying Agency's uses, as the State in its sole discretion may determine, the State may serve notice, in compliance with Section 51 of this MOU, declaring its intent to vacate the Premises and may thereafter, as soon as practicable subsequent to the provision of notice, quit and surrender the entire Demised Premises, in which event Fixed Rent shall abate from the time of the destruction or injury, and the State and the Occupying Agency shall be relieved of further liability under this MOU.

If, however, the Building (in the reasonable judgment of the County) or the Demised Premises (in the reasonable judgment of the State) shall be so destroyed or so injured by any cause aforesaid so as not to be rendered unfit for occupancy, then the County shall repair the same with reasonable promptness, and in that case the Fixed Rent shall abate from the time of the destruction or injury until the completion of such repair period, except only that the Occupying Agency shall, during such time, pay a pro-rata portion of such Fixed Rent apportioned to that portion of the Demised Premises that are in a condition for occupancy or that may be actually occupied during such repair period.

All improvements or betterments placed by the State or the Occupying Agency in the Demised Premises shall, however, in any event, be repaired and/or replaced by the State or the Occupying Agency at their own expense and not at the expense of the County, provided that the injury and damage to such improvements or betterments was caused without the negligence or willful misconduct of the County, its officers, agents, employees or contractors. In the event that such injury or damage was caused through the negligence or willful misconduct of the County or its officers, agents, employees or contractors, the County shall be responsible for the cost to repair or replace the same, as determined by the Parties.

If the Demised Premises are destroyed or damaged by fire or the elements or by any other cause, the State shall notify the County with reasonable promptness, in compliance with Section 51 of this MOU.

In the event the Premises are so damaged or destroyed as above described, any advance Fixed Rent paid by the Occupying Agency to the County shall be apportioned to the date of the damage or destruction and the difference promptly returned by the County to the Occupying Agency.

Notwithstanding the provisions of this Section to the contrary, neither the County nor its officers, employees, agents or contractors shall be liable for any damage to the State's or the Occupying Agency's personal property, nor for loss of or damage to the State's or the Occupying Agency's personal property by theft or otherwise, nor for any injury or damage to persons or the State's or the Occupying Agency's personal property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or adjoining buildings or from the pipes, appliances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever, unless the same is caused by the negligence or willful misconduct of the County or its officers, employees, agents or contractors or the County's breach of this MOU. In addition to the foregoing, in the event of any damage discussed in this paragraph, the State and the Occupying Agency retain the right to avail themselves of all remedies available to them at law, in equity or pursuant to any available insurance.

This section shall be deemed an "express agreement to the contrary" within the meaning of Section 227 of the New York State Real Property Law.

24. SET OFF

In the event the County refuses or fails to make repairs or to provide services for which it is responsible under the terms and conditions of this MOU, the State shall provide at least five (5) business days' written notice to the County in compliance with Section 51 of this MOU. After the expiration of such five (5) business day notice period, provided that the County has failed to initiate a solution that is reasonable to the State, the State may, at its sole option, either: (i) make such repairs or provide such services, and the Occupying Agency may deduct all the costs incurred thereby from the Fixed Rent which is or shall be owing to the County; or (ii) not make such repairs nor provide such services and the Occupying Agency may deduct from said Fixed Rent a reasonable amount for the diminution in the value of the Premises due to such disrepair or lack of services. The provisions of this section are in addition to, and not in lieu of, any and all rights and remedies available to the State at law or in equity.

25. MITIGATION OF DAMAGES

In the event the State quits the Demised Premises such that the State, on behalf of the Occupying Agency, or the Occupying Agency remains responsible for the payment of Fixed Rent to the County, the total Fixed Rent to be paid to the County shall be reduced by that portion of the Fixed Rent attributable to charges for Utility Services, as the same are defined in Section 13 of this MOU, and other services that the County is obligated to provide pursuant to the terms of this MOU, whether or not such charges have been itemized.

Furthermore, in the event the State shall so quit the Premises, the County shall be obligated to make all reasonable efforts to re-let the Demised Premises in order to cover the costs otherwise accruing to the State and/or the Occupying Agency. The County shall not, in any event, be required to pay the State or the Occupying Agency any surplus of any sums received by the County on a re-letting of said Premises in excess of the Fixed Rent reserved in this MOU.

26. SUBORDINATION

This MOU is subject and subordinate to all ground or underlying leases, and to all mortgages that may now or hereafter affect such leases, or the real property of which the Building and the Demised Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. However, no property owned or removable by the State or the Occupying Agency shall be subject to the lien of paramount mortgages.

This provision shall be self-operative, and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, however, the State shall, upon the reasonable request of the County, promptly execute a certificate to such effect, in a format that is acceptable to the State.

This MOU shall be subject and subordinate to the lien of any future mortgage or any future underlying lease, provided that the holder of any such mortgage or the landlord under any such underlying lease shall agree in the mortgage or lease, or otherwise, that this MOU shall not be terminated or otherwise affected by the enforcement of any such mortgage or underlying lease, provided that, at the time thereof, the State shall not be in default, and the State, when requested by the holder of such mortgage, or the landlord, under any such underlying lease, shall execute an attornment agreement, in a format that is acceptable to the State, to the holder of such mortgage, or the landlord, under any such underlying lease, should either succeed to the rights of the County under this MOU.

Copies of the estoppel agreement and subordination, non-disturbance and attornment agreement utilized by the State can be obtained through a written request to the State pursuant to Section 51 of this MOU. When making such requests, the County should allow ample time for the review and execution of such forms by the State.

27. QUIET ENJOYMENT

The County covenants with the State that the State and the Occupying Agency, on complying with the terms of this MOU, shall and may peacefully and quietly have and enjoy the said Premises.

28. NUISANCE CONTROL

The County shall adopt, promulgate and enforce building rules and regulations for the Building that shall proscribe the maintenance or occurrence of nuisances including, but not limited to, noise, dust, vibration, odors or other unreasonable impacts or infringements upon the State's or the Occupying Agency's use and enjoyment of the Premises. In addition, the County shall promptly take such other measures as are reasonable and within its control to enjoin, curtail, eliminate or proscribe any such nuisances resulting from the acts of non-tenants.

29. CONDITION OF PREMISES

The State and the Occupying Agency shall, at the end of the Term, quit and surrender the Demised Premises in as good order and condition as when received, normal wear and tear and damage by the elements, including fire, excepted.

30. NON-ASSIGNMENT

Pursuant to Section 138 of the New York State Finance Law, the County is prohibited from assigning, transferring, conveying, sub-letting or otherwise disposing of this MOU, or its right, title or interest therein, or its power to execute this MOU to another person, company or corporation without the previous consent in writing of the department or official awarding the same; provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. Therefore, prior to any such transfer, the County shall submit a request, in accordance with Section 51 of this MOU, to the State for consent to the same. The County's request shall include submission of a properly completed and executed Consent to Assignment Form, a sample of which is attached to this MOU as Exhibit 5, and all necessary documentation (the Substitute W-9, attached hereto as Exhibit 6, and the Governmental Entity Lease Disclosure Sheet, attached hereto as Form 1). A Consent to Assignment Form may be obtained through a written

request made in accordance with the provisions of Section 51 of this MOU. The consent required by this section shall not be unreasonably withheld, conditioned or delayed. When making such requests, the County should allow ample time for the review and approval of the same by the State, the New York State Attorney General, as to form, and the Office of the New York State Comptroller.

In addition, in the event that the County changes its name, but not its federal identification number, the County is required to notify the State and the Occupying Agency of the change within ten (10) business days of the effective date of such change by submitting a County Change of Name/ Address Form, attached to this MOU as Exhibit 7, to the State in accordance with Section 51 of this MOU. The County shall also be responsible for making all necessary changes to its profile in the Statewide Financial System by contacting the Statewide Financial System Vendor Management Unit. The web address for the Statewide Financial System is: <https://esupplier.sfs.ny.gov>.

31. BROKERAGE FEES / UNLAWFUL INDUCEMENT

- A. The County warrants that no person or selling agency has been employed or retained by the County to solicit or secure this MOU upon an agreement or understanding for a commission, percentage, brokerage, contingent fee or other compensation. The State warrants to the County that it did not consult or negotiate with any broker or finder with regard to the Premises and that no broker, finder or consultant participated with the State in procuring this MOU.

- B. The County, for itself, its agents, employees, and as the case may be, its directors, officers, managers, members or partners (limited or general), represents and warrants to the State, after its due inquiry, and for the express purpose of inducing the State's reliance upon such representation and warrant, that neither the County, its agents, employees, nor, as the case may be, its directors, officers, managers, members or partners (limited or general) has made any payment or given any good, service or other thing of value or made any promise or representation that it will make any future payment or give any good, service or other thing of value, to entice the State to enter into this MOU, and further that upon its due inquiry, neither the County nor any agent, employee or, as the case may be, any director, officer, manager, member or partner (limited or general) has been solicited by any person to give, now or in the future, any good, service, payment or other thing of value for the purpose of securing this MOU, excepting from such solicitation the ethical actions of licensed real estate brokers whose identity has been disclosed in this MOU. The County makes this representation and warranty under penalty of perjury and expressly agrees that a false representation and warranty herein will be deemed to, and will in fact constitute fraud, in the inducement of the State to enter into this MOU.

32. COUNTY'S INTEREST

The County represents that it owns the Demised Premises in fee simple absolute.

33. ALTERATIONS BY THE STATE

It is understood and agreed by and between the Parties that during the MOU Term, and any extension, or holdover thereof, the State and the Occupying Agency reserve the right to make minor alterations or installations, including, but not limited to, carpeting, security equipment features, data or telephone installations and the installation of related equipment.

34. ALTERATIONS BY THE COUNTY

As to any alterations or improvements, other than those allowed for in Section 33 of this MOU, that may subsequently be required by the Occupying Agency, the County shall provide the State with cost estimates based upon the State's written requirements and/or drawings (concept drawings) for the work to be performed. The County shall provide the written cost estimates to the State within fifteen (15) days after receipt of the State's concept drawings.

Written cost estimates shall be accompanied by an itemized description of the work that shall include the following:

- an itemized description of work elements;
- quantities;
- material unit cost;
- total material unit cost;
- labor unit cost;
- total labor unit cost;
- total material and labor unit cost;
- summary of total material and labor unit cost; and
- architectural and engineering fees and permit fees.

Written cost estimates shall be submitted by the County to the State using the Detailed Estimate Form attached to this MOU as Exhibit 8. The costs shall be competitive, consistent with the costs in an arm's-length transaction and employ labor at rates that do not exceed the applicable prevailing wage rates.

The total of any additional fees charged by the County and/or any construction manager employed by the County attributable to overhead, profit or management fees shall be limited to the following percentages of the total direct labor and material costs: ten percent (10%) of the first \$10,000.00, five percent (5%) of the next \$90,000.00 and three percent (3%) of any sum in excess of \$100,000.00.

Upon written approval of the cost estimate by the State, the County shall promptly proceed with the subject alterations or improvements. In the event the State does not approve the cost estimate, the State may submit a reduced scope of work to achieve cost savings. In the event the County and the State cannot agree on the cost of the work, the State may contract directly for such work provided, however, that any State-selected contractors shall be subject to the County's reasonable approval, and in no event shall such work involve structural alterations or the modification of building-wide systems. Payment for work performed in accordance with this section shall be made by the Occupying Agency, in compliance with Article 11-A of the New York State Finance Law, upon completion of the work to the satisfaction of the State, and the County's submission of proper invoices to the State. Notwithstanding the foregoing, in the event that this MOU provides an allowance for Occupying Agency work, the cost of work performed pursuant to this section may be deducted from such allowance following the State's approval of invoices for the work, subject to compliance with all other applicable provisions of this section and this MOU.

35. HAZARDOUS MATERIALS

The County represents and warrants, as an inducement to encourage the State's initial and continued tenancy and the Occupying Agency's initial and continued occupation of the Demised Premises, and as a material term of this MOU, that the Demised Premises and the Building are free from hazard,

particularly with reference to the United States Department of Labor, Occupational Safety and Health Administration Standards for permissible exposure limits to hazardous materials including but not limited to asbestos, lead, PCBs, mold, animal droppings and mercury.

The County further represents that, immediately upon the discovery of any hazardous materials within or about the Demised Premises or the Building, the County shall give written notice, in compliance with Section 51 of this MOU, to the State and the Occupying Agency of the existence of such materials, and shall, at its sole cost and expense, take any and all reasonable steps necessary to completely remove said hazardous materials in full compliance with all applicable federal, State, municipal or local laws, rules, or regulations relating to the removal of such hazardous materials.

Notwithstanding any provision of this MOU or any rider or addendum to this MOU, the County agrees that each and every breach of any warranty or representation contained in this section, without regard to any measure of the magnitude of the breach, shall constitute a default under this MOU that shall entitle the State and the Occupying Agency, in addition to all other rights and remedies available to the State or the Occupying Agency, to deduct from the Fixed Rent or other monetary obligation of the State or the Occupying Agency, or to recover by action, all costs, whether direct or indirect, resulting from any cause whatsoever, incurred by the State or the Occupying Agency as a result of such breach.

36. SIGNAGE

The State and the Occupying Agency may post and maintain such signs and notices as reasonably required to inform the public as to their location in the Building, and shall have a right to have their name and other pertinent information on the County's lobby directory board.

37. INSURANCE REQUIREMENTS

The Parties understand that the County is self-insured, and the State shall accept proof of that self-insurance as compliance with this section. In the event that the County is no longer self-insured, however, the County agrees to comply with the requirements of this section and provide proof of such compliance within thirty (30) days of the date that it is no longer self-insured. During the Term of this MOU, and any extension or holdover thereof, the County shall maintain in force, at its sole cost and expense policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The County shall deliver to the State evidence of the insurance required by this section in a form acceptable to the State. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the State does not, and shall not be construed to, relieve the County of any obligations, responsibilities or liabilities under this MOU.

The County shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the Term of this MOU, and any extension or holdover thereof.

General Conditions

A. **Conditions Applicable to Insurance.** All policies of insurance required by this section shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the County are specified below in Paragraph B-Insurance Requirements.
2. **Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by the State, all policies of insurance required by this section shall be written on an occurrence basis.
3. **Certificate of Insurance/Notices.** The County shall provide the State with a Certificate or Certificates of Insurance, in a form satisfactory to the State (i.e., an ACORD certificate), prior to the Commencement Date, and thereafter, pursuant to the timelines set forth in Section A.13. below. Certificates shall reference the MOU number and shall name The New York State Office of General Services, Division of Real Estate Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40th Floor, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to the State and in accordance with the New York State Insurance Law (i.e.: an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this MOU;
- Refer to this MOU by number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (Certificate(s) and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

The State has not requested that the County submit copies of its entire insurance policies. Generally, the State only requests specific documentation regarding proof of insurance coverage, such as certificates and endorsements. The County is asked to refrain from submitting entire insurance policies, unless specifically requested by the State. If an entire insurance policy is submitted but not requested, the State and the Occupying Agency shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the State does not constitute proof of compliance with the insurance requirements and does not discharge the County from submitting the insurance documentation required by this section.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State and the Occupying Agency. Any other insurance maintained by the State or the Occupying Agency shall be excess of and shall not contribute with the County's insurance.
5. **Breach for Lack of Proof of Coverage.** The Term of this MOU shall not commence if the coverage provisions and limits of the policies provided by the County do not meet the provisions and requirements of this section or proof of compliance is not provided to the State. In addition, the failure to comply with the requirements of this section at any time during the Term of this MOU, and any extension or holdover thereof, shall be considered a breach of the terms of this MOU and shall allow the State to avail itself of all remedies available under this MOU, at law or in equity.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the State. Such approval shall not be unreasonably withheld, conditioned or delayed. The County shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the County is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. **Subcontractors.** Prior to the commencement of any work by a subcontractor, the County shall require such subcontractor to procure policies of insurance that comply with the requirements of this section and maintain the same in force during the term of any work performed by that subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the County prior to the commencement of any work by a subcontractor, pursuant to the timelines set forth in Section A.13. below, as applicable, and to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
8. **Waiver of Subrogation.** The County shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the County's right of subrogation against The People of the State of New York, The New York State Office of General Services, The New York State Department of Labor and their officers, agents, and employees, or, if such waiver is unobtainable provide one of the following to the State prior to the Commencement Date of this MOU: (i) an express agreement that such policy shall not be invalidated if the County waives or has waived before the casualty, the right of recovery against The People of the State of New York, The New York State Office of General Services, The New York State Department of Labor and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New

York, The New York State Office of General Services, The New York State Department of Labor and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. **Additional Insured.** The County shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of the CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, The New York State Office of General Services, The New York State Department of Labor and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the State prior to the Commencement Date and pursuant to the timelines set forth in Section A.13. below. A blanket Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage is also acceptable. For counties that are self-insured, the County shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the County would have been required to pursuant to this section had the County obtained such insurance policies.
10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form, must be provided upon request.
11. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the County shall provide the State with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the requirements of this section.
12. **Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the requirements of this section shall be delivered to the State. If, at any time during the Term of this MOU, and any extension or holdover thereof, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this section, or proof thereof is not provided to the State, the State and the Occupying Agency shall have the right to avail themselves of all remedies available under this MOU, at law or in equity.
13. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the State after renewal or upon request. This requirement means that the County shall provide the applicable insurance document to the State as soon as possible but in no event later than the following time periods:

- For certificates of insurance: five (5) business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: fifteen (15) calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: fifteen (15) calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: thirty (30) calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five (5) business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the County shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the State, the State shall extend the time periods set forth above for a reasonable period, that shall in no event exceed thirty (30) calendar days from request or renewal, whichever is later.

- B. **Insurance Requirements:** The County shall, at its own expense, obtain and maintain in full force and effect during the Term of this MOU, and any extension or holdover thereof, the following insurance with limits not less than those described below, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	Not less than \$5,000,000 each occurrence	Prior to the Commencement Date, upon renewal and upon request.
General Aggregate	\$10,000,000	
Products - Completed Operations Aggregate	\$5,000,000	
Personal and Advertising Injury	\$1,000,000	
Damage to Rented Premises	\$50,000	
Medical Expenses Limit	\$5,000	
Business Automobile Liability Insurance	Not less than \$2,000,000 each occurrence	
Commercial Property Insurance	Not less than the Full Insurable Value	

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, bodily injury, property damage and broad form contractual liability coverage, personal & advertising injury cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract).

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this MOU; and
- Cross liability for additional insureds.

If at any time during the Term of this MOU, and any extension or holdover thereof, the County conducts operations at more than one location, the policy shall contain an endorsement to the effect that the general aggregate limit in the policy shall apply separately to each location operated by the County.

2. **Comprehensive Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under this MOU, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. If performance under this MOU shall require the removal of hazardous waste from the Building or the Demised Premises or other transporting of hazardous materials, pollution liability coverage for covered autos shall be provided by Form CA 9 48 03 06 or Form CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

In the event that the County does not own, lease or hire any automobiles used in connection with performance under this MOU, the County does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the County does not own, lease or hire any automobiles used in connection with performance under this MOU on a form provided by the State. If, however, during the Term of this MOU, and any extension or holdover thereof, the County acquires, leases or hires any automobiles that will be used in connection with performance under this MOU, the County must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to the State within ten (10) days following the date the coverage is bound.

Notwithstanding the foregoing, in the event that the County does not own or lease any automobiles used in connection with the performance under this MOU, but the County does hire and/or utilize non-owned automobiles in connection with performance under this MOU, the County must: (i) obtain Business Automobile Liability Insurance as required by this section, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the County does not own or lease any automobiles used in connection with performance under this MOU, on a form provided by the State. If, however, during the Term of this MOU, and any extension or holdover thereof, the County acquires or leases any automobiles that will be used in connection with performance under this MOU, the County must obtain Business Automobile Liability Insurance that meets all the requirements of this section and provide proof of such coverage to the State within ten (10) days following the date the coverage is bound.

3. **Commercial Property Insurance:** Such insurance shall cover the Demised Premises in an amount not less than the Full Insurable Value of the Demised Premises covering, at a minimum, the perils insured under the ISO Special Causes of Loss Form CP 10 30, or the equivalent, including coverage for loss caused by enforcement of ordinances or laws to the extent it is commercially available. Full Insurable Value shall mean actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings).

The Occupying Agency shall receive a copy of all submissions made to the State in compliance with this section at the following address: Assistant Director of Finance, Business Services, The New York State Department of Labor, W. Averell Harriman State Office Campus, Building 12, Albany, New York 12240.

38. WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS COVERAGE

The Parties understand that the County is self-insured, and the State shall accept proof of that self-insurance as compliance with this section. In the event that the County is no longer self-insured, however, the County agrees to comply with the requirements of this section and provide proof of such compliance within thirty (30) days of the date that it is no longer self-insured.

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and State entities to ensure that businesses applying for contracts, permits or licenses have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the contract, permit, license or contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of this MOU.** Therefore, prior to the Commissioner executing this MOU, the County must submit proof to the State that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Breach for lack of proof of coverage: The Term of this MOU shall not commence if the coverage provisions and limits of the policies provided by the County do not meet the provisions and requirements of the New York State Workers' Compensation Law or proof of compliance is not provided to the State. In addition, the failure to comply with the requirements of this section at any time during the Term of this MOU, and any extension or holdover thereof, shall be considered a breach of the terms of this MOU and shall allow the State to avail itself of all remedies available under this MOU, at law or in equity.

Prior to the commencement of any work by a subcontractor, the County shall require such subcontractor to comply with the requirements of this section and maintain the same during the term of any work performed by that subcontractor.

Proof of Compliance with the Workers' Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, the County shall provide one of the following forms to the State prior to execution of this MOU by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (<http://www.wcb.ny.gov>);
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to the State by the County's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, it will provide Form U-26.3 to the State upon request;
- C) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the County's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, the County shall provide one of the following forms to the State prior to execution of this MOU by the Commissioner:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website (<http://www.wcb.ny.gov>);
- B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to the State by the County's insurance carrier upon request; or
- C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

Information on the requirements of the New York State Workers' Compensation Law is available at <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

Proof of compliance shall be submitted to The New York State Office of General Services, Director, Division of Real Estate Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40th Floor, Albany, New York 12242. The Occupying Agency shall receive a copy of all submissions made to the State in compliance with this section at the following address: Assistant Director of Finance, Business Services, The New York State Department of Labor, W. Averell Harriman State Office Campus, Building 12, Albany, New York 12240. The County shall notify The New York State Office of General Services, Director, Division of Real Estate Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40th Floor, Albany, New York 12242 at least thirty (30) days prior to material change or cancellation of such coverage.

39. AUTOMATED EXTERNAL DEFIBRILLATORS

The County covenants and agrees to cooperate with the State and the Occupying Agency with regard to the installation of Automated External Defibrillators (AEDs) within the Demised Premises that comply with all applicable laws, rules, regulations and orders, at the Occupying Agency's expense.

40. FIRE EXTINGUISHERS

The County, at its own cost and expense, shall provide, test and maintain, the fire extinguishers in the Premises and elsewhere throughout the Building. The types of extinguishers provided and their locations, testing and maintenance shall, at all times during the MOU Term, comply with the standards of the Occupational Safety and Health Administration of the United States Department of Labor, as such standards are contained in Title 29 of the Code of Federal Regulations at Section 1910.157, as the same shall be amended from time to time, unless State statutes or local ordinances impose stricter requirements, in which event the County shall comply with the strictest requirements. All fire extinguisher installations shall be done in compliance with the New York State Uniform Fire Prevention and Building Code and the Americans with Disabilities Act Accessibility Guidelines (hereinafter referred to as the "ADAAG").

41. REDECORATION

INTENTIONALLY DELETED

42. GENERAL PROVISION AS TO REMEDIES

- a. The County, State and the Occupying Agency may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds, the exercise of another.
- b. A single or partial exercise of a right or remedy by the County, State and/or the Occupying Agency shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time.
- c. No delay or omission in exercising a right or remedy by the County, State and/or the Occupying Agency shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event of default.
- d. No waiver of an event of default by the County or the State shall extend to or affect any other event of default or impair any right or remedy with respect to an event of default.
- e. No action (including the payment or acceptance of Fixed Rent or additional rent) or inaction shall constitute a waiver of an event of default.
- f. No waiver of any event of default shall be effective, unless it is in writing.
- g. The payment of Fixed Rent or additional rent shall not be construed as a waiver of any claim the State or the Occupying Agency may have against the County.

- h. The rights and remedies granted hereunder are cumulative, and are not in lieu of, but are in addition to, and shall not be affected by the exercise of any other remedy or right now or hereafter existing at law or in equity.
- i. The New York State Court of Claims Act (McKinney's Consolidated Laws of New York) sets forth the exclusive jurisdiction of the New York State Court of Claims to render judgment of such sums as should be paid by the State. Nothing herein shall be interpreted or construed to limit, waive or nullify the rights of the State existing by virtue of its sovereign status.

43. WORK LETTER

INTENTIONALLY DELETED

44. COUNTY'S CONSENT

Whenever the County's consent is required under any provisions of this MOU such consent shall not be unreasonably withheld, conditioned or delayed.

45. SECTIONAL HEADINGS

The sectional headings as to the contents of particular sections herein are inserted only for convenience and are not to be construed as a part of this MOU or as a limitation of the scope of the particular section to which they refer.

46. BINDING EFFECT

This MOU shall be binding upon the Parties and their respective successors and assigns. The submission of any unexecuted copy of this MOU shall not constitute an offer to be legally bound by the provisions of the document submitted. No Party shall be bound by this MOU until it (i) is executed by all necessary Parties; (ii) has been approved as to form by the Office of the Attorney General; (iii) has been approved by the Office of the New York State Comptroller; and (iv) has actually been delivered by the State to the County. This MOU may be executed in counterparts, and each counterpart constitutes an original document, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

47. INTERPRETATION

- a. A provision of this MOU that requires a Party to perform an act shall, if required, be construed so as to require the Party to cause the act to be performed. A provision of this MOU that prohibits a Party from performing an act shall, if required, be construed as to prohibit the Party from permitting others within its control to perform the act.
- b. Each Party shall be deemed to be required to perform each of its obligations under this MOU at its own expense, except to the extent, if any, that this MOU specifies otherwise.
- c. This MOU shall be governed by the laws of the State of New York.
- d. All prior agreements of the Parties are merged into this MOU and neither Party is relying upon prior statements or representations.
- e. If any provision of this MOU shall be invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

- f. Words of masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall indicate otherwise, words importing persons shall include firms, associations and corporations, including public bodies as well as natural persons.
- g. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms, as used in this MOU, refer to this MOU.
- h. Unless otherwise specifically set forth herein, the term "day" shall refer to a calendar day, including Saturdays, Sundays and State Legal Holidays, as that term is defined in Section 13 of this MOU.

48. REMOVAL OF PERSONAL PROPERTY

Any and all articles of personal property, including, without limitation, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting and water coolers, owned or installed by the State or the Occupying Agency are and shall remain the property of the State or the Occupying Agency, and may be removed by them at any time during the MOU Term, or any extension or holdover thereof, but the State or the Occupying Agency shall not be required to remove them at the end of the MOU Term, or any extension or holdover thereof, unless they so elect, provided that if such business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting, and water coolers are removed, the cost of repairing any damage to the Building arising from such removal shall be paid by the Occupying Agency.

49. NO DEVIATIONS

The Commissioner or her designees are the only individuals on behalf of the State authorized to allow any deviations from the provisions of this MOU, including substitutions for, or additions to, items of construction or alterations, or to commit the State in any way, and the Occupying Agency is not designated for this purpose. All requests for deviations from the provisions of this MOU shall be made to the State in compliance with the notice provisions contained in Section 51 of this MOU.

50. MERGER

This MOU and the appendix, exhibit(s) and schedule(s) attached hereto constitute the entire agreement of the Parties on the subject matter hereof. No representations or promises have been made with respect to the Demised Premises other than those contained herein or as may be contained in any rider, schedule, appendix or exhibit attached to, and made a part of, this MOU. The County agrees that no representations or warranties shall be binding upon the State unless expressed in writing in this MOU. This MOU may not be changed or canceled orally. Unless otherwise allowed for in this MOU, all modifications to this MOU shall not be effective until the same are memorialized in a Memorandum of Understanding Modification Agreement that (i) is executed by all necessary Parties; (ii) has been approved as to form by the Office of the Attorney General; (iii) has been approved by the Office of the New York State Comptroller; and (iv) has actually been delivered by the State to the County.

51. NOTICE

Any notice by the State to the County shall be deemed to be duly given if mailed by certified mail, addressed to the County at the following address: Oneida County Workforce Development, 209 Elizabeth Street, Utica, New York 13501. Any notice by the County to the State shall be deemed to be duly given if mailed by certified mail addressed to The New York State Office of General Services, Director, Division of Real Estate Services, The Governor

Nelson A. Rockefeller Empire State Plaza, Corning Tower, 40th Floor, Albany, New York 12242 with an informational copy to the Occupying Agency sent by certified mail to: Assistant Director of Finance, Business Services, The New York State Department of Labor, W. Averell Harriman State Office Campus, Building 12, Albany, New York 12240.

The County, State and the Occupying Agency shall notify each other of all changes in the above-referenced addresses within ten (10) business days of the effective date of such change.

52. REQUIREMENTS/FEDERAL CERTIFICATIONS

The funding for this MOU is provided by the United States Department of Labor, which requires the following:

- a. Certification regarding debarment, suspension, ineligibility and voluntary exclusion:

The County certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

- b. Certification Regarding Lobbying - Certification for Contracts, Grants, Loans, and Cooperative Agreements:

By signing this MOU, the County certifies to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than 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 contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The County shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of the facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

c. Drug Free Workplace:

By signing this MOU, the County certifies that it will provide a Drug Free Workplace by implementing the provisions at 29 Code of Federal Regulations Section 98.630, Appendix C, pertaining to the Drug Free Workplace.

d. Nondiscrimination & Equal Opportunity Assurance:

As a condition of entering into this MOU with the State, on behalf of the New York State Department of Labor, and in accordance with Title I of the Workforce Investment Act, the County assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 1) Section 188 of the Workforce Investment Act of 1998 (WIA) which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation, or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity;
- 2) Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
- 3) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
- 4) The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- 5) Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

It is further agreed that the County assures that it will comply with 29 Code of Federal Regulations Part 37 and all other regulations implementing the laws listed above. The County understands that the United States has the right to seek judicial enforcement of this assurance.

e. Prevailing Wage:

In relation to all work performed by laborers, workmen, or mechanics involving alteration, renovation, reconstruction, repair, rehabilitation, construction, or demolition performed on behalf of a public agency (entity) under this MOU, or in relation to all building service work as defined in Article 9 of the New York State Labor Law, performed on behalf of a public agency (entity) under this MOU, the County shall abide by the provisions of Articles 8 and/or 9 of the New York State Labor Law. The County agrees that the wages to be paid to any building service employee (including, but not limited to, watchmen, guards, doormen, building cleaners, porters, janitors, gardeners, groundskeepers, stationary firemen, elevator operators and starters, window cleaners and occupations relating to the collection of garbage or refuse and to the transportation of office furniture and equipment, and the transportation and delivery of fossil fuel), or to any worker, laborer, or mechanic, shall not be less than the prevailing wage for the locality in which the work is to be performed. The

schedules of wages required to be paid to the various classes of service employees, workers, laborers, or mechanics for the work to be performed pursuant to this MOU at the present time can be found at

<https://apps.labor.ny.gov/wpp/publicViewPWChanges.do?method=showIt> (Article 8) and

<https://apps.labor.ny.gov/wpp/publicViewPWChangesArt9.do?method=showIt> (Article 9). The County is responsible for obtaining updated schedules as they are published annually by the New York State Department of Labor. The County shall pay each service employee, worker, laborer, or mechanic performing work pursuant to this MOU not less than the wage specified for the craft, trade or occupation in such schedule either through the payment of such wages or through the furnishing of any equivalent combinations of fringe benefits or equivalent or differential payments in cash under the rules and regulations established by the Commissioner of the New York State Department of Labor. The County shall comply with all reporting, filing, retention and other requirements set forth in Articles 8 and/or 9 of the New York State Labor Law.

53. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS

The County shall comply with the provisions of the New York State Information Security Breach and Notification Act (New York State General Business Law Section 899-aa and New York State Technology Law Section 208) and General Business Law Section 899-bb. The County shall be liable for the costs associated with such breach if the same is caused by the County's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the County's agents, officers, employees or sublandlords.

54. PRIOR CONTRACT / CANCELLATION

Upon the Commencement Date, as that term is defined in Section 2 of this MOU, this MOU cancels, terminates and supersedes the Office of the New York State Comptroller's Contract No. L002128 dated July 28, 2016. In the event rent has been paid under such memorandum of understanding (or as a holdover under such memorandum of understanding) that is attributable to the MOU Term set forth herein, the Occupying Agency shall receive a full credit for such payments to be applied to Fixed Rent otherwise due hereunder.

55. ENCOURAGING USE OF NEW YORK STATE BUSINESSES

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of the economic activity and leadership such businesses offer, parties to agreements with the State are strongly encouraged and expected to consider New York State businesses, including small, minority- and women-owned business enterprises, in the fulfillment of the requirements of such agreements. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

State agencies are also strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the County and its New York State business partners. New York State businesses will promote the County's optimal performance under this MOU.

The State encourages parties to agreements with the State to provide maximum assistance to New York State businesses in their use of State contracts. The potential participation by all kinds of New York State businesses will deliver great value to the State and its taxpayers.

56. VENDOR RESPONSIBILITY

The Parties agree that the County is not subject to the State's traditional vendor responsibility requirements, but OGS must still conduct a review of any prospective contractor to provide reasonable assurance that the contractor is responsive and responsible.

The Governmental Entity Lease Disclosure Sheet, attached to this MOU as Form 1, is designed to provide information to assess a contractor's responsibility to conduct business in New York State based upon its financial and organizational capacity, legal authority, business integrity and past performance history.

In addition, in the event that this MOU is transferred to a private entity, the County agrees to assist the State in obtaining a fully and accurately completed NYS Vendor Responsibility Questionnaire (VRQ), which can be found on the Office of the New York State Comptroller's website at <http://www.osc.state.ny.us/vendrep/index.htm>, or requested from the State in accordance with Section 51 of this MOU, and a Building Fact Sheet, which must be requested from the State in accordance with Section 51 of this MOU, from the new entity prior to the approval of such a transfer by the Commissioner, or her designee. The County acknowledges that the State's approval of such a transfer will be contingent upon the State's determination that the new entity is responsible, and that the State will be relying upon the entity's responses to these documents when making its responsibility determination.

In order to assist the State in determining the responsibility of a contractor prior to the award of a contract, the contractor must complete and certify the VRQ prior to the date of execution of the contract and, thereafter, the contractor is under the obligation to update the information provided in the VRQ when there is a material change to the responses or upon request of the State, Occupying Agency or the Office of the New York State Comptroller. Any subsequent contractor should visit the Office of the New York State Comptroller website to become familiar with all of the requirements of the VRQ in order to accurately complete it or may request information on the requirements from the State.

In addition, any subsequent contractor must complete the Building Fact Sheet prior to the approval of a transfer of this MOU and, thereafter, the contractor is under the obligation to update the information provided in the Building Fact Sheet when there is a material change to the responses or upon request of the State, the Occupying Agency or the Office of the New York State Comptroller.

The County agrees that if it enters into this MOU with the State, it shall at all times during the MOU Term remain responsible. The County agrees, if requested by the Commissioner, or her designee, to present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance and organizational and financial capacity.

57. FORCE MAJEURE

For purposes of this MOU, "Force Majeure" shall mean an event or effect that cannot be reasonably anticipated or controlled. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, viruses, pandemics, unexpected and unavoidable governmental action or other similar causes beyond the control of the County, the State or the Occupying

Agency in the performance of the terms of this MOU which non-performance, by exercise of reasonable diligence, cannot be prevented but shall expressly exclude the inability of the County, the State or the Occupying Agency to comply with any payment obligations under this MOU, such as, by way of example only, the obligation to pay Fixed Rent hereunder.

58. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of the economic activity such businesses offer in New York State, parties to agreements with the State are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this MOU. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this MOU, the State conducted a comprehensive search and determined that this MOU does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the County. Nevertheless, the County is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on this MOU for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

The County is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on this MOU.

59. APPENDIX, EXHIBITS, FORM AND SCHEDULE

The following appendix, exhibits and schedule are being attached and made part of this MOU:

Appendix A	Standard Clauses for New York State Contracts
Exhibit 1	300 W Dominick St Rome NY (Section 1)
Exhibit 2	OGS Material Specifications for Leased Facilities (Section 11)
Exhibit 3	Executive Order 4 (Section 16 and Schedule A)
Exhibit 4	Request for Memorandum of Understanding Compliance Service(s) (Section 19)
Exhibit 5	Sample Consent to Assignment Form (Section 30)
Exhibit 6	Substitute W-9 Form (Section 30)
Exhibit 7	County Change of Name/Address Form (Section 30)
Exhibit 8	Detailed Estimate Form (Section 34)
Form 1	Governmental Entity Lease Disclosure Sheet (Section 30)
Schedule A	Janitorial Service Specifications (Section 16)

In the event of a conflict between the terms of this MOU and the exhibits, schedule and form hereto, the terms of this MOU shall control. In the event of a conflict between the terms of this MOU (including the exhibits, schedule and form) and Appendix A hereto, the terms of Appendix A shall control.

60. APPENDIX A

The Parties acknowledge and agree that the terms and provisions of Appendix A, Standard Clauses for New York State Contracts, attached hereto and forming a part of this MOU, shall be incorporated herein and constitute fully effective and binding obligations upon the Parties.

Remainder of the Page is Intentionally Left Blank

The New York State Office of General Services
Agency Certification

Contract Number _____

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

By: _____
The New York State Office of General Services
Division of Real Estate Services

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed in multiple originals the day and year first written above.

**Oneida County Workforce Development,
A Division of Oneida County**

By _____
Name:
Title:

STATE OF NEW YORK }
 : SS.:
COUNTY OF _____ }

On the ____ day of _____, in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York
Qualified in County of: _____
My Commission Expires: _____

Contract Number _____

THE PEOPLE OF THE STATE OF NEW YORK
Acting by and Through the
Commissioner of General Services

By: _____
RoAnn M. Destito
Commissioner of General Services

Date: _____

Contract Number _____

APPROVED AS TO FORM
Letitia A. James
Attorney General

Thomas P. DiNapoli
New York State Comptroller

By: _____

By: _____

Approved:
Assistant Attorney General

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor

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

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

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

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

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under

this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order

instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

300 W Dominick St
Rome NY

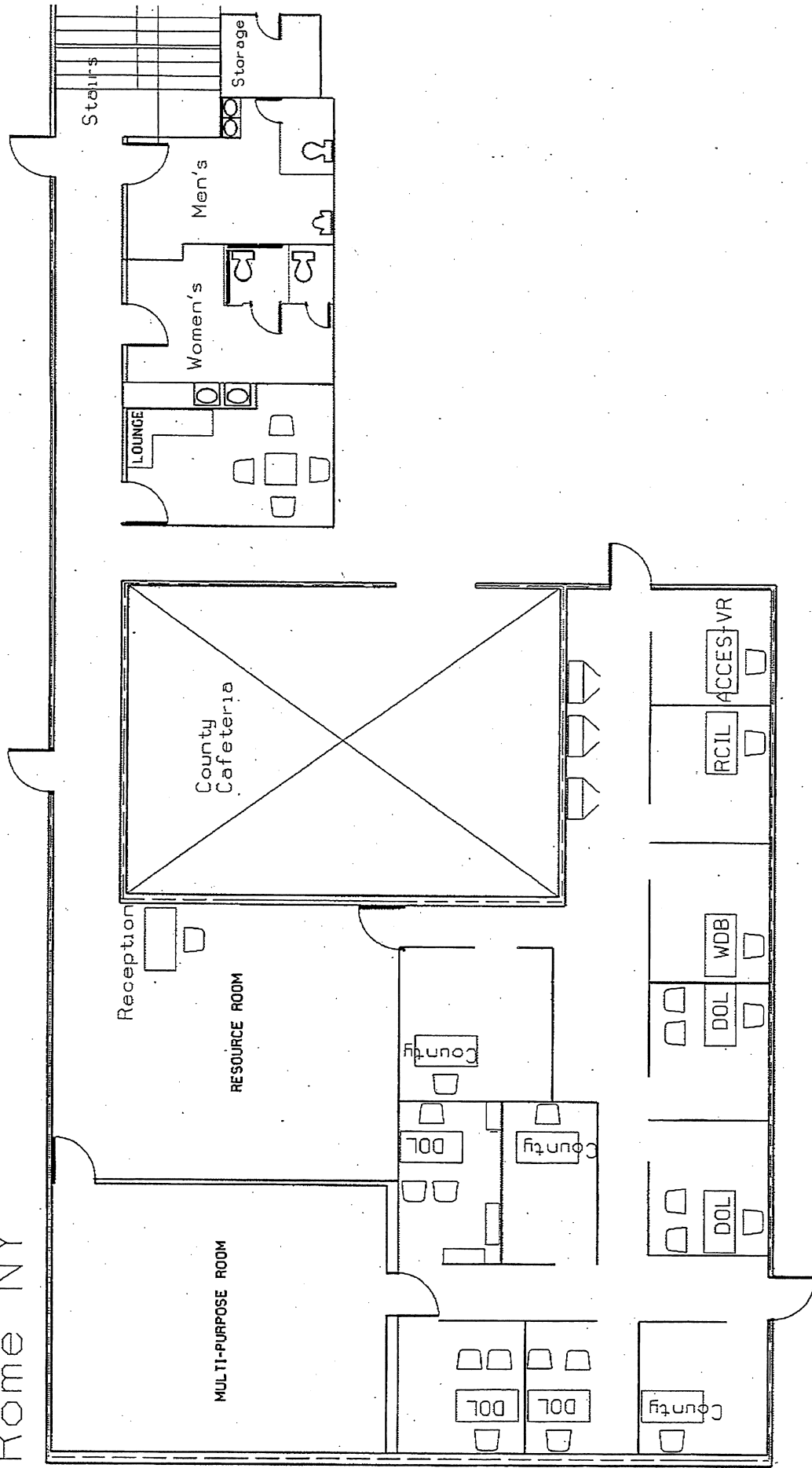


Exhibit 1

OGS Material Specifications for Leased Facilities (MSLF)

September 10, 2018

The specifications set forth herein are minimum quality specifications for materials utilized in any work performed on behalf of the State of New York and pursuant to this agreement.

Landlord covenants to utilize new materials as specified herein and agrees that no material of a lesser quality shall be used or consumed in the performance of work contemplated herein unless Landlord shall have previously requested and received written approval for each specific proposed substitution.

All materials to be installed in accordance with manufacturer's specifications. Material installations shall comply with all applicable codes, rules and regulations, and the American's with Disabilities Act Accessibility Guidelines (ADAAG).

Except where specifically provided otherwise, whenever any product is specified by brand name, i.e., manufacturer's or supplier's name or trade name, catalog or model number or name, the intent is not to limit competition but to establish a standard of quality. The words "or equal" shall be deemed inserted in each instance.

In the event Landlord purposes to substitute material having characteristics or specifications differing from those set forth herein, such proposal shall, under cover of OGS lease and/or project number, be submitted to:

NYS Office of General Services
Real Estate Center
GNARESP
Corning Tower, 40th Floor
Albany, NY 12242

All sections for materials may not be needed for each job. The Landlord or his representative should utilize the appropriate specification for each job.

Landlord should take note of all ***bold italic items*** to ensure compliance with the State's intent to comply with sustainable building design and construction standards.

OGS MATERIALS SPECIFICATIONS
FOR LEASED FACILITIES – CONDENSED
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NOTE: All manufacturers listed are suggested or approved equal.

DIVISION 5 - METALS

SECTION 055800 – FORMED METAL FABRICATIONS / SHADE & BLIND POCKETS

- A. QUALITY ASSURANCE
1. Verify dimensions by field measurement before fabrication. Design units to provide for adjustment and fitting of components during field installation.
 2. See Section 122000 for window treatments: blinds and shades.

SECTION 055800.1 – FORMED METAL FABRICATIONS

- A. PERFORMANCE REQUIREMENTS (MINIMUM)
1. Fabricate units to support a min. loading of 200 lbs. per sq. ft. or 150 lbs. per lin. ft (whichever is greater) without permanent deflection. Provide stiffeners or laminated backing as required for strength and rigidity. Include brackets, plates and straps in the assemblies for support and anchorage to other work.
 2. See Section 131000 Refurbishment for repair of existing enclosures.

End of Section

DIVISION 6 - WOOD AND PLASTICS

SECTION – 062023 INTERIOR FINISH CARPENTRY

- A. ENVIRONMENTAL CRITERIA
1. *All composite wood, engineered wood, or agrifiber products (e.g. plywood, particleboard, medium density fiberboard) shall contain no added urea-formaldehyde resins. Acceptable resins and binders include, but are not limited to, phenol formaldehyde and methyl diisocyanate (MDI). Submit certificate substantiating meeting criteria.*
 2. *Field applied adhesives or sealants used for work in this Section shall meet the requirements "Volatile Organic Compound (VOC) Limits for Adhesives, Sealants and Architectural Coatings," where applicable.*
 3. *Optional Upgrade to materials: Upgrade to be indicated in Request for Proposal, Room Data Sheets, or Lease Work Letter.*
 - (a) *Wood materials shall be "FSC Certified" products (except recycled or salvaged wood) which have been harvested in accordance with the "FSC Principles and Criteria" for well managed forests developed by the Forest Stewardship Council (FSC).*
 - (b) *Engineered wood (except FSC Certified or salvaged wood) shall contain a minimum of 25% (combined) post-industrial/post-consumer recycled content (the percentage of recycled content is based on the weight of the component materials).*
- B. WOOD MATERIAL
1. For miscellaneous wood blocking, grounds, furring as required, use Utility Grade Coastal Douglas Fir or Southern Pine, free from knots, shakes, rot or other defects, straight, square edges and straight grain, air seasoned with maximum moisture content of nineteen (19) percent. Wood shall be S4S, S-Dry, complying with PS-20-15.
 2. All interior wood material specified herein shall be fire retardant treated to comply with the AWPA standards (C20 for lumber, C27 for plywood) for pressure impregnation with fire retardant chemical to achieve a flame spread rating of not more than 25 (UL Class "FR-S") when tested in accordance with UL Test 723 or ASTM E 84. The fire retardant chemicals used to treat
 - (a) After treatment, kiln dry to a moisture content of fifteen (15) percent; if wood is to be painted or finished, kiln dry to a moisture content of twelve (12) percent. Treatment shall be equal to "Dricon" made by Arch Wood Protection Inc. or approved equal. Provide UL approved identification on treated materials.
 - (b) Fire retardant treatment shall be certified by the treating plant that treatment material complies with governing ordinances and that treatment will not bleed through finished surfaces.
Electrical Panels: For backing panels of electrical and communication equipment, provide C-D/INT-APA with exterior glue, fire retardant treated.
 3. For exterior blocking, roofing and sheet metal, pressure treat wood with copper azole, Type A (CBA-A); ammoniacal copper quat (ACQ) or similar preservative product that contains no arsenic or chromium. Preservative shall comply with AWPB Standard U1 for lumber and for plywood, (.25 lbs./cubic foot of chemical in wood).
 - (a) After treatment, kiln dry to a maximum moisture content of fifteen (15) percent. Treatment shall be equal to "Wolmanized Natural Select" made by Arch Wood Protection Inc. or approved equal.
 4. Treated wood which is cut or otherwise damaged shall be further treated in accordance with the AWPA Standard M-4.

End of Section

SECTION 064023 – INTERIOR ARCHITECTURAL WOODWORK

A. ENVIRONMENTAL CRITERIA

1. *All composite wood, engineered wood, or agrifiber products (e.g. plywood, particleboard, medium density fiberboard) shall contain no added urea-formaldehyde resins. Acceptable resins and binders include, but are not limited to, phenol formaldehyde and methyl diisocyanate (MDI). Submit certificate substantiating meeting criteria.*
2. *Field applied adhesives or sealants used for work in this Section shall meet the requirements "Volatile Organic Compound (VOC) Limits for Adhesives, Sealants and Architectural Coatings," where applicable.*

Optional Upgrade to materials: Landlord is encouraged to upgrade. Specific upgrades may be indicated in Request for Proposal, Room Data Sheets, or Lease Work Letter.

- (a) *Wood materials shall be "FSC Certified" products (except recycled or salvaged wood) which have been harvested in accordance with the "FSC Principles and Criteria" for well managed forests developed by the Forest Stewardship Council (FSC).*
- (b) *Engineered wood (except FSC Certified or salvaged wood) shall contain a minimum of 25% (combined) post-industrial/post-consumer recycled content (the percentage of recycled content is based on the weight of the component materials).*

B. MATERIALS GENERAL REQUIREMENTS

1. Softwood lumber shall conform to the requirements of the latest edition of American Lumber Standards Simplified Practice Recommendation R-16. Grades shall conform to the grading rules of the Association having jurisdiction and shall bear the official grade and trademark of the Inspection Bureau of the Association and a mark of mill identification.
2. Framing and Rough Lumber: No. 1 KD grade Southern Pine or Dense Construction grade Douglas Fir, having extreme fiber in bending stress of at least 1700 psi, surfaced four sides (S4S). Provide fire retardant treatment in accordance with Code.
3. Lumber: AWI Section 100 with the following requirements:
 - (a) Hardwood for Transparent Finish: Premium Grade.
 - (b) Hardwood for Opaque Finish: Any hardwood which, when finished, will not show any grain, imperfection or other surface defects when used with the opaque finish specified.
4. ***Plywood: AWI Section 200; Veneer core, particle or plywood core. Core shall contain no added urea formaldehyde.***
5. Veneers: (a) Face Veneers for Transparent Finish: AWI Section 500.

C. PLASTIC LAMINATE

1. Face Sheets: NEMA Publication LD3, Grade GP50, Type I, 0.05" thick.
2. Backing Sheets: Non-decorative, high-pressure plastic laminate, NEMA LD3, Grade BK20, 0.02" thick.

D. CABINETS AND COUNTERS WITH PLASTIC LAMINATE FINISH

1. Fabricate all cabinetry and millwork to the "Premium Grade" standards of the AWI, Section 400.
2. Plastic Laminate
 - (a) Plastic Laminate for Horizontal Surfaces: 0.050" thick, general purpose type (high pressure).
 - (b) Plastic Laminate for External Vertical Surfaces: 0.028" thick, general purpose type (high pressure).
 - (c) Plastic Laminate for Post Forming: 0.042" thick, post forming (high pressure).
 - (d) Plastic Laminate for Cabinet Linings: 0.020" thick, cabinet liner (high pressure).
 - (e) Plastic Laminate for Concealed Panel Backing: 0.020" thick, backer type (high pressure).

E. WOOD FOR RAILS, CAPS, TRIM, BASES, MOLDINGS AND FRAMES

1. Quality Standard: For the following types of interior architectural woodwork, comply with indicated standards as applicable.
 - (a) Standing and Running Trim: AWI Section 300.
 - (b) Miscellaneous Millwork: AWI Section 700.
 - (c) Stair Handrails: AWI Section 800.

End of Section

DIVISION 7 - THERMAL & MOISTURE PROTECTION

SECTION 072116 – BLANKET INSULATION

A. GENERAL

1. Sound deadening within full depth of partition cavity: Insert in partition cavity from bottom to top of steel stud system. Blankets or batts shall be pressed tightly in place with a snug friction fit.
2. Sound deadening within ceiling plenum shall be un-faced mineral insulation.

B. SUGGESTED MANUFACTURERS

1. ***Fiberglass: Owens-Corning, Certainteed with minimum of 25% recycled content***
2. Mineral Insulation or Thermafiber: USG
3. Or approved equal.

End of Section

DIVISION 8 - OPENINGS

SECTION 081113.13- STANDARD HOLLOW METAL DOORS AND FRAMES

A. ENVIRONMENTAL CRITERIA

1. *Every effort shall be made to maximize post-industrial/post-consumer waste, but steel members shall contain a minimum of 50% (combined) post-industrial/post-consumer recycled content (the percentage of recycled content is based on the weight of the component materials). Certification of recycled content shall be in accordance with the Submittal Requirements herein.*

B. SUGGESTED MANUFACTURERS

1. Provide products manufactured by Steelcraft (L20 Series Doors), Curries, Ceco Door Products, or approved equal meeting these specifications.

C. FRAMES

1. Frames for exterior openings shall be made of commercial grade cold-rolled steel conforming to ASTM A1008/A, Type B not less than 14 gauge and shall have a hot dipped galvanized coating conforming to ASTM A924 and A653 with G-60 coating. The zinc-alloy coating shall be a dull matte surface treated for paint adhesion.
2. Frames for interior openings shall be either commercial grade cold-rolled steel conforming to ASTM A1008/A, Type B or commercial grade hot-rolled steel conforming to ASTM A1011/A, Commercial Steel, Type B. Metal thickness shall be not less than sixteen (16) gauge for frames in openings 4'-0" or less in width; not less than fourteen (14) gauge for frames in openings over 4'-0" in width.
3. Design
 - (a) All frames shall be welded units with integral trim, of the sizes and shapes shown on approved shop drawings. Unless otherwise noted, knocked-down frames will not be accepted.
 - 1). Where knock-down frames are scheduled (at drywall), corners shall be mitered and reinforced with a wedge lock corner clip to provide a firm interlock of jambs to head.
 - (b) Welded frames shall have corners mitered, reinforced and continuously welded full depth and width of frame; conforming to NAAMM Standard HMMA-820.
 - (c) Hardware Reinforcements
 - 1). Frames shall be mortised, reinforced, drilled and tapped at the factory for fully-templated mortised hardware only, in accordance with approved hardware schedule and templates provided by the hardware supplier. Where surface-mounted hardware is to be applied, frames shall have reinforcing plates.
 - 2). Minimum thickness of hardware reinforcing plates shall be as follows:
 - a) Hinge and pivot reinforcements - seven (7) gauge, 1-1/4" x 10" minimum size.
 - b) Strike reinforcements - twelve (12) gauge
 - c) Flush bolt reinforcements - twelve (12) gauge
 - d) Closer reinforcements - twelve (12) gauge
 - e) Reinforcements for surface mounted hardware - twelve (12) gauge.
 - (d) Frames to be coordinated with requirements for security system, as required for each project.
 - (e). Frames in existing base building construction that are slated for reuse and require a fire rating shall bear a label from a testing and inspection agency acceptable to authorities having local jurisdiction stating the fire-protection rating required by the local code. If such label no longer exists, the landlord shall have unlabeled doors recertified by a testing and inspection agency acceptable to the authorities having local jurisdiction.

D. HOLLOW METAL DOORS

1. Suggested Materials: Doors shall be made of commercial quality, level, cold rolled steel conforming to ASTM A1008/A, Commercial Steel, Type B and free of scale, pitting or other surface defects. Face sheets for interior doors shall be not less than eighteen (18) gauge.
2. Design
 - (a) All doors shall be fully welded seamless construction with no visible seams or joints on their faces or vertical edges. Minimum door thickness shall be 1-3/4".
 - (b) Laminated Honeycomb Core for Interior Doors: Resin impregnated Kraft paper with maximum 1" cells; fastened to face sheets with waterproof adhesive.
 - (c) Fire Rated Door Core: As required to provide fire-protection and temperature rise ratings indicated.
3. Door faces shall be joined at their vertical edges by a continuous weld extending the full height of the door. All such welds shall be ground, filled and dressed.
4. Finish: After fabrication, all tool marks and surface imperfections shall be dressed, filled and sanded as required to make all faces and vertical edges smooth, level and free of all irregularities. Doors shall then be chemically treated to insure maximum paint adhesion and shall be coated, on all exposed surfaces, with manufacturer's standard rust-inhibitive alkyd primer as specified for frames which shall be fully cured before shipment.
5. Doors to be coordinated with requirements for security system, as required by each project.

End of Section

SECTION 081116 - ALUMINUM ENTRANCE DOORS AND FRAMES

- A. GENERAL
 - 1. Installation to be in accordance with manufacturer's specifications.
- B. FABRICATION
 - 1. Door frame(s) and frames combining transoms, sidelights and panel framing of formed or extruded aluminum not less than 0.125" thick.
 - 2. Glazed doors with fabricated stiles and rails of extruded aluminum tubular shapes, minimum wall thickness, not less than 3" wide. Attach extrusions together by means of concealed mechanical fasteners and concealed welding.
 - 3. Overlapping astragal with compression type weather stripping. Astragal should be mounted so proper door is active.
 - 4. **Architectural Powder Coat and Finish: Kynar Interpon D 2000 powder coat finish complying with AMMA 605.2-92 (no VOC's).**
- C. SUGGESTED MANUFACTURERS
 - 1. United States Metals & Manufacturing Corp. D41 Intermediate Style with #7235 astragal and coordinator.
 - 2. Kawneer 350 Medium Style with Panic Guard astragal bar. 3. Or approved equal

End of Section

SECTION 081416 – FLUSH WOOD DOORS

- A. ENVIRONMENTAL CRITERIA
 - 1. **All composite wood, engineered wood, or agrifiber products (e.g. plywood, particleboard, medium density fiberboard) shall contain no added urea-formaldehyde resins. Acceptable resins and binders include, but are not limited to, phenol formaldehyde and methyl diisocyanate (MDI). Submit certificate substantiating meeting criteria.**
 - 2. **Field applied adhesives or sealants used for work in this Section shall meet the requirements "Volatile Organic Compound (VOC) Limits for Adhesives, Sealants and Architectural Coatings," where applicable.**
 - 3. **Optional Upgrade to materials: Upgrade to be indicated in Request for Proposal, Room Data Sheets, or Lease Work Letter.**
 - (a) **Wood materials shall be "FSC Certified" products (except recycled or salvaged wood) which have been harvested in accordance with the "FSC Principles and Criteria" for well managed forests developed by the Forest Stewardship Council (FSC).**
- B. SUGGESTED MATERIALS
 - 1. Non-rated Solid Core Doors for Transparent Finish: Comply with the following requirements:
 - (a) Faces: Select center book match White Birch Finish to be selected.
 - (b) Plain sliced, straight grain book-matched.
 - (c) Rotary cut Select White Birch
 - (d) Edges: Shall match face veneer.
 - (e) AWI Grade: Premium, Double A Grade Face
 - (f) **Construction: Composite wood containing no added Urea formaldehyde "Medite II" or equal.**
 - (g) **Use adhesives that meet the VOC limits of South Coast Air Quality Management District Rule 1168, and all sealants used as filter must meet or exceed Bay Area Air Quality Management District Regulation #8, Rule #51.**
 - 2. Fire-Rated Solid Core Doors: Comply with the following requirements:
 - (a) Faces and Grade: Provide faces and grade to match non-fire-rated doors in same area of building, unless otherwise indicated.
 - (b) Construction: Manufacturer's standard core construction as required providing fire-resistance rating indicated.
 - (c) Blocking: Provide composite blocking designated to maintain fire resistance of door with improved screw-holding capability of same thickness as core.
 - (d) Top rail blocking and lockbox blocking.
 - 3. Non-rated and Rated Doors Edge Construction: Provide manufacturer's standard laminated-edge construction for improved screw-holding capability and split resistance as compared to edges composed of a single layer of treated lumber. Exposed edges shall match face veneer.
 - 4. Transparent Finish: Comply with requirements indicated for grade, finish system, staining effect, and sheen. **All coatings must meet or exceed the VOC and chemical component limits of Green Seal requirements (Flat coats must be less than 50g/liter; non-flat must be less than 100g/liter; non-flat, High Gloss must be less than 150g/liter).**
 - (a) Grade: Premium
 - (b) Finish (shop Applied): Manufacturer's standard finish with performance requirements comparable to AWI System TR-6 catalyzed polyurethane or UV catalyzed polyester.
 - (c) Staining: As selected by Architect approved by Agency from manufacturer's full range.
 - (d) Effect: Open-grain finish.

- (e) Sheen: Satin-medium rubbed effect.
- 5. Vision Lights
 - (a) Non-Fire Rated Doors: Tempered glass ASTM C 1048, Condition A (uncoated), Type I (transparent glass, flat), Class 1 (clear), Quality Q3 (glazing), Kind FT (fully tempered), ¼ inch thick.
 - (b) Fire Rated Doors: Use wired glass with a maximum of 100 sq. inches.
 - (c) Vision Lite Frames: Wood veneer (to match door veneer) vision lite frame, appropriate for use in fire rated doors, nominal size as indicated in Door Schedule.
- 6. Astragals
 - (a) Provide surface mounted astragal at all double doors. Coordinate type for required rated doors/frames and closers. Provide door coordinator(s) as required.
- 7. Doors to be coordinated with requirements for security system, as required by each project.

C. SUGGESTED MANUFACTURERS

- 1. Marshfield Door Systems
- 2. Eggers Industries, Architectural Door Division
- 3. Mohawk Flush Wood Doors, Inc. – Wood Stave Core Door or 45/60/90 Minute Fire Door
- 4. Or approved equal.

End of Section

SECTION 084236 - GLASS DOORS AND PARTITIONS

A. QUALITY ASSURANCE

- 1. Provide systems, including anchorage, capable of withstanding required loads without structural failure, deflection exceeding specified limit, support components transferring stresses to glazing, and glazing-to-glazing or glazing-to-support contact as determined by structural analysis.
- 2. Clear Glass: ASTM C 1048, Kind FT (fully tempered), Condition A (uncoated surfaces), Type I (transparent), Class 1 (clear) requirements. Provide products of thickness indicated that have been tested for surface and edge compression according to ASTM C 1048 and for impact strength according to CPSC 16 CFR, Part 1201 for Category II materials. Provide distraction markings.

B. SUGGESTED MANUFACTURERS: 1) CRL Laurence 2) Blumcraft 3) OR Approved Equal

End of Section

SECTION 087100 - DOOR HARDWARE

A. QUALITY ASSURANCE

- 1. Hardware shall be suitable and adapted for its required use and shall fit its designated location. Should any hardware as shown, specified or required fail to meet the intended requirements or require modification to suit or fit the designated location, determine the correction or modification necessary and notify the Architect in ample time to avoid delay in the manufacture and delivery of hardware.
- 2. For fire rated openings provide hardware complying with NFPA Standard No. 80 requirements of authorities having jurisdiction.
- 3. Barrier Free Requirements: Maximum pressure applied to the latch area to open exterior doors shall not exceed fifteen (15) pounds. Interior doors which have a self-closing feature shall require pressure not to exceed five (5) pounds.

B. FINISHES

- 1. Hardware finishes shall meet in all respects the requirements of the U.S. Bureau of Standards for the following:
 - (a) US 28 Satin anodized aluminum
 - (b) US 32D Satin stainless steel
 - (c) NOTE: A single finish should be selected and used uniformly throughout the facility.

C. REQUIREMENTS

- 1. All doors with locksets shall be keyed under a Grand Master and Tenant Master System.
- 2. All existing door hardware shall be ADA compliant. If existing door hardware is not ADA compliant, it shall be replaced with new ADA compliant hardware.
- 3. Hardware shall be coordinated with security requirements for each project. Hardware not contained in this section should be submitted to OGS for their comment.

D. TYPE AND MANUFACTURER

1. Aluminum Entrance Doors (Pairs):

Hinges: Quantity: 3 pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Door Closer: a) Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

b) Power Assisted Door operators shall be installed on all main entry doors (see section 08700 SectionE)

Door Pulls: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Push Bars: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Exit Devices: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Flush Bolts: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

2. Aluminum vestibule doors: Same as entrance doors

3. Public Toilet Doors:

Hinges: Quantity: 1 ½ pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Door Closers: Quantity: 1 ½ pair. a) Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications. b) Power Assisted Door operators shall be installed on all toilet room doors (see section 08700 Section E)

Push Plate: 1). Size: 14" x 18". 2). Gauge: 16. 3). Material: Stainless Steel

Door Pull: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specification.

Kick Plate: 1). Size: 8" x 2" x less than door width. 2). Material: Stainless Steel

Knob Bumper: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Lock Set: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications

4. Staff Toilet Doors:

Hinges: Quantity: 1 ½ pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specification.

Door Closer: 1. Manufacturer and Series: Commercial grade, heavy-duty use as per manufacturer specifications.

2. Power Assisted Door operators shall be installed on all toilet room doors.

Knob Bumpers: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Push-Button Lock: 1). Manufacturer: Simplex Security Systems, Inc., commercial grade, heavy-duty use as per manufacturer specifications

2). NOTE: Specify manufacturer of removable core cylinder.

5. Stair Doors

Hinges: Quantity: 1 ½ pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specification.

Door Closer: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications

Knob Bumper: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications

Lockset: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Exit Device: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

6. Corridor Doors to Offices

Hinges: 1). Quantity: 1 ½ pair. 2). Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Door Closer: Manufacturer and Series: Commercial grade, heavy-duty use as per manufacturer specifications

Lockset: Manufacturer and Series: Commercial grade, heavy-duty use as per manufacturer specifications

Lever Handle Lockset: Manufacturer and Series: Commercial grade, heavy-duty use as per manufacturer specifications

Knob Bumper: Manufacturer and Series: Commercial grade, heavy-duty use as per manufacturer specifications

7. Private Office Doors

Hinges: Quantity: 1 ½ pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Lockset: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Knob Bumpers: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Coat Hooks: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

8. Closet Doors

Hinges: Quantity 1 ½ pair. Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Lockset: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

Knob Bumper: Manufacturer: Commercial grade, heavy-duty use as per manufacturer specifications.

9. Door hardware functions shall be passage sets, classroom, privacy or storage functions as required or otherwise specified on design drawings. All door hardware shall be commercial grade and meet ADA requirements.

E. POWER ASSIST OPERATORS

1. Quality Assurance

- (a) Fire-rated and emergency exit openings: Provide door operators that comply with NFPA for requirements for doors as emergency exits, and that do not interfere with fire ratings.
- (b) BHMA Standard: Provide power door operators that comply with applicable requirement of ANSI A156.10 (BHMA 1601, Power Operated Pedestrian Door Standard).
- (c) UL Standard: Provide power door operators that comply with UL 325.

2. General Door Operator Requirements:

- (a) Capacity: provide operators of the size recommended by the manufacturer for the door size, weight and movement, for condition of exposure; and for long-term, maintenance-free operation under normal traffic load for the type of occupancy indicated.
- (b) Exposed housing for operators: Minimum 0.0598-inch (16 gauge) thick formed sheet steel cover with provisions for maintenance access. Provide with fasteners concealed with door is in closed position. Provide with manufacture's standard prime coat finish for field painting.
- (c) Adjustment features: operators shall be fully adjustable. Provide adjustment for opening, closing and checking speeds, as well as length of time the door remains open.
- (d) Electro-Mechanical Operator for Swinging Doors: Provide the manufacturer's standard electromechanical unit with doors power-opened and spring-closed, with the closing speed controlled mechanically by gear train and dynamically by braking action of electric motor and, with easy manual operation including spring closing with power off. Provide operator action as indicated and mounting as indicated below:
 - 1). Operator Mounting Type: Surface-mounted overhead operator
 - 2). Fire Door Accessories: Provide fire door accessory package consisting for UL-listed latch mechanism power reset box, and caution labels for fire-resistance rated doors indicated for electro-mechanical operation.
- (e) Card Reader Access: Coordinate with security hardware vendor as necessary to provide complete operation for function/security as required. Provide operator with auxiliary contacts as necessary for security vendor.
- (f) Door to be activated by remote mounted ADA compliant controller.

All manufacturers listed are suggested or approved equal

End of Section

DIVISION 9 – FINISHES

SECTION 092900 - GYPSUM BOARD

A. ENVIRONMENTAL CRITERIA

- 1. *Steel studs, track, and miscellaneous framing shall contain a minimum of 35% (combined) post-industrial/post-consumer recycled content (the percentage of recycled content is based on the weight of the component materials). Gypsum wallboard shall contain "synthetic" gypsum produced with a minimum of 75% post-industrial recycled content. If required, certification of recycled content shall be in accordance with the requirements found in the Request for Proposal, Room Data Sheets, or Lease Work Letter.*

B. MATERIALS

- 1. Studs, tracks and furring: ASTM C-645, 25 gauge galvanized steel, minimum 3 5/8" wide, at 16" on center high recycled content.
- 2. *Gypsum wallboard shall contain "synthetic" gypsum produced with a minimum of 75% post-industrial recycled content.*
- 3. Fire resistant gypsum board: ASTM C-36 5/8" thick, Type X, UL listed and bearing listing marking, long edges tapered.
- 4. Moisture resistant gypsum board: ASTM C-630, 5/8" thick, long edges tapered.
- 5. Moisture and fire-resistant gypsum board, ASTM C-630, 5/8" thick, Type X, UL listed and bearing listing mark, long edges tapered.
- 6. Metals and trim accessories: Galvanized steel in accordance with gypsum board manufacturer's recommendation. Alternate: Paper face beads and trim.
- 7. Joint tapes: ASTM C-475, gypsum board manufacturers.
- 8. *Joint compound: ASTM C-475, Joint Compound: Factory premixed vinyl base product, free of antifreeze vinyl adhesives, preservatives, biocides and other slow releasing compounds.*
- 9. Sound Batts: Un-faced fiberglass insulation "Sound Attenuation Batts" by Owens Corning or approved equal.
- 10. Acoustical Sealant: USG "Acoustical Sealant" or "Tremco Acoustical Caulking" of Tremco Mfg. Co. or approved equal.
Gypsum Manufacturers: (a) United States Gypsum (b) National Gypsum (c) Or approved equal

End of Section

SECTION 093013 – CERAMIC TILING

- A. GENERAL
1. Installation shall comply with ANSI 108.1 - 108.10 as applicable for type and method of tile installation.
 2. Wall tile shall be from floor to ceiling.
 3. Ceramic base tile shall be covered.
 4. *Adhesive to have a VOC limit of 130 grams/liter or latest requirement of South Coast Rule #1168 by South Coast Air Quality Management District.*
 5. Tile and Base Manufacturer: Both tile and base must be supplied by the same manufacturer.
 6. Install with 1/2" cement board or waterproof gypsum board at shower areas.
 7. Install all ceramic tile in accordance with the recommendations contained in Handbook for Ceramic Tile Installation of the Tile Council of America, Inc. latest edition.
- B. PORCELAIN TILE
1. Tile should carry a Porcelain Enamel Institute (PEI) rating for abrasion of Class 4+ - Heavy to Extra Heavy Traffic.
 2. Tile shall be impervious having an absorption rate between 0.0 – 0.5%.
 3. Tile should have a through body color.
 4. Matt or non-skid finish for floor application.

End of Section

SECTION 095300 - ACOUSTIC PANEL CEILINGS

- A. QUALITY ASSURANCE
1. Fire rated assembly of complete ceiling system, where required by applicable local building code, shall comply with applicable requirements "UL Fire Resistance Index" and with "UL Design Numbers" corresponding to the assembly.
 2. Main and cross runners, wall angle or channel shall be steel with manufacturer's standard smooth matte white painted finish, containing recycled contents if available.
- B. REFERENCES
1. The metal suspension system shall meet the requirements of ASTM C635 Metal Suspension Systems for Acoustical Tile and Lay-in Panel Ceilings.
- C. SUSPENSION SYSTEM MATERIALS
1. Suspension System:
 - (a) Type ID/EG: Intermediate duty, direct hung, exposed grid (minimum load carrying capability of main runner; 12 lb./lin. ft.)
 - (b) Type HD/EG: Heavy duty, direct hung, exposed grid (minimum load carrying capability of main runners; 16 lb./lin. ft.)
 - (c) Suggested Manufacturers:
 - 1). USG DXF/DXLF (9/16" wide)
 - 2). Armstrong Silhouette XL 9/16" Bolt Slot with 1/8" reveal.
 - 3). Or approved equal.
 2. Acoustical Ceiling Tile for Offices, Conference Rooms and Corridors:
 - (a) Minimum requirements: Furnish products that meet or exceed the following requirements:
 - 1). Class A Mineral Fiber panel, 5/8" thick, 24"x24" and 24" x 48"
 - 2). Flame spread rating (ASTM E84): Class A 25 or less
 - 3). NRC: 90
 - 4). Minimum AC 170
 - 5). Minimum CAC 35
 - 6). Light reflectance: .75% (LR-1) or more.
 - (b) Standard finish: Manufacturer's standard factory applied white paint finish with mold and mildew inhibitor
 - (c) *37%-75% post recycled content*
 - (d) Suggested Manufacturers: 1) USG 2) Armstrong 3) Or approved equal
 3. Ceiling tile for computer/server rooms.
 - (a) USG Clean Room Clima Plus or equal
 4. Acoustic Ceiling Tile for Special Use Areas:
 - (a) Landlord's architect to provide separate submittal for approval by OGS prior to use.

End of Section

SECTION 096513 - RESILIENT BASE AND ACCESSORIES

A. GENERAL

1. Installation shall be in accordance with manufacturer's specifications.
2. Materials shall comply with ASTM E 648 and ASTM E 662.
3. *Adhesives to have a VOC limit of 150 grams/liter or latest requirement of South Coast Rule #1168 by South Coast Air Quality Management District.*
4. *Leveling Compound: Low VOC, latex type as recommended by manufacturer of tiles.*
5. *Use of base with recycled content.*

B. MATERIALS

1. Cove Base Materials:
 - (a). Size: 4" high
 - (b.) Thickness: 1/8"
 - (c). Length: Nominal 4 foot
 - (d). Exterior Corners: Jobsite formed
 - (e). Interior Corners: Jobsite formed
2. Base Manufacturers: (a) Armstrong (b) Roppe (c) Or approved equal

End of Section

SECTION 096519 – RESILIENT TILE FLOORING

A. GENERAL

1. Installation shall be in accordance with manufacturer's specifications.
2. Materials shall comply with ASTM E 648 and ASTM E 662.
3. *Adhesive to have a VOC limit of 150 grams/liter or latest requirement of South Coast Rule #1168 by South Coast Air Quality Management District.*
4. *Leveling Compound: Low VOC, latex type as recommended by manufacturer of tiles.*
5. *Use of VCT with recycled content is encouraged.*

B. MATERIALS AND MANUFACTURERS

1. Tile Materials: (a) Size: 12"X12" tiles. (b) Thickness: 1/8". (c) Class: 2 (through pattern tile). (d) Wear Surface: smooth.
2. Suggested Manufacturers: (a) Armstrong's "Standard Excelon" (b) Or approved equal

End of Section

SECTION 096813 - TILE CARPETING

A. GENERAL

1. Install tile carpeting and miscellaneous materials in accordance with CRI 104, Section 14 and with tile carpeting manufacturer's written installation instructions.
 - (a) Maintain dye lot integrity or specify mergeable dye lot materials. Do not mix dye lots in the same area.
3. Carpeting must be full glue application or approved dry adhesive.
4. References:
 - (a) AATCC - The American Association of Textile Chemists and Colorists, Research Triangle Park, NC 27709, www.aatcc.org.
 - (b) CRI – Carpet and Rug Institute, Dalton, GA 30722-2048, www.carpet-rug.com.
 - (c) Carpet tile must comply with the Carpet and Rug Institutes Indoor Air Quality Program (ASTM-D-5116)
5. *Utilize adhesives, which are CRI Indoor Air Quality Green Label Certified.*
6. Flammability Certification:
 - (a) Radiant Panel Flooring Flammability Test: NFPA 253. Class I, Minimum 0.45 watts per sq. centimeter.
 - (b) Methenamine Tablet Test: DOC-FF-1-70 and ASTM D 2859. Meet the "Standards for the Surface Flammability of Carpets".
 - (c) Smoke Density Test: NFPA 258 and ASTM E 662. Specific optical density (DM) of 450 or less (flaming).
7. Dimensional Stability: Aachen Method DIN 54318, 0.2 percent or less.
8. Obtain each type of carpet tile from one source and by a single manufacturer.
9. Warranty including the following:
 - (a) Abrasive wear warranty of 10% wear maximum over a 10-year minimum period from date of installation.
 - (b) Lifetime warranty coverage for tuft bind, static, delamination and edge ravel.
 - (c) Backing shall be warranted against cupping, doming, delamination and squareness for a minimum period of 10 years from date of installation.

B. PRODUCTS/SIZE SELECTION

- 1) Subject to compliance with requirements, provide products of the following:
- 2) Carpet tile including products from the following manufacturers:
 - (a) Mohawk Carpet, Kennesaw, GA 30144, (800) 554-6637, www.mohawkgroup.com

- (b) Shaw Contract, Calhoun, GA 30701, (800) 241-4014, www.shawcontract.com
 - (c) Mannington Commercial Carpet, Calhoun, GA 30703, (800) 241-2262 www.mannington.com
 - (d) Milliken Carpet, LaGrange, GA 30240 (800) 528-8453, www.milliken地毯.com
 - (e) Or approved equal
- 3) All carpet tile shall meet the following standards:
- (a) Carpet Tile: carpet module size available (24" x 24", 18" x 36", 9"x36", 12"x48, other).
 - (b) Face Weight: 20 oz.
 - (c) Gauge: 1/8
 - (d) Colorfastness to Light: AATCC 16, Option E. Minimum rating of 4 on grey scale after 80-hours exposure for 100% solution Dyed or Cationic Nylon.
 - (e) Colorfastness to Crocking: AATCC 165. Minimum rating of 4 wet and dry for 100% solution Dyed or Cationic Nylon.
 - (f) Appearance Retention Rating: ASTM D 5252. CRI TM-101 "Severe" rating.
 - (g) Stain Resistance: AATCC 175. Rating of 8 or better. Manufacturer Stain Warranty.
 - (h) Static Resistance: AATCC 134. 3.5 kv or less, at 70 degrees F and 20 percent RH.
 - (i) Tuft Bind: ASTM D 1335. Average pounds of force not less than 12 pounds.
 - (j) Maximum Pile Height (inches): .156.
 - (k) Minimum Pile Thickness (inches): .130.
 - (l) Minimum Stitches per Inch: 8.3.
 - (m) Fiber Type: 100 percent Type 6 or 6.6 Nylon.
 - (n) Dye Method: Yarn Dyed, Injection Dyed, or Solution Dyed.
 - (o) Minimum density: 5000
 - (p) Minimum pattern repeat-size subject to approval by owner (overprinting not acceptable). Type A Tile Carpeting: Tufted, Textured Loop Pile (Random Pattern).
 - (q) Backing System: Manufacturer's standard vinyl-free or thermoplastic polyolefin compound with fiberglass reinforced layer-backing or integral-cushion thermoplastic backing system, must be recyclable and contain recycled content, maintaining a 100 percent moisture barrier between secondary backing and the floor substrate.
 - (r) Option: Backing made from 100% reclaimed thermoplastic content.
 - (s) Option: LEED Building Criteria: Comply with testing and product requirements of the Carpet and Rug Institute "Green Label Plus" program.
 - (t) Minimum NSF Gold certification
 - (u) Minimum Cradle to Cradle Silver certified
 - (v) Must have Declare label, red list compliant
- 4) Miscellaneous
- (a) Trowel-able: Leveling and Patching Compounds: Latex-modified Portland cement based, or blended hydraulic-cement-based formulation provided or approved by tile carpeting manufacturer for application on substrate surface and grade level.
 - (b) Resilient Edge Strips: Not less than one-inch wide, tapered bullnose edge, thickness and color as selected.
 - (c) Adhesives: Tile carpeting manufacturer's recommended water-resistant materials formulated for application on substrate surface and grade level.
 - (d) Low VOC Flooring Adhesive and Joint Materials: Tile carpeting manufacturer's recommended water-resistant materials formulated for low VOC (VOC Limit 50g/L less water) and for application on substrate and grade level.
 - (e) Cleaning Solvents: Low toxicity, and a flash point in excess of 100 degrees F.
 - (f) Wood Floor Primer: Tile carpeting manufacturer's recommended type.
 - (g) Liquid Floor Stripper: Tile carpeting manufacturer's recommended type.
 - (h) Metal Edge Strips: Extruded aluminum, mill finish; butt type for concealed anchorage; countersunk stainless-steel fasteners, with anchors suitable for substrate surface.

C. EXECUTION

1. The persons installing the tile carpeting and their Supervisor shall be experienced in carpeting installation, including the requirements of the tile carpeting manufacturer. Examine surfaces scheduled to receive tile carpeting for defects that will adversely affect the proper installation. Do not proceed until unsatisfactory conditions are corrected.
2. Install pattern parallel to walls and borders.
3. Cut and fit tile carpeting neatly around projections through floor and to walls and other vertical surfaces.
4. Bind or seal cut edges as recommended by the tile carpeting manufacturer.
5. Stagger joints of tile carpeting so tile carpeting grid is offset from access flooring panel grid.
6. Install edge strips where tile carpeting terminates at other floor coverings or finishes. Use one full length piece where possible. Where splicing cannot be avoided, butt ends tight and flush.

7. Upon completion of the tile carpeting installation, immediately remove spots and smears of excessive adhesive from tile carpeting with cleaning solvent. Remove loose pieces of face yard with sharp scissors.
8. Place usable remnants of tile carpeting in an area designated by the Director's Representative.
9. Remove waste materials and tools.
10. Upon completion, thoroughly vacuum clean carpeted areas.
11. After each area of tile carpeting has been installed, protect from soiling and damage.

End of Section

SECTION 096816 - SHEET CARPETING

A. GENERAL

1. References:
 - (a) AATCC - The American Association of Textile Chemists and Colorists, Research Triangle Park, NC 27709, www.aatcc.org.
2. CRI – Carpet and Rug Institute, Dalton, GA 30722-2048, www.carpet-rug.com
3. Flammability Certification:
 - (a) Radiant Panel Flooring Flammability Test: NFPA 253. Class I, Minimum 0.45 watts per sq centimeter.
 - (b) Methenamine Tablet Test: DOC-FF-1-70 and ASTM D 2859. Meet the "Standards for the Surface Flammability of Carpets".
<https://www.gpo.gov/fdsys/pkg/CFR-2012-title16-vol2/xml/CFR-2012-title16-vol2-part1630.xml>
 - (c) Smoke Density Test: NFPA 258 and ASTM E 662. Specific optical density (DM) of 450 or less (flaming).
4. Colorfastness to Light: AATCC 16, Option E. Minimum rating of 4 on grey scale after 80 hours exposure.
5. Colorfastness to Crocking: AATCC 165. Minimum rating of 4 wet and dry.
6. Appearance Retention Rating: ASTM D 5252. CRI TM-101 "Severe" rating.
7. Stain Resistance: AATCC 175. Rating of 8 or better.
8. Static Resistance: AATCC 134. 3.5 kv or less, at 70 degrees F and 20 percent RH.
9. Tuft Bind: ASTM D 1335. Average pounds of force not less than 12 pounds.
10. Installer Qualifications: The persons installing the sheet carpeting and their Supervisor shall be experienced in carpeting installation, including the requirements of the sheet carpeting manufacturer,
11. Manufacturer's Warranty: Minimum 15-year wear warranty.
12. **Optional: LEED Submittals:**
 - (a) **Indoor Environmental Quality: Indicate compliance with testing and product requirements of the Carpet and Rug Institute's "Green Label Plus" program. Adhesive: Include printed statement of VOC content and chemical components.**
 - (b) **Recycled Content: Indicate recycled content; include minimum percentage of pre-consumer and post-consumer recycled materials.**
 - (c) **Local/Regional Materials: Indicate sourcing and manufacturing locations.**

B. PRODUCTS

1. SHEET CARPETING MANUFACTURERS
 - (a) Mohawk Carpet, Kennesaw, GA 30144, (800) 554-6637, www.mohawkgroup.com
 - (b) Shaw Contract, Calhoun, GA 30701, (800) 241-4014, www.shawcontract.com
 - (c) Mannington Commercial Carpet, Calhoun, GA 30703, (800) 241-2262 www.mannington.com
 - (d) Milliken Carpet, LaGrange, GA 30240 (800) 528-8453, www.millikencarpet.com
Or equal.
2. Type A Sheet Carpeting: Tufted, Textured Loop Pile (Random Pattern):
 - (a) Fiber Type: 100 percent Type 6.6 Nylon.
 - (b) Minimum Face Yarn Weight: 20 oz.
 - (c) Maximum Pile Height (inches): .156.
 - (d) Minimum Pile Thickness (inches): .130.
 - (e) Minimum Stitches per Inch: 8.3.
 - (f) Minimum Gauge: 1/8.
 - (g) Minimum Density: 5000.
 - (h) Dye Method: Yarn Dyed, Injection Dyed, or Solution Dyed.
 - (i) Backing: 1) Primary- Polypropylene 2) Secondary- Synthetic
 - (j) Width: 12 feet.
 - (k) **Optional: LEED Building Criteria: Comply with testing and product requirements of the Carpet and Rug Institute's "Green Label Plus" program.**

3. Carpet Cushion: Sheet carpeting manufacturer's recommended cushion material for substrates and specified sheet carpeting types.
4. Resilient Edge Strips: Not less than one-inch wide, tapered bullnose edge, thickness and color as selected.
5. Metal Edge Strips: Extruded aluminum, mill finish; butt type for concealed anchorage; countersunk stainless-steel fasteners, with anchors suitable for substrate surface.
6. Trowel-able Leveling and Patching Compounds: Latex-modified Portland cement based or blended hydraulic-cement-based formulation provided or approved by sheet carpeting manufacturer for application on substrate surface and grade level.
7. Adhesives: Sheet carpeting manufacturer's recommended water resistant materials formulated for application on substrate surface and grade level.
8. ***Low VOC Flooring Adhesive and Joint Materials: Flooring manufacturer's recommended water-resistant materials formulated for low VOC (VOC Limit 50g/L less water) and for application on substrate and grade level.***
9. Seam Sealer: Sheet carpeting manufacturer's recommended type
10. Cleaning Solvents: Low toxicity, and a flash point in excess of 100 degrees F.
11. Wood Floor Primer: Sheet carpeting manufacturer's recommended type.
12. Liquid Floor Stripper: Sheet carpeting manufacturer's recommended type.

C. EXECUTION

1. Examine surfaces scheduled to receive sheet carpeting for defects that will adversely affect the proper installation. Do not proceed until unsatisfactory conditions are corrected.
2. Install sheet carpeting in accordance with approved seam diagram. Match sheet carpeting pattern at seams.
3. Seaming: Treat edges cut for seaming with seam sealer. Apply the sealer along the edge of the sheet carpeting at the point where the face yarn goes into the back. Immediately remove excess sealer from face of pile with cleaning solvent recommended by seam sealer manufacturer.
4. Cut and fit sheet carpeting neatly around projections through floor and to walls and other vertical surfaces.
5. Direct Glue-Down Method: Apply adhesive in accordance with manufacturer's instructions. Broom or roll sheet carpeting to remove air bubbles and insure bond.
6. Stairs and Steps: Secure sheet carpeting by anchorage methods recommended by sheet carpeting manufacturer.
7. Install edge strips where sheet carpeting terminates at other floor coverings or finishes. Use one full length piece where possible. Where splicing cannot be avoided, butt ends tight and flush.
8. Upon completion of the sheet carpeting installation, immediately remove spots and smears of excessive adhesive from sheet carpeting with cleaning solvent. Remove loose pieces of face yard with sharp scissors.
9. Remove all waste materials and tools.
10. Upon completion, thoroughly vacuum clean carpeted areas.
11. After each area of sheet carpeting has been installed, protect from soiling and damage.

End of Section

SECTION 096913 - RIDGID-GRID ACCESS FLOOR (BOLTED STRINGER)

- A. Quality assurance:
 1. Installer Qualifications: Firm approved by access flooring manufacturer and that has successfully installed access flooring systems of a scope similar to that of this project.
- B. PERFORMANCE REQUIREMENTS (MINIMUM)
 1. Panels
 - (a) Panels shall have a maximum electrical resistance of 1 ohm or less from the top edge of the panel, less surface covering and pedestal pad, to the understructure.
 - (b) Concentrated Load: Panel shall support a 1000 lb. load at any location, with top surface deflection not to exceed 0.100", and a permanent set not to exceed 0.010".
 - (c) Uniform Load: Panel shall support 250 lb. per square foot load, with a maximum top surface deflection not to exceed 0.060" and a permanent set not to exceed 0.010".
 - (d) Ultimate Load: 3000 lbs. minimum at weakest point.
 - (e) Rolling Load: Panels shall withstand a rolling load of 800 lbs. applied through a 3" dia. x 1-13/16" wide phenolic caster for 10 passes. Permanent top surface set shall not exceed 0.040". Panels shall withstand a rolling load of 600 lbs. applied through a 6" diameter x 1-1/2" wide hard rubber-surfaced wheel for 10,000 cycles over the same path. Permanent top surface set shall not exceed 0.020".
 - (f) Impact Load: A 150 lb. load dropped from 36" onto a one-inch square indenter shall not cause system failure.
 - (g) ASTM E 84: Flame spread of 5 or less and smoke development of 25 or less.

2. Pedestals
 - (a) Axial Load: Pedestal assembly shall provide a 5000-lb. axial load without permanent deformation.
 - (b) Overturning Moment: Pedestal assembly shall provide an average overturning moment of 1000 in-lbs. when glued to a clean sound, uncoated concrete surface.
3. Stringers
 - (a) Mid-span Concentrated Load: Stringer shall be capable of withstanding a concentrated load of 450 lbs. placed in the mid-span stringer center on a one square inch area using a round or square indenter without exceeding a permanent set of 0.010" after load is removed.
4. Floor Panels
 - (a) Manufacturer's standard 24" x 24" nominal size, interchangeable, welded steel construction floor panels easily placed and removed by a portable lifting device.
 - (b) Chemically clean bottom surfaces and edges of floor panels. Prime and paint with manufacturer's conductive paint. Do not paint top surface of panels.
 - (c) Floor Covering: Finish top of each floor panel with one (1) piece of high pressure laminated plastic, 1/8" nominal thickness, of type specifically designed and manufactured for use on computer room floors. Edge each panel on four (4) sides with manufacturer's standard shape, extruded, conductive, vinyl plastic edge trim.
 - (d) Carpet Covering: Provide plain panel factory finished steel ready to accept carpet tiles.
5. Grid System
 - (a) Manufacturer's standard steel stringers, interlocking with pedestal heads to form a grid pattern for supporting each edge of each floor panel, and with a pedestal under each corner of each floor panel.
 - 1). Rigid grid with stringers securely locked or bolted to pedestal heads.
 - 2). Rigid conductive vinyl pads for bearing surfaces of stringers.
 - (b) Finish of Steel: Galvanized or manufacturer's standard primer and paint.
6. Accessories
 - (a) Cutouts: Fabricate floor panels with cutouts for cables and grilles at locations shown. Trim cutouts with plastic edging and provide foam rubber pad for sealing and protection of cables. Provide additional support if required to satisfy performance requirements.
 - (b) Grilles and Dampers: Manufacturer's standard load-bearing vent grilles and dampers in floor panels at locations shown. Isolate grilles and dampers from metal-to-metal contact. Reinforce floor panel units if required to satisfy performance requirements. Units shall not project more than 0.125 inch above floor finish.
 - (c) Perforated Floor Panels: Computer room floor strength perforated floor panels, with dampers, at locations as required by design. Must be interchangeable with solid panels.
 - (d) Plenum Dividers: Minimum 0.064-inch thick aluminum or 16-gauge galvanized steel sheet.
 - (e) Sealing Mastic: Mastic recommended by flooring manufacturer.
 - (f) Vertical Closures (Fascia): Minimum 0.080-inch thick aluminum side closure plates.
 - (g) Ramps: Units of the same basic performance and construction requirements as the flooring system. Cover ramps with floor covering to match access floor. Provide non-slip pads on top surface of ramp covering. Cut panels will not be accepted unless warranted by manufacturer to have equivalent performance as required by specifications for full panels.
 - (h) Steps: Fabricated of same basic materials as floor panels, with Non-slip aluminum nosing on steps, unless otherwise shown.
 - (i) Railings: Manufacturer's standard satin-finished aluminum post and rail type handrails, with end caps, wall and floor flanges, plates and anchorages.
 - (j) Panel Lifting Device: Provide a minimum of two double, suction type, panel-lifting device for hard surfaced panel installation.
7. Attic Stock

Attic stock for individual rooms/floors of buildings shall be provided for the following items:

 - (a) Grid system components of each style used.
 - (b) Standard panels for each flooring finish
 - (c) Cut panels for each finish, including grommets if required

The quantity of attic stock for individual rooms or building with one or more floors of raised flooring or individual rooms shall be calculated as follows:

 - (a) Standard panels for each flooring finish:
 1. Individual Rooms: 1 panel for each 100 USF of raised floor, minimum of one
 2. Building with one or more floors: 1 panel for each 5,000 USF of raised floor, minimum of two.
 - (b) Perforated Panels for each floor finish: 5% of initial design requirement.
 - (c) Cut panels for each finish:
 1. Individual Rooms: 2 panels for each 100 USF, minimum of two.
 2. Buildings with one or more floors: 2% of the number of cut panels, minimum of two.

- (d) Grid components for each raised floor type:
 - 1. Individual Rooms: sufficient components to support one panel for every 100 USF, minimum of one.
 - 2. Buildings with one or more floors: sufficient components of support one panel for every 5,000usf, minimum of two.
- 8. Manufacturers: (a) Tate Concore 3000 bolted stringer (b) Or approved equal

End of Section

SECTION 097200 – VINYL COATED FABRIC WALLCOVERING

A. GENERAL:

- 1. Wall covering to meet ASTM E-84 Tunnel Test with the following flame spread scale and smoke development rate:
 - (a) Flame Spread Scale: 0 to 25 (b) Smoke Development Rate: 0 to 25
- 2. Wall covering shall have a vinyl surface.
- 3. Type II (heavy duty): Total weight 22 oz./sq. yd. minimum
- 4. Material width: 54"
- 5. Fabric Backing: Drill or Polyester Osnaburg
- 6. Performance and Physical Properties:
 - (a) Tensile breaking strength (minimum): 50 lbs. X 50 lbs.
 - (b) Tear Strength (minimum): 25 x 25 scale reading
 - (c) Abrasion Resistance: 300 double rubs
 - (d) Meets ASTM D 1308 with no appreciable effect of staining
 - (e) Meets ASTM D 1308b with no fading due to strong cleaning solution
 - (f) Meets ASTM D 751-79 with adhesion of coating to fabric being a minimum of six lbs. per two-inch width
- 7. Pattern and color: To be selected by Tenant.
- 8. Adhesive, primer/sealer: type recommended by wall covering manufacturer. All materials must be mildew-resistant and non-staining to the wall covering.
- 9. Corner Guards are to be installed 48" above the base on all exterior corners and columns (See Section 102613).
- 10. Manufacturers: (a) Korseal Wall covering(B.F.Goodrich) (b) Genon (c) J.M.Lynn (d) Wolf Gordon Inc. (e) Or approved equal

End of Section

SECTION 099123 INTERIOR PAINTING AND FINISHING

A. GENERAL APPLICATION

- 1. Paint all existing presently painted surfaces, two (2) coats.
- 2. Paint all new wallboard, three (3) coats, one (1) prime and two (2) finish).
- 3. Paint all ferrous metals, two (2) coats, (one (1) prime and one (1) finish).
- 4. *Wooden top caps, one (1) coat stain, two (2) coats water emulsion or water based urethane.*
- 5. Provide primers and undercoat paint produced by the same manufacturer as the finish coats.
- 6. *All paint to be Low or No VOC. Maximum VOC limit for Interior Coatings: Non-flat 100; Flat 50; or latest Green Seal standard for paints.*
- 7. All painting and application shall be as per manufacturer's instructions.

NOTE: No painting required for manufacturer's pre-finished paint surfaces or newly hung ceilings.

B. SUGGESTED MANUFACTURERS FOR DESIGNATED SURFACES

- 1. Gypsum Drywall (Ceilings): Lusterless (flat) emulsion finish, two coats over primer.
 - a. *Primer: Pristine Eco Spec. Latex Primer by Benjamin Moore, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Primer B28W02600 or equal.*
 - b. *1st and 2nd Finish Coat: Pristine Eco Spec. Latex Flat #219 by Benjamin Moore, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Paint Flat B30W12651, or equal.*
- 2. Gypsum Drywall (Walls Tenant Area): Eggshell finish; two coats over primer.
 - a. *Primer: Pristine Eco Spec. Latex Primer #231 by Benjamin Moore, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Primer B28W02600, or equal.*
 - b. *1st and 2nd Finish Coat: Pristine Eco Spec Latex Eggshell #223 by Benjamin Moore, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Eggshell B20W12651 or equal.*
- 3. Gypsum Drywall – polomyx and aqua fleck.
 - a. Primer: One coat Benjamin Moore Interior Latex Primer/Sealer #231, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Primer B28W02600.or equal.
 - b. *1st and 2nd Finish Coat: Eco Spec Semi-gloss #224 by Benjamin Moore, Sherwin William Pro Mar 200 Zero VOC Interior Latex Semi-Gloss B31W02651 or equal.*

- c. For painting over Polymyx substrates: 1ct Sherwin Williams Extreme Bond Primer B51-150, 2cts Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Semi-Gloss B31W02651
- 4. Ferrous Metal (including factory primed hollow metal doors and frames): Semi-gloss acrylic latex, two coats over primer.
 - a. Primer: Alkyd metal primer M06 by Benjamin Moore, Sherwin Williams Hi Solids Alkyd Metal Primer B50NZ0002, or equal.
*Alternate: Acrylic metal primer, M04 by Benjamin Moore, Sherwin Williams Pro Industrial DTM Acrylic Primer Finish B66W00011, or equal.
 - b. **1st and 2nd Finish Coat: Eco Spec Semi-gloss #224 by Benjamin Moore, Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Semi-Gloss B31W02651, or equal.**
- 5. Painted Wood Trim and Doors (Semi-Gloss):
Primer: One coat Benjamin Moore Paste Wood Filler #238, Sherwin Williams MinWax Wood Filler 926-0779, or equal.
 - a. Stain: One coat Benjamin Moore Interior Wood Penetrating Stain #234, Sherwin Williams Wood Classics Interior Oil Stain A49N00202, or equal; color as selected by Architect and approved by OGS.
 - b. **Finish Coat: Two coats Benjamin Moore Urethane water based stays clear #422, Sherwin Williams Wood Classics Waterborne Polyurethane Varnish A68V00091, or equal.**
- 6. CMU/Gypsum/Metal Doors/Trim (Labs & Restrooms)
Primer: Sherwin Williams Pro Mar 200 Zero VOC Interior Latex Primer B28W02600
1 and 2 Finish Coat: Sherwin Williams Paint Shield EPA Approved Microbicidal Coating D12W00051.

End of Section

DIVISION 10 - SPECIALTIES

SECTION 102113 – METAL TOILET COMPARTMENTS

- A. MATERIALS FOR TOILET PARTITIONS AND SCREENS
 - 1. Steel Sheet for Baked Enamel Finish: Prime quality carbon steel, cold rolled, stretcher leveled, galvanized (0.00015" thick galvanized coating on each face) and bonderized.
 - 2. Core Insulation: Manufacturer's standard rot-proof and vermin-proof double-faced honeycomb or corrugated type core material; required in all panels, screens, pilasters and doors.
 - 3. Hardware: Solid forged brass or stainless steel (Type 302 or 304), as indicated below. Stamped, cast alloy, or aluminum extrusions shall not be accepted.
 - (a) Ceiling Hung: Stainless steel, one-piece (no visible joints or seams) flush or offset design, twenty (20) gauge.
 - (b) Hinges: Gravity hinge type, self-closing, concealed within door, fully adjustable, to bring door to rest in thirty (30) degree open position. Hinge brackets solid forged brass or stainless steel, with solid stainless-steel pin and pintels.
 - (c) Latch: Solid forged brass with solid stainless-steel slide.
 - (d) Strike and Keeper: One-piece, solid forged brass or sixteen (16) gauge stainless steel, with rubber bumper mechanically applied and theft proof.
 - (e) Bumper Coat Hook: Solid forged brass, with ferrule held rubber bumper on back of each toilet compartment door.
 - (f) Stirrup Brackets: Fourteen (14) gauge stainless steel or forged brass.
 - (g) Hardware Finishes (select one):
 - 1). On Forged Brass: Heavy chromium plating over nickel over copper. Satin Finish (US26D).
 - 2). On Stainless Steel: No. 4, Satin Finish.
 - 4. Fasteners: Provide exposed fasteners of stainless steel or chromium plated brass, same finish as adjoining metal, theft proof. Provide concealed fasteners of non-corrosive metal.
 - 5. Furnish galvanized steel anchorage devices, complete with threaded rods, lock washers, and leveling adjustment nuts at pilasters, to permit structural connection at floor. Furnish shoe at each pilaster to conceal anchorage.
- B. FABRICATION
 - 1. Minimum Acceptable Metal Gauges
 - (a) Face Sheets for Panels and Screens: Twenty (20) gauge steel sheet.
 - (b) Face Sheets for Doors: Twenty-two (22) gauge steel sheet.
 - (c) Face Sheets for Pilasters: Sixteen (16) gauge steel sheet for baked enamel finish, unless otherwise indicated.
 - 1). For pilasters less than four (4) inches wide - fourteen (14) gauge.
 - (d) Edge Moldings: Eighteen (18) gauge galvanized, bonderized steel.
 - (e) Concealed Reinforcement: Fourteen (14) gauge galvanized steel for tapping and twelve (12) gauge galvanized steel for anchoring devices.

- C. STEEL FRAMING FOR SUPPORT OF CEILING HUNG TOILET
1. Light steel framing (ASTM A36) and hanger for support of ceiling hung toilet compartments shall consist of adequately sized steel channels extending between walls directly over pilasters and be supported by 1/2" dia. galvanized steel rods. Rods shall be securely attached to structural slab above and securely attached to steel channels. Locate rods above every other pilaster. Install light steel framing and hangers prior to installation of suspended ceiling.
- D. SUGGESTED MANUFACTURERS
1. Ceiling Hung Toilet compartments:
 - (a) "Flushung" of Flush Metal Partition Corp. (Metal panels)
 - (b) "Century" of the Sanymetal Products Co. (Metal panels)
 - (c) "Forum CH-700" of the Metpar Co (Resin)
 - (d) Or approved equal.

End of Section

SECTION 102213 - WIRE MESH PARTITIONS

- A. MATERIALS
1. Wire Mesh Partitions
 - (a) Mesh: 1-1/2" diamond-intermediate crimped.
 - (b) Wire: No. 10 W & M gauge.
 - (c) Vertical Channel: 1-1/4" x 5/8" "C" Type with 1/4" bolts.
 - (d) Horizontal Channel: 1" x 1/2".
 - (e) Center Reinforcement: Double: Two 1" x 1/2" CCR channel bolted each side of mesh.
 - (f) Corner Post: 1-3/4" x 1-3/4" x 1/8" angle.
 - (g) Top Reinforcement: 2-1/4" x 1" Channel: Fastened with 1/4" "U" bolts. Approximately 24" on center.
 - (h) Floor Sockets: 1-1/4" x 1-1/4" x 2-1/2" high-ductile iron (weldable).
 - (i) Sliding Door Frame: 1-1/2" x 3/4" channel.
 - (j) Swinging Door Frame: 1-1/4" x 1/2" channel.
 - (k) Hardware: Mortise type lock operated by key outside, recess knob inside. Spring catches on pass windows.
 2. Finish
 - (a) Fabricated units shall be dipped in a cleaning bath.
 - (b) Units shall be polyester powder coated and air dried.
 - (c) Color shall be as selected by the Architect from manufacturer's standard colors.
- B. SUGGESTED MANUFACTURER: 1) Cisco-Eagle 2) Miller Wire Works, Inc.
- 3) Acorn Wire and Iron Works Inc. 4) Or Approved Equal

End of Section

SECTION 102238 - OPERABLE PANEL PARTITIONS

- A. QUALITY ASSURANCE
1. Folding partitions, accessories, and trim shall be the product of a single manufacturer.
 2. Sound Transmission Classification: Comply with ASTM E 90.
 3. Fire Hazard Classification: Vinyl-faced fabrics as tested and classified by UL in accordance with ASTM E 84 and equal to or less than the following:
 - (a) Flame Spread: 25 (b) Fuel Contributed: 15 (c) Smoke Developed: 25
- B. ACCORDION FOLDING PARTITION
1. Construction: Collapsible steel frame, 24-gauge steel panels and acoustical membrane.
 2. Panel Assembly: Each panel attaches to frame with steel leaf fasteners.
 3. Panel Surface Finish: Vinyl, manufacturer standard.
- C. FOLDING PANEL PARTITIONS:
1. Panel Construction: 3" thick (minimum) horizontal and vertical formed steel frame, 21-gauge steel panels welded directly to the frame, or 3" thick (minimum) gypsum with manufacturer' standard vinyl, high pressure plastic laminate, wood veneer or carpet covering
 2. Panel Surface Finish: (a) Vinyl, manufacturer's standard (b) High pressure plastic laminate (c) Panel Configuration: (d) Paired panels (e) Continuously hinged panels (f) Single panels
 3. Track Assembly
 - (a) Manufacturer's standard top supported galvanized steel or extruded aluminum track and trolley assembly sized to suit dimensions and operation application.
 - (b) Center meeting bi-parting units, with manufacturer's standard center meeting molding or strike.
 - (c) Side stacking units.

4. Carriers
 - (a) Manufacturer's standard ball bearing trolley assemblies
5. Sound Rated Units
 - (a) Sound transmission classification (STC) of 45, minimum.
6. Hardware
 - (a) Pull Bar, Draw Latches, Screws and Installation Hardware: Manufacturer's standard for folding or accordion folding partitions furnished.
 - (b) Latch: operable from both sides of closed unit.
7. Manufacturer: Hufcor Corp, Modernfold or an approved equal.

End of Section

SECTION 102613 - CORNER GUARDS

A. QUALITY ASSURANCE

1. Cover materials shall be classified in accordance with ASTM E 84 as to flame spread and smoke development and shall be classified as self-extinguishing in accordance with ASTM D 635.

B. MATERIAL

1. Surface mounted, 2-piece, CG-10, corner guard consisting of aluminum retainer and high impact vinyl cover, selected from manufacturer's standard colors.
2. Minimum width 3".
3. Minimum height 48".
4. Screw mount (no self-adhesive).
5. Install on all outside corridor corners (all areas open to public) and high traffic areas.
6. Suggested Manufacturers: (a) Pawling Pro-Tek wall protection systems (b) Or approved
7. Chair rail. Minimum 6" height. Acrovyn SCR-48 or equal. Height to be determined during design.

End of Section

SECTION 102813 - TOILET & BATH ACCESSORIES

A. MATERIALS

1. Stainless Steel: AISI Type 302/304 with No. 4 satin finish, unless otherwise indicated.

B. FABRICATION

1. Provide keyed vandal-resistant lock where key access is specified.
2. Mounting Devices: Type and size compatible with accessory unit specified which will securely mount accessory to wall or partition construction indicated. Grab Bars: Provide anchoring devices, which will withstand minimum downward pull of 500 pounds.
3. Exposed Mounting Devices and Fasteners: (a) Type: Concealed fasteners (b) Finish: Match accessory finish, unless otherwise indicated.

C. TYPES AND MANUFACTURERS

1. Mirrors
 - (a) Type:
 - 1). Tempered glass mirror in stainless steel frame.
 - 2). Tempered glass mirror in stainless steel frame with integral shelf.
 - 3). Fixed tilt, tempered glass mirror in stainless steel frame to meet ADA requirements.
 - (b) Frame: Either of the following:
 - 1). Angle Framed Construction: Stainless steel angle frame with No. 4 finish, minimum 5/8" x 1/8" x 18 gauge, corners mitered, heliarc welded, ground smooth and polished, with concealed 18 gauge stainless steel angles welded on inner side of frame 6" on center and tapped to receive back plate fasteners.
 - 2). Roll-formed Angle Framed Construction: Roll-formed stainless steel angle frame with concealed, continuous integral stiffener/retainer around perimeter, No. 4 finish, minimum 3/4" x 1/4" x 12 gauge, corners mitered, heliarc welded, ground smooth and polished. Stiffener/retainer shall be tapped to receive back plate fasteners.
 - (c) Back Plate: Galvanized steel, 20 gauge, full interior area of frame, secured to frame with concealed, cadmium-plated screws 6" OC"
 - (d) Mounting Frame (Hanger Bracket): Rigid box or rectangular type, welded construction, fabricated of 18 gauge, galvanized steel, with 18 gauge locking tabs.
 - (e) Mirror Quality:
 - 1). Identification Stamp: Identify tempered glass units by affixing manufacturer's stamp labeled "tempered" to a glass face.
 - 2). Mirror Backing: Shock absorbing material over entire back mirror surface.

- (f) Integral Shelf: 22-gauge stainless steel for units up to 36" wide, 18 gauge for units wider than 36"; No. 4 finish. Size: 5" deep x full width of mirror frame. Bend front edge down ½" and fold metal back on itself to form finished edge. Bend sides down ½". Heliarc weld corners grind smooth and polish all welds.
2. Paper Towel Dispensers - Recessed: Units fabricated of 22-gauge stainless steel with 22-gauge double-pan, or 18 gauge single-pan, stainless steel door construction. Hang door on full length, continuous stainless-steel hinge. Approximate size: 17" wide x 29" high x 10 ½" deep to accommodate roll paper towel. Keyed access.
 3. Paper Towel Dispensers - Surface Mounted: Unit fabricated of stainless steel. Front cover shall be fabricated of smoked transparent, high impact plastic, or stainless. Approximate cabinet size: 17" wide x 15" high x 10 ½" deep to accommodate roll paper towel. Keyed access. Fabricate units with flush, tight seams and joints, rounded corners, sloping tops and all exposed edges rolled. Option: ADA compliant unit with motion sensor when required for employees.
 4. Double Roll Toilet Tissue Holder: Constructed of stainless steel or smoked transparent high impact plastic. Units shall have hinged arm for filling, pilfer resistant locking mechanism, and designed to prevent free roll of tissue for each roll.
 - (a) Type 1: Holder shall accommodate standard 4 ½" wide jumbo tissue rolls. Approximate size: 15" wide x 12" high x 6" deep.
 - (b) Type 2: Smoked transparent high impact to accommodate 4 wide jumbo tissue rolls. Approximate size: 15" wide x 12" high x 6" deep.
 5. Waste Receptacles - Surface Mounted: Units fabricated of 22-gauge stainless steel with rounded front corners and hemmed edges. Approximate size: 23" high x 16½" wide x 12½" deep. Liner: Removable vinyl liner.
 6. Waste Receptacles - Recessed: Unit fabricated of 22-gauge stainless steel with cabinet access door, and removable and reusable metal or rigid molded plastic waste contained equipped with lifting handle. Fabricated door of 22-gauge stainless steel double-pan, or 18-gauge stainless steel single-pan, construction. Mount door on full length, continuous stainless-steel hinge. Approximate overall size: 48" high x 14" wide x 7" deep. Minimum capacity of waste container: 1.3 cubic feet. Units shall have integral trim flange and key access.
 7. Combination Paper Towel Dispensers and Waste Receptacles: Units fabricated of 22-gauge stainless steel with dispenser door, waste cabinet access door, and removable and reusable metal or rigid molded plastic waste container equipped with lifting handle. Fabricate doors of 22-gauge stainless steel double-pan, or 18-gauge stainless steel single-pan construction. Mount doors on full length, continuous stainless-steel hinge. Approximate overall size: 54" high x 14" wide x 10" deep. Units to dispense roll paper towels. Units may be surface mounted or recessed with integral trim flange.
 8. Feminine Napkin Disposals - Surface Mounted (FND-SM): Units fabricated of 22-gauge stainless steel with 22-gauge stainless steel sloping cover mounted on a full length, continuous stainless-steel hinge. Equip cover with a side-mounted handle for lifting. Approximate overall size: 11" high x 8" wide x 4" deep.
 9. Feminine Napkin Disposals - Recessed: Units fabricated of 22-gauge stainless steel, completely enclosed, with self-closing door and removable receptacle. Mount door on a full length, continuous stainless-steel hinge. Receptacle shall have a recessed finger grip for removal. Approximate overall size: 18" high x 14" wide x 4" deep. Door shall have stamped or embossed lettering reading: "Napkin Disposal" and "push". Units shall have integral trim flange.
 10. Lather/Foam Soap Dispensers - Surface Mounted: Individual surface mounted tank type consisting of smoked transparent high impact plastic or stainless-steel one-piece body with polished satin finish, push-in soap dispenser valve with stainless steel mechanism, locked filler cap at top, and stainless steel back with vandal resistant mounting bracket. Soap tank capacity: Not less than 40 oz. liquid soap. Approximate overall size: 8 ½" wide x 4 ¾" high x 5 ½" deep. Valve shall have bulking multiplier of 10 or more. Units shall have refill indicator window and service key access for refilling.
- D. SUGGESTED MANUFACTURERS: (a) Bobrick Washroom Equipment Inc. (b) Bradley Corporation
(c) Or approved equal

End of Section

SECTION 102814 - ELECTRICAL HAND DRYERS

A. GENERAL

1. 110 or 220-volt Surface mounted automatic hand dryer. Fractional horsepower motor to be automatic thermal overload switches to protect overheating.
2. No-Touch electronic operation; automatically turn off when hands are moved away.
3. Base should be one-piece heavy-duty non-corroding alloy.
 - 1). Cover should be heavy duty, scratch and dent-resistant cast-iron vitreous enamel finish cover. Cover should have tamper resistant bolts.
 - 2). Nozzle to be a die cast alloy, which is located to allow hand drying.
4. Suggested Manufacturers: 1) Bobrick Washroom Equipment B-7000 Series 2) Or approved equal

End of Section

SECTION 104413 - FIRE PROTECTION CABINETS

- A. QUALITY ASSURANCE
 - 1. Provide portable fire extinguishers, cabinets and accessories by one manufacturer.
 - 2. UL-Listed Products: Provide new portable fire extinguishers which are UL-listed and bear UL "Listing Mark" for type, rating, and classification of extinguisher indicated.
- B. EXTINGUISHERS
 - 1. Multi-Purpose Dry Chemical Type: UL rated 4A-60B:C, 10 lb. nominal capacity, in enameled steel container, for Class A, Class B and Class C fires.
 - 2. Provide sufficient quantity to meet National Fire Protection Association reference standards.
- C. MANUFACTURES
 - 1. Cabinets - Architect Series by Larsens or approved equal.
 - 2. Walter Kidde or approved equal.

End of Section

DIVISION 11 - EQUIPMENT

SECTION 113100 - APPLIANCES, PORTABLE HEATING/COOLING APPLIANCES

- A. Refrigerators, dishwashers, water heaters and miscellaneous appliances must have "Energy Star Label"

SECTION 115213 - PROJECTION SCREENS

- A. ELECTRICALLY OPERATED, REMOTE CONTROL SCREENS
 - 1. Provide units for recessed ceiling mounting completely housed in a metal-lined wood case, listed by UL and bearing re-examination markers of UL. Mount top of screen fabric to metal roller with roller supported on brackets with self-aligning bearings.
 - 2. Screen Case: Fabricate wood case with metal lined motor compartment, hinged or removable access panel to motor compartment, electrical outlet box, and finished with manufacturer's standard primer coat.
 - 3. Motor Units: Size and capacity recommended by the screen manufacturer. Use instant reversing, gear drive motor with permanently lubricated ball bearings, automatic thermal overload protection, and pre-set limit switches to automatically stop screen in "up" and "down" and "stop" in a box with cover plate for flush wall mounting. Stop action to be positive to prevent coasting.
- B. SUGGESTED MANUFACTURERS: 1) Da-Lite 2) Or approved equal

End of Section

DIVISION 12 - FURNISHINGS

SECTION 122000 - WINDOW TREATMENT

- A. HORIZONTAL LOUVER BLINDS
 - 1. Components:
 - (a) Slats:
 - 1). Width: 1"
 - 2). Thickness: .006 - .008 prior to painting
 - 3). Material: aluminum or aluminum alloy
 - (b) Finish: Baked oil paint, resistant to fading/discoloration
 - (c) Color: coordinated with office colors
 - (d) Ladders and Lift Cords:
 - 1). Material: braided polyester with minimum stretch
 - 2). Color: to match slats
 - 2. Head Channel:
 - (a) Material: Electro-galvanized steel
 - (b) Thickness: .025" in a "U" shaped channel
 - (c) Finish: Baked on polyester finish to match color of slats
 - (d) Edges to be rolled
 - 3. Bottom Rail:
 - (a) Material: cold-rolled sheet steel
 - (b) Thickness: .018 - .031"
 - (c) Finish: baked or polyester finish to match color of slats
 - (d) End caps: to match color of slats
 - 4. Cord Lock: Securely raise & lower the blind to any height without tearing cords
 - 5. Tilt Wand:
 - (a) Material: clear acrylic
 - (b) Shape: tubular
 - 6. Tilter: worm and gear type

7. Intermediate Support Brackets: furnished for blinds over 48" wide
8. Suggested Manufacturers
 - (a) Levolor 1" (25mm) Monaco Blind
 - (b) Hunter Douglas Flexalum Decor 1" (25mm)
9. Bali Classics Mini Blinds

B. SHADES

1. Provide manually operated shade system equal to "Mecho-Shade" made by the Mecho-Shade Corp. or equal made by Sol-R-Veil Inc. or Kirsch Co. or approved equal conforming to standards specified herein.
2. Shade system shall be a smooth operating chain and sprocket operated roller shade system which incorporates an adjustable slip clutch to control the rate of fall, from free running zero friction factor, to a factor of 100%. The shade may be adjusted to stop and hold at an infinite number of positions, or adjustable at any percentage of friction to control the fall rate of the shade as required. The shade position when set as a free fall system to be mechanical, by use of a chain retainer. At either setting the highest and lowest shade position will have an automatic stop to prevent over winding or unrolling. The window shade mechanism shall have sufficient latitude to accommodate small lightweight shades, as well as large heavy shades compatible with glass sizes in the building.
3. Shade mounting brackets shall be made of 1/8" thick sheet steel and a 7/16" welded steel shaft which shall be the axis for the entire sprocket and spring clutch assembly. Reversible for left hand or right-hand operation. Wall, jamb, or ceiling mounted as required, shall be permanently installed with the mechanism concealed from view when fully assembled. Delrin cover plate shall be mechanically attached to sheet steel. Injection molded Delrin cover plate is provided for each of the brackets to conceal the metal brackets from view, provide means of attaching a fabric without exposed hardware, and guide and retain the chain gear assembly. Brackets to act as protective retainer for tube and shade assembly preventing accidental dislocation of tube and shade by vibration, rough usage. The bracket assembly to be permanently mounted to the building; shade tube and fascia are removable.
4. SnapLoc Tube: Extruded 6063-XT6 aluminum, 1-1/2" o.d., either end of tube to engage drive system through internal extruded keyway. Tube shall be extruded with two fabric mounting channels which shall provide anti-deflection support for wide span shades. All tubes removable, interchangeable without removing the drive assembly, block resetting, or readjusting the pre-set stops. Shade tube to be self-aligning and self-leveling.
5. SnapLoc Fabric Mounting Spline: Spline to be of extruded vinyl with symmetrical insertion locking channels and embossed fabric guide. Spline shall have sufficient capacity to hold heavy shades when spline is snapped and locked into the tube. Fabric shade shall be readily removable without removing the tube from the retainer brackets or removing the brackets from the wall.
6. Fabric-Guide End Cap: Delrin end cap shall have steel pin which permits up to 5/16" lateral adjustment in tube width. End cap shall have 2-1/4" o.d. fabric-guide tapered disc feature to assure alignment and protection of the shade cloth.
7. Finishes: All exposed aluminum parts have an anodized finish. Steel parts are either nickel plated, satin finish, or have been bonderized prior to painting with a baked, enamel finish.

End of Section

DIVISION 13 - METAL REFURBISHMENT

SECTION 131000 REFURBISHMENT

GENERAL

1. Work of this section shall be accomplished by an experienced fabricator or installer, who has been engaged in work of equivalent scope for at least five (5) years. Materials, methods of finishing, re-finishing, fabrication, fitting, assembly bracing, supporting, fastening, and erection shall be in accordance with drawings and specifications, approved shop drawings, and be of highest quality practices of the industry, using new and clean materials, having structural properties sufficient to safely sustain or withstand stresses and strains to which materials and assembled work will be subjected. All work shall be accurately and neatly fabricated, assembled and erected.
2. Field Measurements: Take field measurements prior to preparation of shop drawings and fabrication, to ensure proper fitting of the new work to existing.
3. The Contractor by commencing the work of this Section, assumes overall responsibility, as part of his warranty of the work, to assure that all assemblies, components and parts shown or required within the work of this Section, comply with the Contract Documents. The Contractor shall further warrant:
 - (a) That all components, specified or required to satisfactorily complete the installation, are compatible with each other and with the existing conditions of installation and expected use.
 - (b) The overall effective integration and correctness of individual parts and the existing system.
 - (c) Compatibility with adjoining existing substrates, materials and work of other trades.
 - (d) There shall be no premature material failure due to improper finish, design and installation.
4. All results of refurbishing must meet with the Architect's approval.

SUBMITTALS

1. Materials list of items proposed to be provided under this Section;

2. Fabricators descriptions and other data needed to prove compliance with the specified requirements;
3. Shop Drawings showing details of refurbishment, details of construction, installation, and anchorage.

FABRICATION AND FITTING CRITERIA

1. **Cutting:** Cut metal by sawing, shearing or blanking. Flame cutting will be permitted only if cut edges are ground back to clean, smooth edges. Make cuts accurate, clean, sharp, square and free of burrs, without deforming adjacent surfaces or metals.
2. **Holes:** Drill or cleanly punch holes (do not burn), so that holes will be accurate, clean, neat and sharp without deforming adjacent surfaces or metals.
3. **Connections**
 - (a) Make connections with tight joints, capable of developing full strength of member, flush unless indicated otherwise, formed to exclude water where exposed to water. Locate joints where indicated on drawings. Provide connections to allow for thermal movement of metal at locations and by methods approved by Architect. For work exposed to view, use concealed fasteners (unless welded or other connections indicated) with joints accurately fitted, flush and rigidly secured with hairline contacts.
 - (b) **Welding:** Welding shall be in accordance with recommendations of the American Welding Society and shall be done with electrodes and/or methods recommended by the manufacturers of the metals being welded. Welds shall be continuous, except where spot welding is specifically permitted. Welds exposed to view shall be ground flush and dressed smooth with and to match finish of adjoining surfaces so that joint will not be visible; undercut metal edges where welds are required to be ground flush and dressed smooth. All welds on or behind surfaces which will be exposed to view shall be done so that finished surface will be free of imperfections such as pits, runs, splatter, cracks, warping, dimpling, depressions or other forms of distortion or discoloration. Remove weld splatter and welding oxides from all welded surfaces.
4. **Supplementary Parts:** Provide as necessary to complete each item of work, even though such supplementary parts are not shown or specified.
5. Accurately cut, fit, drill and tap work of this Section to accommodate and fit existing conditions. Furnish or obtain templates for proper coordination of this work.
6. **Exposed Work:** In addition to requirements specified herein or shown on drawings, all surfaces exposed to view shall be clean, and free from dirt, stains, grease, scratches, distortions, waves, dents, buckles, tool marks, burrs and other defects which mar appearance of finished work. Work exposed to view shall be straight and true to line or curve, smooth arises and angles as sharp as practicable, miters formed in true alignment, profiles accurately intersecting, and with joints carefully matched to produce continuity of line and design. Exposed fastenings, where permitted, shall be of the same material, color and finish as the metal to which applied, unless otherwise indicated, and shall be of the smallest practicable size.
7. Materials used shall be of such strength, thickness and alloy that they are capable of meeting all standards and descriptions specified herein, shall match existing and as detailed on drawings.
8. All painting and re-painting shall conform to the requirements of Section 099101 and as specified herein.

End of Section

DIVISION 22 - PLUMBING

SECTION 224239 - COMMERCIAL FAUCETS, SUPPLIES AND TRIM

A. MATERIALS

1. Valve body: cast brass
2. Internal Components:
 - (a) Metals: Brass or stainless steel
 - (b) Non-Metals: Materials not adversely affected by contact with water, temperature changes or a combination of both.
3. Finishes: All exposed to view surfaces installed in finished spaces shall be brass, polished and chrome plated, or stainless steel, with a No. 4 brush finish.
4. Handicapped Installation to have single action faucet.
5. *Faucets: Laminar flow reduction (saves up to 30%), Hot/cold mixing valve: connects to hot water side.*

- B. SUGGESTED MANUFACTURES:** 1) Moen Lavatory or Sink Faucet 2) Or approved equal

End of Section

SECTION 224200 - PLUMBING FIXTURES

- A. QUALITY ASSURANCE
1. Each fixture and fitting shall be plainly and permanently marked with the manufacturer's name or trademark.
 2. Acid resistant surfaces shall be plainly and permanently marked with the manufacturer's label or symbol indicating "acid resistance".
 3. *Water Closet's: 1.6-gallon gravity flush, 1.28 GPF desired.*
 4. *Urinals: 1.0-gallon gravity flush, .5 GPF desired.*
 5. *Lavatory: 0.50 GPM, 0.1 desired*
 6. *Shower head: low-flow 1.25 to 2.5 GPM.*
- B. MATERIALS
1. Vitreous China: First quality, smooth, uniform color and texture and having a fused-on glaze covering all surfaces exposed to view.
 - (a) Surfaces shall be free of chips, craze, warpage, cracks and discolorations. All surfaces in contact with walls or floors shall be flat, with warpage not to exceed 1/16" per foot.
 - (b) Color: White
 2. Fixture Trim: Stainless steel 18-8 type 302 or 304.
 3. Trim Finishes (exposed to view): Stainless steel with invisible welds and seams, polished to No. 4 commercial finish.
 4. Fixture hold-down bolts: Steel, plated for corrosion resistance. Cap nuts: polished chrome plated finish
- C. TYPES AND MANUFACTURERS (Or approved equal)
1. Wall Hung Chair Carrier Lavatory
Manufacturer: American-Standard Lavatory 20" x 18"
 2. Handicapped Wall Hung Chair Carrier Lavatory
Manufacturer: American-Standard Wheelchair Lavatory 27" x 20"
 3. Floor Mounted Water Closet:
Manufacturer: American-Standard Toilet
 4. Handicapped Floor Mounted Water Closet:
Manufacturer: American-Standard 18" high Elongated Cadet Toilet
 5. Wall Hung Chair Carrier Water Closet:
Manufacturer: American-Standard Aftwall Toilet with back spud
 6. Water Closet Seat
 7. Materials
 - (a) Extra heavy-duty, commercial design
 - (b) Solid plastic, open front, without a cover, molded in one piece with no joints, seams or crevices.
 - (c) Manufacturer's name shall be molded into the seat.
 - (d) Metal check hinges shall be integrally molded into the seat. Hinges, inserts, bearings and posts shall be of brass or stainless steel; the upper post and metal exposed above the fixture rim shall be covered with plastic to match the seat.
 - (e) Surface shall be hard, polished, impervious to moisture, and not affected by the action of uric acid.
 - (f) Color: White. Manufacturer: Kohler Company, Model No. K-4666-C
 8. Urinal: Manufacturer- American-Standard Urinal

End of Section

SECTION 224713 – DRINKING FOUNTAINS AND WATER COOLERS

- A. GENERAL
1. Supply a sufficient number of water coolers as required by the applicable building code.
 2. Water coolers to be high/low type and be ADA compliant
 3. Each single or double bowl Water Cooler to include a Bottle Filling Station.
 4. Each double bowl unit shall constitute a single water cooler as defined by building code.
- B. INSTALLATION
1. All required plumbing shall be supplied and installed.
 2. All required electrical items and work shall be supplied and installed.
- C. SUGGESTED MANUFACTURERS
1. Elkay: Enhanced EZH2O Bottle Filling Station & Single ADA Cooler, Filtered 8 GPH Light Gray.
 2. Or approved equal.

End of Section

DIVISION 23 - MECHANICAL

SECTION 230500 - HEATING, VENTILATION, AND AIR CONDITIONING

- A. Thermostats-- programmable thermostat for commercial use with seven-day flexible programming, liquid crystal display, individual temperature set-points for occupied and unoccupied heating and cooling, concealed keyboard and locking cover, automatic heat/cool changeover, auxiliary relay output for economizer cycle, conventional or heat pump operation.
- B. Energy Management Systems: PC based programmable with individual controls for set points for temp, humidity, flow and economy saving operations. Maintaining log of building environment 24 hours per day and 7 days per week including point updates at least hourly.
- C. Ductwork: Galvanized sheet metal with fiberglass wrap with factory applied aluminum foil facing reinforced with fiberglass scrim laminated to a UL KRAFT, Insulation minimum 2" thick.
- D. *Fans: High efficiency, variable speed motors/controllers with energy star rating.*
- E. *Filters: Minimum 65% efficient*
- F. *Refrigerants: shall be non-ozone depleting.*
- G. *Pumps and motors to be high efficiency with energy star rating.*
- H. No electric resistance elements will be allowed to satisfy temperature requirements called out in the lease.

End of Section

SECTION 233439 - HIGH SPEED, LOW SPEED PROPELLER FAN (CEILING EXHAUST)

- A. GENERAL
 - 1. Fans shall be U.L. listed and labeled. 2. Sound power level: AMCA Standard 300-67.
- B. PRODUCT
 - 1. General: Fans shall be of the electric motor driven centrifugal type, installed in an insulated sheet steel unit casing with a decorative air intake grille, slow speed electric motor, electric terminal box inside housing, speed controller and outside wall cap. Quiet operation, less than 1.5 sones for toilets
 - 2. Fan Assembly: True centrifugal wheels, mounted on the extended shaft of an electric motor. Fabricate fan scroll from heavy gauge sheet steel with a corrosion resistant coating. Isolate the entire fan assembly from the unit casing with elastomer type vibration eliminators. Fan assembly shall be easily removable from the unit casing.
 - 3. Unit Casing: Fabricate from heavy gauge sheet steel, with a corrosion resistant coating. Acoustically line the interior surfaces of the casing with fibrous glass, coated on the exposed side. Provide discharge outlet complete with backdraft damper.
 - 4. Electric Motor: Low speed (1200 RPM or below), with built-in thermal overload protection, designed to operate on 120-volt, 60 cycle, 1 phase service. Assembly shall be complete with flexible electric cord, plug and electrical receptacle inside housing. Suitably ground fan motor.
 - 5. Inlet Air Grille:
 - (a) Aluminum: Etched and coated with clear acrylic lacquer.
 - (b) Steel: Primed and finished with baked-on white enamel.
 - (c) Plastic: White of the egg crate design.
 - 6. Conference Rooms only to have speed control. Solid-state circuitry, with polished chromium plated wall plate, suitable for use with standard electrical wall box.
 - 7. Switching thru lighting system or occupancy sensor.
- C. SUGGESTED MANUFACTURERS: 1) NuTone, Panasonic, Dayton, Broan. 2) Or approved equal

End of Section

DIVISION 26 - ELECTRICAL

SECTION 260533 - ELECTRICAL CONDUIT FOR TELEPHONE/SIGNAL OUTLETS

- A. MATERIALS
 - 1. Metallic raceway of sufficient size including two bushings (minimum).
 - 2. Metallic box with connector.
 - 3. Drag line.
- B. INSTALLATION
 - 1. Install metallic box at standard outlet height and connect EMT of sufficient size to box. EMT to terminate above hung ceiling. Drag line and bushings to be installed in conduit.
 - 2. Size of EMT to be determined by landlord's designer in coordination with telecom/data provider.

End of Section

SECTION 260923 - LIGHTING CONTROL DEVICES

- A. Occupancy Sensor - Wall Switches
1. General
 - (a) Three-wire, self-contained dual technology utilizing passive infrared and ultrasonic technologies, designed for taking the place of a standard toggle switch, and compatible with solid state lighting ballasts.
 - (b) Adjustments: Auto-off time delay adjustable 2-15 minutes, and adjustable sensitivity.
 - (c) Controls: Hands free automatic on, automatic off, manual on, manual off.
 - (d) Indicators: Red LED to indicate when unit is triggered; and audible warning tone to pre-signal automatic shutdown.
 2. Suggested Manufacturers: Lightolier Controls "Insight" Series
 - (a) Watt Stopper. (b) Sensor Switch. (c) Or approved equal.
- B. Occupancy Sensor - Ceiling
1. General:
 - (a) Ceiling mounted, dual technologies utilizing passive infrared and ultrasonic technologies. Unit shall operate in conjunction with a separately mounted power pack. Field of view may be reduced by lens masking labels.
 - (a) Adjustments: Manual-off time delay adjustable 20 seconds to 30 minutes (adjustment at power pack), and adjustable sensitivity.
 - (b) Photocell: Prevents automatic-on activation based on an (adjustable) minimum ambient light level setting.
 - (c) Controls: Automatic-on or manual-on (selectable at power pack), automatic off, and manual-off.
 - (d) Indicators: Red LED to indicate when unit is triggered.
 - (e) Multiple sensors: May be used to control a single power pack.
 - (f) Power packs: Separately mounted UL listed power supply consisting of transformer, contact closure relay, and system configuration electronics and selector switches. Power output of transformer must be sufficient for powering up to twelve sensors.
 - (g) Slave relays: As required for controlling additional lighting circuits from the same sensor(s) connected to a power pack.
 2. Suggested Manufacturers
 - (a) Lightolier Controls
 - (b) Watt Stopper
 - (c) Or approved equal
- Light Level Controls: Automated control systems based on daylight, occupancy and timed schedules.

End of Section

SECTION 265116 - FLUORESCENT FIXTURES

- A. UL listed fixture.
- B. Fixtures:
- Type 1:
- a. Type: Indirect/direct recessed, 2 lamps. b. Size: 2'0"X4'0"
 - c. Type of Lamps: 32 watt (type 32T8). d. Lamp Shield: Perforated metal
 - e. Finish: 95% Reflective baked white acrylic matte high reflectance paint finish.
 - f. Fixture Manufacturer: Lightolier
 - g. Ballasts: Rapid start HPF thermally protected class "P" ballast. Use dimming ballast if called for.
- Type 2:
- a. Type: Indirect/direct recessed, 1 lamp. b. Size: 2'-0" x 2'-0"
 - c. Type of Lamps: TT-5 B-tube. d. Lamp Shield: Perforated metal
 - e. Finish: Baked white acrylic matte high-performance paint finish.
 - f. Fixture Manufacturer: Lightolier
 - g. Ballasts: Rapid start HPF thermally protected class "P" ballast. Use dimming ballast if called for.
- Suggested Manufacturers: 1. Lightolier's "Alter". 2. National's "AST-series". 3. Or approved equal.
- Type 3:
- a. Type: Recessed parabolic troffer, 3 lamps. b. Size: 2'0" x 4'0".
 - c. Type of lamps: 32-watt lamps (Type F32T8). d. No. of cells: 4" deep troffer – 24 cell anodized aluminum
 - e. Louver Finish: Low iridescent diffuse silver louver, black reveal, high gloss baked white enamel finish, IES RP24 criteria.

7. Fixture manufacturer: Current by G.E.
8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed
Suggested manufacturers: a) Current by GE LAB series b) Lumax Lighting c) Or approved equal

D. TYPE 4:

1. Type: Indirect/direct center basket recessed. 2. Size: 2'-0" X 2'-0"
3. Type of LED: 19400 lumens; 20 watts
 - a. Temperature: 3500 Kelvin or 4000 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
4. LED shield: A delineated perforated basket down the middle of the fixture
5. Finish: High specularly reflective white painted steel
6. Lifetime rating of 50,000 hours at L85
7. Fixture manufacturer: Current by G.E.
8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed
Suggested manufacturers: a) Current by GE LAB series b) Lumax Lighting c) Or approved equal

E. TYPE 5:

1. Type: Center row baffle direct recessed. 2. Size: 2'-0" X 4'-0"
3. Type of LED: 4900 lumens; 42 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
4. LED shield: Curving single row baffle down the middle of the fixture and uniform light across the lens.
5. Finish: High specularly reflective white painted steel
6. Life Time rating of 50,000 hours at L85
7. Fixture manufacturer: Current by G.E.
8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAC series b) Lumax Lighting c) Or approved equal

F. TYPE 6:

1. Type: Center row baffle direct recessed 2. Size: 2'-0" X 4'-0"
3. Type of LED: 3150 lumens; 27 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - d. An efficacy of 100 Lumens per watt or more
 - e. Color consistency of 4 Step MacAdam Ellipse or less
4. LED shield: Curving single row baffle down the middle of the fixture and uniform light across the lens.
5. Finish: High specularly reflective white painted steel
6. Life Time rating of 50,000 hours at L85
7. Fixture manufacturer: Current by G.E.
8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAC series b) Lumax Lighting c) Or approved equal

G. TYPE 7:

1. Type: Center row baffle direct recessed. 2. Size: 2'-0" X 2'-0"
3. Type of LED: 3000 lumens; 30 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
4. LED shield: Curving single row baffle down the middle of the fixture and uniform light across the lens.
5. Finish: High specularly reflective white painted steel
6. Life Time rating of 50,000 hours at L85
7. Fixture manufacturer: Current by G.E.

8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAC series b) Lumax Lighting c) Or approved equal

- H. TYPE 8:
1. Type: Center row baffle direct recessed. 2. Size: 2'-0" X 2'-0"
 3. Type of LED: 2050 lumens; 20 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 4. LED shield: Curving single row baffle down the middle of the fixture and uniform light across the lens.
 5. Finish: High specularly reflective white painted steel
 6. Life Time rating of 50,000 hours at L85
 7. Fixture manufacturer: Current by G.E.
 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAC series b) Lumax Lighting c) Or approved equal
- I. TYPE 9:
1. Type: Curved step lens, recessed. 2. Size: 2'-0" X 4'-0"
 3. Type of LED: 4900 lumens; 42 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more.
 - d. Color consistency of 4 Step MacAdam Ellipse or less.
 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 5. Finish: High specularly reflective white painted steel
 6. Life Time rating of 50,000 hours at L85
 7. Fixture manufacturer: Current by G.E.
 8. Driver: 0-10 V dimmable.
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAD series b) Lumax Lighting c) Or approved equal
- J. TYPE 10:
1. Type: Curved step lens, recessed. 2. Size: 2'-0" X 4'-0"
 3. Type of LED: 3150 lumens; 27 watts
 - a. Temperature: 3500 Kelvin.
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 5. Finish: High specularly reflective white painted steel
 6. Life Time rating of 50,000 hours at L85
 7. Fixture manufacturer: Current by G.E.
 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater.
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 9. U.L. Listed
Suggested manufacturers: a) Current by GE LAD series b) Lumax Lighting c) Or approved equal
- K. TYPE 11:
1. Type: Curved step lens, recessed. 2. Size: 2'-0" X 2'-0"
 3. Type of LED: 3000 lumens; 30 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 5. Finish: High specularly reflective white painted steel
 6. Life Time rating of 50,000 hours at L85
 7. Fixture manufacturer: Current by G.E.
 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAD series b) Lumax Lighting c) Or approved equal
- L. TYPE 12:
1. Type: Curved step lens, recessed 2. Size: 2'-0" X 2'-0"
 3. Type of LED: 2050 lumens; 20 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 90 or greater
 - c. An efficacy of 100 Lumens per watt or more

- d. Color consistency of 4 Step MacAdam Ellipse or less
 - 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 - 5. Finish: High specularly reflective white painted steel
 - 6. Life Time rating of 50,000 hours at L85
 - 7. Fixture manufacturer: Current by G.E.
 - 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 - 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LAD series b) Lumax Lighting c) Or approved equal
- M. TYPE 13:
- 1. Type: flat translucent non-pixilating lens, recessed
 - 2. Size: 2'-0" X 4'-0"
 - 3. Type of LED: 4800 lumens; 36 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 80 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 - 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 - 5. Finish: High specularly reflective white painted steel
 - 6. Life Time rating of 50,000 hours at L70
 - 7. Fixture manufacturer: Current by G.E.
 - 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 - 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LBT series b) Lumax Lighting c) Or approved equal
- N. TYPE 14:
- 1. Type: flat translucent non-pixilating lens, recessed
 - 2. Size: 2'-0" X 4'-0"
 - 3. Type of LED: 3000 lumens; 23 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 80 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 - 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 - 5. Finish: High specularly reflective white painted steel
 - 6. Life Time rating of 50,000 hours at L70
 - 7. Fixture manufacturer: Current by G.E.
 - 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 - 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LBT series b) Lumax Lighting c) Or approved equal
- O. TYPE 15:
- 1. Type: flat translucent non-pixilating lens, recessed
 - 2. Size: 2'-0" X 2'-0"
 - 3. Type of LED: 3300 lumens; 26 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 80 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 - 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 - 5. Finish: High specularly reflective white painted steel
 - 6. Life Time rating of 50,000 hours at L70
 - 7. Fixture manufacturer: Current by G.E.
 - 8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
 - 9. U.L. Listed.
Suggested manufacturers: a) Current by GE LBT series b) Lumax Lighting c) Or approved equal
- P. TYPE 16:
- 1. Type: flat translucent non-pixilating lens, recessed
 - 2. Size: 2'-0" X 2'-0"
 - 3. Type of LED: 2000 lumens; 16 watts
 - a. Temperature: 3500 Kelvin
 - b. A CRI of 80 or greater
 - c. An efficacy of 100 Lumens per watt or more
 - d. Color consistency of 4 Step MacAdam Ellipse or less
 - 4. LED shield: Curved step lens down the middle of the fixture with uniform light across the lenses.
 - 5. Finish: High specularly reflective white painted steel
 - 6. Life Time rating of 50,000 hours at L70
 - 7. Fixture manufacturer: Current by G.E.

8. Driver: 0-10 V dimmable
 - a. A power factor of 90 or greater
 - b. THD: <20%
 - c. Voltage; 120V thru 277V; 50/60 Hz
9. U.L. Listed.
Suggested manufacturers: a) Current by GE LBT series b) Lumax Lighting c) Or approved equal

End of Section

SECTION 265213 - EMERGENCY + EXIT LIGHTING

- A. GENERAL
 1. UL Listed
 2. Independent self-contained unit inverter system with charger.
 3. Compatible with 32-watt lamp.
 4. Sealed rechargeable, maintenance free battery. Battery shall be capable of energizing one (1) 32-watt lamp to provide not less than 1-foot candle for 90 minutes.
- B. INSTALLATION
 1. Wired into building night light circuit therefore permanently energized.
 2. Approximate placement in corridors, subject to design review:
 - (a) Crosswire troffers every 40' (b) Lengthwise troffers every 30'
 3. Maximum coverage in offices is 1,500 square feet.
- C. SUGGESTED MANUFACTURERS: 1) Lithonia 2) Or approved equal
NOTE: Retrofit unit is available by Lithonia - Power Sentry Unit Inverters, and Philips Bodine.

End of Section

SECTION 265213.13 - EMERGENCY LIGHTING

- A. GENERAL
 1. Type, quantity and type shall conform to all applicable codes and NFPA 101 - Life Safety Code (Section 5-9).
 2. Installation shall be in accordance with manufacturer's directions.
- B. TYPE
 1. EZ-2: to be used in areas with an ambient temperature above 45 degrees F.
 - (a) Six-volt maintenance free battery (sealed lead-calcium free electrolyte or sealed pure lead cells). Batteries shall be of suitable rating and capacity to supply and maintain at not less than 87½% of the nominal battery voltage for the total lamp load associated with the unit for a period of at least 1½ hours.
 - (b) Low battery voltage cut-off (not less than 80% of nominal battery voltage).
 - (c) Electronic or sealed dust-tight transfer relay.
 - (d) Six volt, 12-watt integral tungsten halogen lighting heads.
 - (e) Input circuit suitable for operation on 120 volts 60 hz. Circuit.
 - (f) Mounting shelf or bracket.
 2. EZ-2D: to be used in areas where the ambient temperature may be less than 45 degrees F., i.e., unheated storage areas and parking garages
 - (a) Six-volt nickel cadmium battery, wet cell, pocket plate type. Batteries shall be of six-volt nickel-cadmium battery, wet cell, pocket plate type. Batteries shall be of suitable rating and capacity to supply and maintain at not less than 87½% of the nominal battery voltage for the total lamp load associated with the unit for a period of at least 1½ hours. Batteries shall deliver full ampere-hour capacity at 0 degrees F ambient temperature.
 - (b) Electronic or sealed dust-tight transfer relay.
 - (c) Six volt, 12-watt, integral tungsten halogen lighting heads.
 - (d) Input circuit suitable for operation on 120 volts 60 Hz. Circuit.
 - (e) Mounting shelf or bracket.
 - (f) Time delay device for units installed in areas illuminated with high-density discharge lighting fixtures. Emergency lighting units shall remain illuminated 15 minutes after normal power is restored.
 - (g) Wire guard to cover unit.
- C. SUGGESTED MANUFACTURERS:
 - a. Dual-Lite Co.'s EZ-2 Series
 - b. Mule Lighting's EM-800 Series LED; SQ-80-LED or EM-80 LED Series

End of Section

SECTION 265213.16 - EXIT SIGNS

A. PRODUCT

1. **LED (non-radioactive), 5 Watts or less, Energy Star Compliant which will illuminate on normal source and battery source.**
2. Compliant with standards of the Life Safety Code and National Electric Code.
3. Input circuit suitable for operation on 120 VAC circuit or 277 VAC circuit, as appropriate.
4. Red lettering for signs shall be at least 6" high with not less than 3/4" wide strokes.
5. Downlight panel
6. Mounting designed for:
 - (a) Wall surface
 - (b) Wall, end mount, single face
 - (c) Ceiling, single face
 - (d) Stem, single face
 - (e) Wall, end mount, double face
 - (f) Ceiling, double face
 - (g) Stem, double face
8. Directional arrows, as needed.
9. Manufacturers: Lithonia LE Series (LED models), Meridian Series or NYMD Series, by Mule Lighting.

End of Section

SECTION 272627 - WIRING DEVICES

B. Products: All devices and or device boxes must be UL listed (including all requirements of the National Electric Code).

1. Boxes: where located on exterior walls, boxes must be airtight.
2. In floor tele/data/power. Provide flush mounted devices with Cast aluminum w/ brass powder-coat finish metal cover. Hubbell System One metal floor box w/flush mounted 180 degree hinged covers w/fire rating where applicable or equal.

End of Section

END OF DOCUMENT

EXHIBIT 3

EXECUTIVE ORDER No. 4:

ESTABLISHING A STATE GREEN PROCUREMENT AND AGENCY SUSTAINABILITY PROGRAM

WHEREAS, the State of New York ("State") is dedicated to the simultaneous pursuit of environmental quality, sound public health, economic prosperity and social well-being; and

WHEREAS, the production, use and disposal of materials, and the generation and use of energy, can have significant impacts on environmental quality and public health; and

WHEREAS, State government is a major consumer of materials and energy; and

WHEREAS, the State's policies include conserving, improving and protecting natural resources and the environment; preventing water, air and land pollution; and enhancing the health, safety and welfare of State residents and their overall economic and social well-being; and

WHEREAS, it is the State's policy to promote cost effective methods to reduce energy and resource consumption, and reduce or eliminate the use of hazardous substances and the generation of hazardous substances, pollution and waste at the source; and

WHEREAS, the State's solid waste management priorities include reducing the generation of solid waste, reusing materials, and recycling materials that cannot be reused; and

WHEREAS, by making sound choices in the course of their daily activities, such as the commodities, services, and technology they consume, and the amount of waste they generate, State agencies and public authorities can minimize potential environmental and health impacts on workers and the public; and

WHEREAS, the State's procurement of commodities, services and technology can be enhanced through State agency and public authority choices that minimize the potential environmental and health impacts of their activities; and

WHEREAS, State government can be a leader in environmental stewardship through the use of green procurement and sustainable management practices.

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

A. Definitions

1. "State agency" or "agency" shall mean any State agency, department, office, board, commission or other instrumentality of the State, other than a public authority.

2. "Public authority" or "authority" shall mean a public authority or public benefit corporation created by or existing under any State law, a majority of whose members is appointed by the Governor (including any subsidiaries of such public authority or public benefit corporation), other than an interstate or international authority or public benefit corporation.

B. Interagency Committee on Sustainability and Green Procurement

1. There is hereby established an Interagency Committee on Sustainability and Green Procurement (the "Committee"). The Committee shall be comprised of the Director of the Budget, the Commissioner of General Services, the Commissioner of Environmental Conservation, the Commissioner of Health, the Commissioner of Economic Development, the President of the Urban Development Corporation, the Commissioner of Transportation, the President of the Environmental Facilities Corporation, the President of the New York State Energy Research and Development Authority, the Chair of the Power Authority of the State of New York, and the Executive Director of the Dormitory Authority of the State of New York. The Commissioner of General Services and the Commissioner of Environmental Conservation shall serve as co-chairs of the Committee.
2. Members of the Committee may designate an executive staff member to represent them and participate on the Committee on their behalf. A majority of the members of the Committee shall constitute a quorum, and all actions and recommendations of the Committee shall require approval of a majority of the total members of the Committee.

C. Green Procurement Lists and Specifications

1. The Committee, no later than September 1, 2008, and annually thereafter, shall select a minimum of three "priority categories" of commodities, services or technology, and at least twelve "priority commodities, services and technology" within each of the priority categories, for which the Committee shall develop "green procurement lists" ("procurement lists") and "green procurement specifications" ("procurement specifications") for use by State agencies and public authorities in the procurement of commodities, services and technology. The Committee shall focus on commodities, services and technology that reasonably will: (a) reduce or eliminate the health and environmental risks from the use or release of toxic substances; (b) minimize risks of the discharge of pollutants into the environment; (c) minimize the volume and toxicity of packaging; (d) maximize the use of recycled content and sustainably managed renewable resources; and (e) provide other environmental and health benefits.
2. The Committee, no later than December 1, 2008, shall develop: (a) procurement specifications to be used for the development and issuance of new contracts and new solicitations for priority commodities, services and technology; and (b) procurement lists of priority commodities, services and technology that are available under existing procurement arrangements that satisfy the requirements of this order.

3. In developing the procurement lists and procurement specifications, the Committee shall consider the following factors: (a) protection of the public health and the environment, including the health of children and other vulnerable populations; (b) avoidance of risks from the use or release of toxic substances; (c) pollution reduction and prevention; (d) sustainable resource management and use, and sustainable manufacturing and production processes; (e) reduction of greenhouse gases; (f) the use of renewable resources, remanufactured components and recycled content; (g) waste reduction, recyclability and compostability; (h) quality, durability and utility; (i) minimizing adverse impacts throughout a commodity's or technology's life cycle; (j) cost; (k) extended producer liability; and (l) legal and regulatory requirements applicable to the use and procurement of commodities, services and technology.
4. The Committee may review the priority categories, priority commodities, services and technology, procurement lists and procurement specifications periodically and revise or supplement them as appropriate in a manner consistent with the requirements of this section.
5. The Committee shall establish specific goals to achieve reasonable reductions in the amount of solid waste generated and paper consumed annually by State agencies and authorities. The Committee shall also develop and implement strategies to assist State agencies and authorities to achieve such reduction goals.

D. Sustainability and Environmental Stewardship Programs

1. Each State agency and authority shall develop and implement a Sustainability and Environmental Stewardship Program, which shall include:
 - (a) specific projects, programs and policies designed to achieve compliance with the requirements of this Order; and
 - (b) specific projects, programs and policies designed to reduce the public health and environmental impacts of the activities and operations of the agency or authority, including: (i) the reduction or elimination of the use and generation of toxic substances, pollution and waste; (ii) the reduction, reuse, recycling and composting of solid waste; (iii) increasing energy efficiency; (iv) increasing the use of renewable energy sources; (v) conserving water and other natural resources; and (vi) maximizing the use of environmentally preferable or "green" commodities, services and technology.
2. Commencing no later than July 1, 2008, all copy paper, janitorial paper and other paper supplies purchased by each State agency or authority shall be composed of 100% post-consumer recycled content to the maximum extent practicable, and all copy and janitorial paper shall be process chlorine-free to the extent practicable, unless such products do not meet required form, function or utility, or the cost of the product is not competitive.

3. Commencing no later than July 1, 2008, all State agency and authority publications shall be printed on 100% post-consumer recycled content paper. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function and utility, paper procurements shall use post-consumer recycled content to the extent practicable. Non-recycled content shall be derived from a sustainably-managed renewable resource to the extent practicable, unless the cost of the product is not competitive.
4. State agencies and authorities shall rely on and use the procurement lists and specifications issued by the Committee when developing new solicitations and contracts for the procurement of commodities, services and technology, and for the procurement of commodities, services and technology under existing contracts, unless the head of the agency or authority determines: (a) that such commodities, services or technology will not meet required form, function or utility; (b) the cost of the commodities, services or technology is not competitive; or (c) there is an emergency or other compelling public health or safety reason not to purchase such commodities, services or technology. Such form, function, utility or other determination shall be presented in the procurement record and notice of the determination shall be provided to the Committee Chairs.
5. All State agencies and authorities shall, to the extent practicable: (a) implement effective programs to source separate recyclable materials, including paper, metal, glass and plastic, that will maximize materials recovery; (b) implement effective programs to reduce waste; (c) use locally available compost, mulch and soil amendments produced from secondary materials; and (d) utilize secondary materials in construction.

E. Training and Staff

1. State agencies and authorities, no later than September 1, 2008, shall assign an employee to serve as a Sustainability and Green Procurement Coordinator ("Coordinator"). Coordinators shall be given full management support and provided with the necessary resources to enable the agency or authority to comply with this order.
2. The Committee shall design and implement training and outreach programs for Coordinators and assist them with the training of appropriate staff, vendors and contractors.
3. The Commissioner of General Services, no later than September 1, 2008, shall select an employee to serve as Director of Green Procurement, who shall assist the Commissioner of General Services in carrying out his or her duties under this order.
4. The Office of General Services, the Department of Environmental Conservation, the Environmental Facilities Corporation, and the New York State Energy Research and Development Authority are authorized to assist State agencies and authorities in complying with this order, including through the development and implementation of Sustainability and Environmental Stewardship Programs.

F. Reporting

1. The Committee, no later than December 1, 2008, shall develop a format for a progress report to be used by State agencies and authorities to inform the Committee of: (a) the progress each agency and authority has made toward achieving the goals described in or established pursuant to this order; (b) the effectiveness of the procurement lists and specifications; and (c) the specific sustainability projects that have been implemented and the effectiveness of such programs.
2. Each State agency and authority, no later than March 1, 2009, and on March first each year thereafter, shall submit a progress report to the Committee in the form and containing the information specified by the Committee. At a minimum, such report shall describe the agency or authority's efforts regarding waste reduction and recycling activities, recycled products procurement, quantities of waste generated and materials recycled, incentives and disincentives to waste reduction and recycling, and recommendations for additional measures to encourage efficient use of the State's resources.
3. The Committee, on or before June 1, 2009, and on June first each year thereafter, shall submit a report to the Governor, which shall compile the information submitted by State agencies and authorities pursuant to this section and report on progress made on the implementation of this order.

G. Sustainability and Green Procurement Advisory Council

There is hereby established a Sustainability and Green Procurement Advisory Council ("Council"), which shall consist of 11 members appointed by the Governor who have experience in the fields of green procurement, public health, waste prevention and recycling, energy efficiency, workplace safety, labor relations, environmental protection, environmental justice, or chemical manufacturing. The Governor shall select a Chair of the Council from among its members. The Council shall meet at the times requested by the Committee and provide such advice and assistance as the Committee may require.

H. Miscellaneous

1. Every agency and public authority of this State shall furnish such information and assistance as the Committee determines is reasonably necessary to accomplish its purposes.
2. Executive Order 142, issued on January 16, 1991, is hereby revoked and superseded by this Executive Order.

Given under my hand and the Privy Seal of the State in the City of Albany this twenty-fourth day of April in the year two thousand eight.

David A. Paterson
Governor.

LANDLORD CONSENT TO ASSIGNMENT
New York State Office of General Services (OGS)
Division of Real Estate Services
September 2020

CONSENT TO ASSIGNMENT COMPLETION DIRECTIONS

A. Definitions:

Assignor: The current landlord.

Assignee: The proposed landlord to whom the assignment is being made.

Designated Contacts: Refer to the letter dated _____ regarding Commencement of Restricted Period in accordance with State Finance Law Section 139-j, Consent to Assignment Process.

B. Responsibilities:

1. **OGS Responsibilities:** OGS will complete the information required on this page and pages 1 and 2 of the Consent to Assignment and provide the completed form to the Assignor. Following execution of the Assignment by the Assignor and Assignee and review of the transfer, documents and responsibility of the Assignee, if the Commissioner approves the Assignment, she or her designee will sign the Assignment on Page 5 of the Assignment
2. **Assignor Responsibilities:** An individual who is an officer, director or member of the Assignor or is authorized to bind the Assignor (and provides a letter on the Assignor's letterhead, signed by an officer, director or member of the Assignor) must print and sign his or her name on page 3 of the Consent to Assignment and have his or her signature notarized. The printed name of the person signing on behalf of the Assignor must be indicated in the acknowledgment section and that name must agree with the signature of the individual signing on behalf of the Assignor. If the Assignor will be signing this document outside of New York State, please advise the Bureau of Leasing Services prior to signing, so that the appropriate acknowledgement block can be provided for use on this form.
3. **Assignee Entries:** An individual who is an officer, director or member of the Assignee or is authorized to bind the Assignee (and provides a letter on the Assignee's letterhead, signed by an officer, director or member of the Assignee) must print and sign his or her name on page 4 of the Consent to Assignment and have his or her signature notarized. The printed name of the person signing on behalf of the Assignee must be indicated in the acknowledgment section and that name must agree with the signature of the individual signing on behalf of the Assignee. If the Assignee will be signing this document outside of New York State, please advise the Bureau of Leasing Services prior to signing, so that the appropriate acknowledgement block can be provided for use on this form.

***All signatures & notarizations must have original signatures/notarizations.**

**** Notarization:** The Acknowledgment forms must have notary stamps with registration numbers for all New York State notary signatures. For other than New York State notary signatures, either registration numbers or notary seals may apply. Each notary must identify his or her state of registration.

termination right by providing written notification to the Assignee in accordance with the written notification terms of the Lease.

SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING: Pursuant to State Finance Law §§139-j and 139-k, this Assignment is a "Governmental Procurement" and, therefore, there are certain restrictions on Contacts between OGS and an Assignor and/or Assignee during the assignment process. Both the Assignor and the Assignee are restricted from making Contacts from the earliest posting, on a Governmental Entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law of written notice of intent to assign the contract through final approval of the Assignment by OGS (the foregoing shall hereinafter be referred to as the "Restricted Period") to other than designated staff unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, are identified in the letter dated _____ regarding Commencement of Restricted Period in accordance with State Finance Law Section 139-j. OGS employees are also required to obtain certain information when Contacted during the Restricted Period and make a determination of the responsibility of the Assignee pursuant to State Finance Law §§139-j and 139-k. Certain findings of non-responsibility can result in rejection of an Assignment, and in the event of two findings within a four-year period, result in debarment of an individual or entity from obtaining Governmental Procurements. Further information about these requirements and the capitalized terms in this paragraph can be found on the OGS website at: <https://ogs.ny.gov/acpl>.

Prior to approval of an assignment of the Lease, OGS must make a vendor responsibility review of the Assignee. Subsequently, the Assignee agrees it shall at all times during the Lease term remain responsible. The Assignee agrees, if requested by the Commissioner of OGS or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of General Services has reviewed the proposed transfer, this Assignment and the parties thereto and determined that: (1) the transfer is not an attempt to avoid a lien, tax obligation or other legal responsibility relating to the Lease; (2) the Assignee is responsible; and (3) approval of the Assignment is not arbitrary and capricious or would frustrate the purposes of the competitive bidding statutes. Therefore, the Commissioner of General Services does hereby consent to the assignment of OSC Lease No. _____, which will now be referred to as (NEW) OSC Lease No. _____ hereafter and the foregoing shall hereinafter be referred to collectively as the "Lease."

This Assignment is subject to approval by the Attorney General and the Comptroller of the State of New York.

The State reserves any and all rights of any kind or nature whatsoever which it may have against the Assignor, named herein, and this consent is made, executed and delivered upon the express condition that this Assignment shall not operate to discharge any claims, demands or causes of action the State heretofore had, now has, or hereafter may have against the Assignor for or by any reason or matter or thing whatsoever.

Except as amended herein, all other terms and conditions of the Lease shall remain unchanged and in full force and effect. Capitalized terms used but not defined herein, shall have the respective meanings given to them in the Lease.

The effective date of the Assignment, for payment purposes, is _____ (hereinafter referred to as the "Effective Date"). The term of this Assignment will commence upon the Effective Date and end on the Expiration Date or Termination Date of the Lease.

Remainder of Page is Left Intentionally Blank

ASSIGNOR

By: _____
(Print Name)

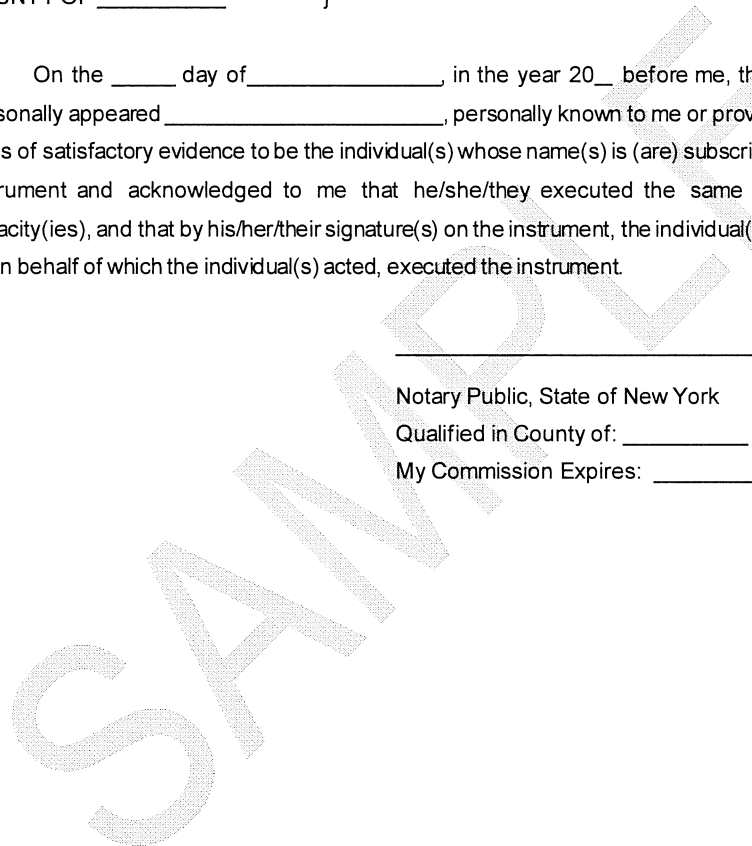
By: _____
(Signature)

Date: _____

STATE OF NEW YORK }
 : SS.:
COUNTY OF _____ }

On the ____ day of _____, in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York
Qualified in County of: _____
My Commission Expires: _____



ASSIGNEE

By: _____
(Print Name)

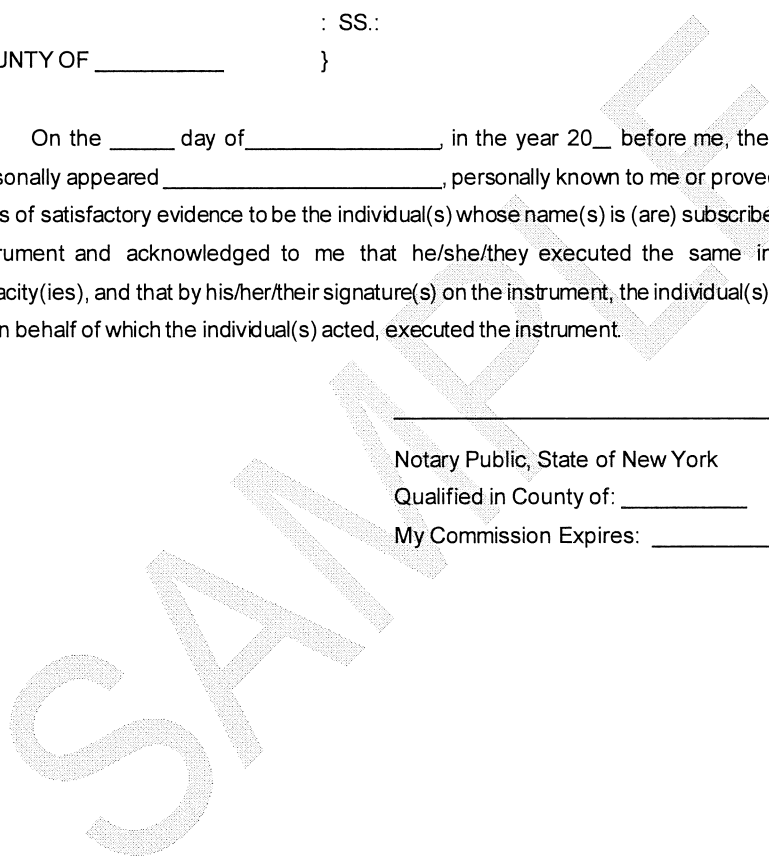
By: _____
(Signature)

Date: _____

STATE OF NEW YORK }
 : SS.:
COUNTY OF _____ }

On the ____ day of _____, in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York
Qualified in County of: _____
My Commission Expires: _____



THE PEOPLE OF THE STATE OF NEW YORK

By: _____
(Signature)
Jessica Gabriel, Acting Associate Commissioner
Division of Real Estate Services
For the Commissioner of General Services

Date: _____
(OGS signature date)

APPROVED AS TO FORM

Letitia A. James
New York State Attorney General

By _____
Assistant Attorney General

Date: _____

APPROVED:

Thomas P. DiNapoli
Office of the New York State Comptroller

By _____

Date: _____

SAMPLE



**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
SUBSTITUTE FORM W-9:
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION**

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
-------------------------	--

3. Entity Type (Check one only):

<input type="checkbox"/> Individual Sole Proprietor	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Co.	<input type="checkbox"/> Corporation	<input type="checkbox"/> Not For Profit	<input type="checkbox"/> Exempt Payee
<input type="checkbox"/> Trusts/Estates	<input type="checkbox"/> Federal, State or Local Government	<input type="checkbox"/> Public Authority	<input type="checkbox"/> Disregarded Entity		
<input type="checkbox"/> Other _____					

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: *(DO NOT USE DASHES)*
See instructions.

--	--	--	--	--	--	--	--	--	--

2. Taxpayer Identification Type (check appropriate box):

Employer ID No. (EIN) Social Security No. (SSN) Individual Taxpayer ID No. (ITIN) N/A (Non-United States Business Entity)

Part III: Address

1. Remittance Address:	2. Ordering Address:
Number, Street, and Apartment or Suite Number	Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country
	Email Address

Part IV: Vendor Primary Contact Information – Executive Authorized to Represent the Vendor

Primary Contact Name: _____ Title: _____

Email Address: _____ Phone Number: _____

Part V: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (TIN), and
- I am a U.S. citizen or other U.S. person, and
- (Check one only):
 - I am not subject to backup withholding.** I am (a) exempt from back up withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding), or
 - I am subject to backup withholding.** I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to back withholding.

Sign Here:

_____	_____	_____
Signature	Title	Date
_____	_____	_____
Print Preparer's Name	Phone Number	Email Address

NYS Office of the State Comptroller
Instructions for Completing Substitute Form W-9

New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.¹ We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

Part I: Vendor Information

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type:** Check the Entity Type doing business with New York State.

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

The TIN provided must match the name in the "Legal Business Name" box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

Part III: Address

1. **Remittance Address:** Enter the address where payments, 1099s, if applicable, and official correspondence should be mailed. This will become the default address.
2. **Ordering Address:** Enter the address where purchase orders should be sent. Please note that purchase orders will be sent via email by default.

Part IV: Vendor Primary Contact Information

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization. Name, phone number and email address are required.

Part V: Certification and Exemption from Backup Withholding

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

¹ According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.



Office of General Services
Division of Real Estate Services

EXHIBIT 7

County Change of Name/Address Form

State of New York
The New York State Office of General Services
Division of Real Estate Services
Corning Tower, 40th Floor
Empire State Plaza
Albany, New York 12242
Phone: 518-486-5630 Fax: 518-474-7866

DATE: _____

TO: OGS Lease Processing Unit
40th Floor, Corning Tower, ESP
Albany, NY 12242

FROM: County Vendor ID# _____

OSC Contract # _____

County Building Address/City _____

County New Name: _____

County New Address:

Street Number and Street _____

City-State-Zip Code _____

Contact/Phone: _____

E-Mail Contact _____

SCHEDULE A

**SECTION 16 - JANITORIAL SERVICE
SPECIFICATIONS**

The County shall, at its sole cost and expense, provide the following janitorial services using materials and procedures that comply with the requirements set forth in Section 16 of this MOU. As used herein, the word "Daily" shall mean to occur once each day, Mondays through Fridays, excluding State Legal Holidays, as that term is defined in Section 13 of this MOU.

Drinking Fountains: Wash inside and outside Daily. Water shall be set at a high enough level that the mouth does not touch the faucet.

Floors-Resilient Tile: Dust mop Daily with cleaning products that comply with the requirements of EO-4, which is attached to this MOU as Exhibit 3, and spot mop as necessary. Spray buff monthly with commercially prepared spray buff material or a solution of water and floor finish that complies with the requirements of EO-4. Strip and redress annually with synthetic, metal, interlocked, non-slip material with a minimum of seventeen percent (17%) solids. Floors shall have a clean appearance at all times.

Floors-Carpeted: High traffic areas are to be vacuumed Daily. All carpet shall be completely vacuumed once a week, and shall be shampooed once a year.

Furniture: All surfaces must be cleaned and dust free.

Restrooms:

Daily - thoroughly clean all urinals, water closets and sinks, inside and outside, with a disinfectant and odor-counteractive solution that complies with the requirements of EO-4, which is attached to this MOU as Exhibit 3. Empty all trash and sanitary receptacles. Wash and sanitize all shelves, dispensers and receptacles. Clean all mirrors. Spot wash walls, partitions, doors and furniture. Wet mop and rinse all floor areas. Fill all dispensers so as to last a full working day.

Weekly - Dust all partitions and air vents.

Monthly - Wash all furniture in lounge area and partitions in restrooms.

Annually - Wash all walls, partitions, ceilings, and all air supply and return vents.

Light Fixtures: Annually wash inside and outside of all light fixtures, tubes and diffusers.

Venetian Blinds/Window Treatments: Dust monthly. Completely wash annually. Repair as needed.

Walls, Ceilings, Entrances, Metal Trim, Doors, Etc.:

Daily - Damp wipe fingerprints, smears, smudges, etc. from all entrance doors and frames, handrails and glass. Damp wipe wall surfaces and wall hung fixtures. Clean all entrance glass, both inside and outside in public areas. Clean telephone booths and fixtures. Damp mop all non-carpeted floor surfaces in lobbies, corridors and entrances. Vacuum entrance mats.

Monthly - Spray buff all non-carpeted corridor, lobby and vestibule floors.

Semi-annually - Completely wash both sides of all outside entrances and vestibules, glass, frames, handrails, steps, risers, accessible ramps and doors. Strip and redress corridor and lobby floors. Shampoo entrance carpets.

Annually - Wash corridor walls, vestibule walls and ceilings, and lobby walls.

Woodwork (Natural Wood Finish): Dust Daily. Clean and polish annually.

Stairwells, Landings and Concrete Floors:

Daily - Sweep, spot mop spills and remove gum Daily. Damp wipe fingerprints, smudges and smears on stairway doors, wall surfaces, and handrails.

Monthly - Mop and rinse stairway landings.

Annually - Wash and rinse walls, light fixtures, sills, treads, risers and handrails and apply dressing to all landings and treads.

Windows: To be cleaned, inside and out, in April and October. Interior partition glass to be clean at all times.

Rubbish: Wastepaper baskets and trash cans are to be emptied and trash removed from the Premises Daily. Wastepaper baskets are to be clean, odor free and lined Daily. In order to maximize materials recovery and implement effective programs to reduce waste, the Occupying Agency shall source separate all recyclable waste materials, including paper, metal, glass and plastic, hereafter referred to as "Wastes," from rubbish generated within the Demised Premises in compliance with Section 16 of this MOU. As discussed in Section 16 of this MOU, the County, at its sole cost and expense, agrees, to the extent practicable, to assist the State and the Occupying Agency with implementing said programs and shall likewise source separate and remove all such Wastes, causing the same to be disposed of for purposes of recycling and materials recovery in accord with all laws, rules, orders, ordinances and regulations at any time issued or in force and applicable in the borough, city, county, or other municipality in which the Demised Premises are located.

Maintenance and Trimming: Grass, shrubs and trees surrounding the Building to be clipped and trimmed. Use of chemicals shall be in accord with all applicable federal, State and local laws, rules, orders, ordinances and regulations.

Sidewalks, Entrances, and Parking Areas: Remove refuse and debris Daily. In winter, remove snow and ice from the walkway and parking lots and spread de-icer as needed.

The County shall work with the State and the Occupying Agency to comply with the requirements of EO-4, to the extent practicable, including but not limited to utilizing the New York Interagency Committee on Sustainability and Green Procurement's approved specifications, such as those for: Pre-Packaged Snowmelt and Deicing Products, Trash Bags, Janitorial Paper Products, Solid Waste Recycling and Management Services, Disinfectants and

Sanitizers, General Purpose Cleaners and Hand Cleaners, Hand Soaps, Consumer Antiseptic Hand Washes and Hand Rubs, and Personal Care Cleansing Products and others found at: <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools#approved-eo-4-specifications>.

Governmental Entity Lease Disclosure Sheet

FORM 1

NYS OFFICE OF GENERAL SERVICES Division of Real Estate Services 40 TH FLOOR, CORNING TOWER Empire State Plaza ALBANY, NEW YORK 12242				
PROJECT NO:	DATE:	OCCUPYING AGENCY:		
BUILDING ADDRESS (street/city/state/zip code/county):	FEDERAL I.D. NO. (FEIN):	SOCIAL SECURITY #:		
GOVERNMENTAL ENTITY NAME:	GOVERNMENTAL ENTITY ADDRESS/ TELEPHONE NO.:			
e-mail address:				
GOVERNMENTAL ENTITY/BUILDING INFORMATION:			YES	NO
~If explanation required, please attach additional sheets as necessary~				
1. Is the Governmental Entity's property interest in the premises fee simple ownership? If NO, please describe the property interest (i.e. leasehold, purchase, contract, etc.).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the Governmental Entity do business under any other names? If yes, please indicate those names: _____.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the primary business of the Governmental Entity the leasing of space? If NO, please provide an explanation/purpose of the primary business.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is there present on, near or within 30 meters of the premises or the building of which the premises form a part, any "PCB Transformers", "PCB Articles" or "PCB Equipment" as such terms are defined in U.S. Environmental Protection Agency Regulation (40CFR761)? (PCB Transformer owners were required by U.S. EPA Regulation (40CFR761) to notify owners of commercial buildings of the existence of PCB Transformers within 30 meters of such buildings not later than December 1, 1985).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • If answer to #6 is YES, are such "PCB Transformers", "PCB Articles" or "PCB Equipment" labeled in accordance with U.S. Environmental Protection Agency Regulation (40CFR761)? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • If answer to #6 is YES, have such "PCB Transformers", "PCB Articles" or "PCB Equipment" been registered with fire response personnel having primary jurisdiction as is required by U.S. Environmental Protection Agency Regulation (40CFR761)? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there sprinklers in the premises?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • If YES are they Omega, Central, Gem or Star Sprinklers? • If Omega, Central, Gem or Star, have the defective parts been replaced/repaired pursuant to recent CPSC directives and building codes? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Was this building constructed prior to January 1, 1979? If YES, include date: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Is there present on or within the premises or the building of which the premises form a part, any asbestos material or material impregnated with asbestos, or which asbestos forms a part? If yes, please briefly describe the nature and extent of the use of asbestos, including a description any activity which has been undertaken to preclude the asbestos from becoming friable.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the building located within a historic district or is it listed on or as eligible for the State or National Register of Historic Places?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the Governmental Entity have any current or pending Real Property leases with any New York State Agencies, Authorities, Boards, or Commissions? (A pending lease means one that is currently being negotiated with one of the listed governmental entities.) If YES, please provide details.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the Governmental Entity use, or has it used in the past five (5) years, any other Federal Employee Identification Number other than what is listed on page one of this document? If YES, provide the Federal Employee Identification Number(s) and the address for each such entity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Have any bankruptcy proceedings been initiated by or against the Governmental Entity or its affiliates within the past 7 years (whether or not closed) or is any bankruptcy proceeding pending by or against the Governmental Entity or its affiliates regardless of the date of filing? (If YES, indicate if this is applicable to the submitting Governmental Entity or affiliate. If it is an affiliate, include the affiliate's name and Federal Employee Identification Number. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Will New York State businesses be used in the performance of this Lease? If yes, identify New York State business(es) that will be used; (Attach identifying information).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Governmental Entity Lease Disclosure Sheet

Governmental Entity Lease Disclosure Sheet

<p>13. Per New York State Workers' Compensation Laws §57 and §220, a Governmental Entity applying for a State contract, license, or permit must provide proof of coverage or exemption for both Workers' Compensation AND Disability Benefits.</p> <p>Please refer to the attached "WORKERS' COMPENSATION AND DISABILITY INSURANCE FORMS CHART" for additional information on applicable forms and links to website. Be sure to designate the New York State Office of General Services, Division of Real Estate Services, Corning Tower, 40th Floor, Empire State Plaza, Albany, NY 12242 as the Certificate Holder or Government Entity requesting proof of coverage.</p> <p>The Governmental Entity name and FEIN (or SSN) on the lease contract, disclosure sheet, and Workers' Compensation/Disability forms must all match exactly.</p> <p>Governmental Entity has:</p>		
<p>(a) Workers' Compensation: If Yes, attach one of the following forms:</p> <ul style="list-style-type: none"> • Form C-105.2 -- issued by your insurance carrier • Form U-26.3 -- issued by the State Insurance Fund • Form GSI-105.2 -- must be completed by the group self-insurance administrator 	<input type="checkbox"/>	<input type="checkbox"/>
<p>(b) Disability Insurance Benefits: If Yes, attach one of the following forms:</p> <ul style="list-style-type: none"> • Form DB-120.1 -- issued by your insurance carrier, or • Form DB-155 -- issued by the Board's Self-Insurance Office (518) 402-0247 	<input type="checkbox"/>	<input type="checkbox"/>
<p>*IF NO, exemption form CE-200 is available on the New York State Workers' Compensation Board's website. However, please note that an exemption is available in very limited circumstances.</p>		
<p>14. Does the Governmental Entity have the financial resources necessary to fulfill the requirements of the proposed lease?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>15. The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.</p> <p>The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.</p> <p>Generally, the Human Rights Law applies to:</p> <ul style="list-style-type: none"> • all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment; • employers with fewer than four employees in all cases involving sexual harassment; and, • any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin. <p>Does the Governmental Entity certify, in accordance with Executive Order No. 177, that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law?</p> <p>Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>16. (a) Is any immediate family member of any individual employed by any governmental entity of the State of New York or serving as a member of any State Board, Commission or Authority? If the answer is YES, please disclose the name of the governmental entity and indicate the relationship between the individuals.</p>		
<p>(b) Is any individual employed by any governmental entity of the State of New York or serving as a member of any State Board, Commission or Authority? If the answer is YES, please disclose the name of the governmental entity and indicate whether the individual was involved in the bidding, contracting or leasing process for this transaction.</p>		

Governmental Entity Lease Disclosure Sheet

SIGNATURE PAGE

The undersigned, personally and on behalf of the Governmental Entity noted below, does hereby state and certify to the New York State Office of General Services that the information given above is true, accurate and complete with respect to State Finance Law §§ 139 j-k.

The undersigned: (1) recognizes that this document is submitted for the express purpose of assisting the New York State Office of General Services (hereinafter referred to as "OGS") and other New York State government entities (including the Office of the New York State Comptroller (OSC)) in making responsibility determinations regarding the award or approval of a lease or modification thereto (including, but not limited to, a renewal, modification or assignment thereof) and that OGS and other New York State government entities will rely on the information disclosed herein when making responsibility determinations; (2) acknowledges that OGS and other New York State government entities may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility and all other actions available at law or in equity.

The undersigned certifies that he/she:

- is knowledgeable about the Governmental Entity's business and operations;
- understands that OGS and other New York State government entities will rely on the information disclosed in this Lease Disclosure Sheet when entering into a lease or modification thereto with the Governmental Entity;
- is under an obligation to update the information provided herein to include any material changes to the Governmental Entity's responses from the time of proposal submission through the delivery of a fully executed document by OGS, and may be required to update the information at the request of OGS or other New York State government entities prior to the award and/or approval of a lease or modification thereto, or during the term of the lease; and
- is authorized to bind the Governmental Entity and is either (1) listed as an officer/partner/member of the Governmental Entity listed in response to question 1 of this Lease Disclosure Sheet; or (2) is submitting a letter, with this Lease Disclosure Sheet, on the Governmental Entity's letterhead signed by an officer/partner/member of the Governmental Entity, stating that the undersigned is authorized to sign on behalf of the Governmental Entity.

I affirm this ____ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the statements contained herein are true, and I understand that this document may be filed in an action or proceeding in a court of law.

Name of Governmental Entity

Signature

Address

Print or Type Name

City, State, Zip

Title

Date: _____

Telephone Number: _____

Governmental Entity Lease Disclosure Sheet

WORKERS' COMPENSATION AND DISABILITY INSURANCE FORMS CHART

WORKERS' COMPENSATION AND DISABILITY BENEFITS AGENCY CONTRACT REQUIREMENTS			
<p>Workers' compensation is law (PWC) requires state entities to ensure that businesses applying for permits, licenses, or contracts have appropriate workers' compensation and disability benefits insurance coverage. This requirement applies to both original solicitations and renewals, whether the governmental agency is having the work done or is simply leasing the work, services or contract.</p>			
Businesses Requesting to Enter into, Extend, or Assign Contracts MUST provide ONE of the following Workers' Compensation Form:	AND	List the Employee Disability Benefits Form(s).	
<p>After a business has been selected for a contract, the business must provide the following information to the governmental agency leasing the work, services or contract:</p> <p>1. A copy of the Workers' Compensation Form (CE-200) and a copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation (CE-208) will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p> <p>2. A copy of the Workers' Compensation Form (CE-109.2) and a copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation (CE-208) will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p> <p>3. A copy of the Workers' Compensation Form (CE-109.2) and a copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation (CE-208) will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p> <p>4. A copy of the Workers' Compensation Form (CE-109.2) and a copy of the Certificate of Attestation of Exemption from NYS Workers' Compensation (CE-208) will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p>	<p>CE-200: Certificate of Attestation of Exemption from NYS Workers' Compensation (the CE-208 will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p>	<p>CE-200: Certificate of Attestation of Exemption from Disability Benefits Coverage (the CE-208 will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p>	<p>Note: Employees being covered by the contract will be able to file for workers' compensation benefits through the Workers' Compensation Board (WCB) website. The WCB will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p> <p>CE-208: The WCB will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p> <p>WCB: Additional information regarding Workers' Compensation is available at www.wcb.ny.gov</p>
<p>CE-109.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the governmental entity upon request) PLEASE NOTE: The State Insurance Fund provides its own version of this form, the I-206.3, or</p>	<p>CE-109.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the governmental entity upon request) PLEASE NOTE: The State Insurance Fund provides its own version of this form, the I-206.3, or</p>	<p>DB-120.1 -- Certificate of Disability Benefits (the business's insurance carrier will send this form to the governmental entity upon request); or</p>	<p>The DB-120.1 must be submitted by the business's insurance carrier to the Workers' Compensation Board (WCB) website. The WCB will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p>
<p>CE-109.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the governmental entity upon request) PLEASE NOTE: The State Insurance Fund provides its own version of this form, the I-206.3, or</p>	<p>CE-109.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the governmental entity upon request) PLEASE NOTE: The State Insurance Fund provides its own version of this form, the I-206.3, or</p>	<p>DB-155 -- Certificate of Disability Benefits Self-Insurance (the business's insurance carrier will send this form to the governmental entity upon request)</p>	<p>The DB-155 must be submitted by the business's insurance carrier to the Workers' Compensation Board (WCB) website. The WCB will also establish if the contractor is, in fact, seeking from Disability Coverage), or</p>

<http://www.wcb.ny.gov/data/contracts/employees/multiemployer.pdf> [Link To WCB Instructions](#)
<http://www.wcb.ny.gov/data/contracts/multiemployer/ADF-forms.pdf> [Link To WCB Forms](#)
<http://www.wcb.ny.gov/data/contracts/multiemployer/ADF-forms.pdf> [Link To WCB Search - "Based on Employer Have I coverage?"](#)
<http://www.wcb.ny.gov/data/contracts/multiemployer/ADF-forms.pdf> [Link To "Request for Exemption"](#)



ONEIDA COUNTY
DEPARTMENT OF PUBLIC WORKS
George E. Carle Complex
5999 Judd Road, Oriskany, NY 13424
Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE JR.
County Executive

MARK E. LARAMIE, P.E.
Commissioner

January 12, 2022

FN 20 22-049

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

PUBLIC WORKS

WAYS & MEANS

Dear County Executive Picente,

Development of plans and specifications for reconstruction of Middle Settlement Road are complete and right-of-way acquisition is scheduled to be complete prior to the end of 2021 with construction beginning April 2022. Construction phase services, including on-site project representation, construction inspection, and construction contract administration, must be secured prior to a construction contract award.

It is anticipated that this project will be fully funded with State aid. Therefore, in accordance with NYSDOT guidelines for State aid projects, Oneida County solicited an Expression of Interest (EOI) from all firms on the NYSDOT Region 2 list of eligible consultants. Each EOI was reviewed and scored on a qualifications basis. State procedures prohibit the use of consulting fees as a determining factor. It was decided that Barton & Loguidice, D.P.C., is the most qualified consultant for this project.

Oneida County and Barton & Loguidice negotiated an acceptable scope of work and proposed fee schedule for construction phase services. Therefore, I recommend an award to Barton & Loguidice for construction phase services with a maximum amount payable of \$316,100.00.

If you concur with this request, please indicate so my endorsing this letter and forwarding it and the enclosed contract documents to the Board of Legislators for consideration at their next meeting.

Thank you for your continued support.

Sincerely,

Mark E. Laramie, P.E.
Commissioner

Enc.

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

Anthony J. Picente, Jr.
County Executive

Date 1-18-22

Oneida Co. Department: Public Works

Competing Proposal X
Only Respondent
Sole Source RFP

**ONEIDA COUNTY BOARD
OF LEGISLATORS**

Name of Proposing Organization: Barton & Loguidice, D.P.C.
443 Electronics Parkway
Liverpool, NY 13088

Title of Activity or Service: Middle Settlement Road Reconstruction
Construction Phase Services

Proposed Dates of Operation: Upon Execution - 12/31/2023

Client Population/Number to be Served: N/A

Summary Statements

1) Narrative Description of Proposed Services:

Development of plans and specifications for reconstruction of Middle Settlement Road are complete and right-of-way acquisition is scheduled to be complete prior to the end of 2021 with construction beginning April 2022. Construction phase services, including on-site project representation, construction inspection, and construction contract administration, must be secured prior to a construction contract award.

In accordance with the NYSDOT Procedures for State Aid Projects, Oneida County solicited an Expression of Interest (EOI) from each firm on the NYSDOT Region 2 list of eligible consultants. Each EOI was reviewed and scored on a qualifications basis. State procedures prohibit the use of consulting fees as a determining factor. It was decided that Barton & Loguidice, D.P.C. is the most qualified consultant for this project.

On November 3, 2021, the Oneida County Board of Acquisition and Contract accepted a proposal from Barton & Loguidice with a not-to-exceed fee of \$316,100.00 construction phase services for reconstruction of Middle Settlement Road in the Town of New Hartford.

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

3) Program Design and Staffing: N/A

Total Funding Requested: \$316,100.00 **Account #:** H-298
Oneida County Dept. Funding Recommendation: \$316,100.00
Proposed Funding Sources (Federal \$/ State \$/County \$): \$316,100.00 (State)

Cost Per Client Served: N/A
Past Performance Data: N/A
O.C. Department Staff Comments: None

Architectural/ Engineering Consultant Agreement

PIN (s) 2754.27

Municipal Contract No. _____

Agreement made this ____ day of _____, _____ by and between

ONEIDA COUNTY

(municipal corporation)

having its principal office at 5999 Judd Road, Oriskany, New York 13424 (to be known throughout this document as the "Sponsor")

and

BARTON & LOGUIDICE, D.P.C.

with its office at 443 Electronics Parkway, Syracuse, New York 13088
(to be known throughout this document as the "Consultant")

WITNESSETH:

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this contract **CR 30 – Middle Settlement Road Reconstruction CA/CI Services** (as described in detail in Attachment A annexed hereto, the "Project") the Sponsor has sought to engage the services of a Consultant Engineer) to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Sponsor has selected the Consultant to perform such services in accordance with the requirements of this Contract; and

WHEREAS, the _____], is authorized to enter this Contract on behalf of the Sponsor,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS CONTRACT

This contract consists of the following:

- Agreement Form - this document titled "Architectural/Engineering Consultant Agreement";
- Attachment "A" - Project Description and Funding;
- Attachment "B" – Scope of Services;
- Attachment "C" - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Sponsor with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Sponsor, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Contract shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the Sponsor.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based on the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

■ 3.1 Cost Plus Fixed Fee Method		
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	INTERIM PAYMENTS
Item I	<ul style="list-style-type: none"> ■ Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Contract, plus properly allocable partial salaries of all persons working part-time on this PROJECT. ■ The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established therefore by the Sponsor. ■ If, within the term of this Contract, any direct salary rates are paid in excess of the maximums shown in Attachment A, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance 	<p>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</p> <ul style="list-style-type: none"> ■ Actual cost incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative. ■ Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Contract, all subject to audit. ■ Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Sponsor. <p>INTERIM PAYMENTS</p> <ul style="list-style-type: none"> ■ The CONSULTANT shall be paid in <i>monthly</i> progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. ■ Bills are subject to approval of the Sponsor and Sponsor's Representative.
Item II	Actual Direct Non-Salary Project-related Costs incurred in fulfilling the terms of this Contract; all subject to audit.	<p>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</p> <p>All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor.</p> <p>INTERIM PAYMENTS</p> <p>Salvage value</p>
Item III	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Sponsor at the completion of the work or at the option of the Sponsor.	

3.1 Cost Plus Fixed Fee Method		INTERIM PAYMENTS
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE
Item IV	<ul style="list-style-type: none"> ■ Overhead Allowance based on actual allowable expenses incurred during the term of this Contract, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations (FAR), sub-part 1-31.2 as modified by sub-part 1-31.105, and applicable policies and guidelines of the Sponsor, NYSDOT and FHWA. ■ For the purpose of this Contract, an accounting period shall be the CONSULTANT's fiscal year. An audit of the accounting records of the CONSULTANT shall be made by the Sponsor for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made, under Item IA of this subdivision to determine the charge to be made under this Item. 	<ul style="list-style-type: none"> ■ The overhead allowance shall be established as a percentage of Item IA only (Actual Direct Technical Salaries) of this ARTICLE, and shall be a FAR compliant rate initially established as 1.75% (office), in all events not to exceed 1.27% (field), subject to audit.
Item V	<ul style="list-style-type: none"> ■ Negotiated Lump Sum Fixed Fee. ■ Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	<ul style="list-style-type: none"> ■ A negotiated Lump Sum Fee which in this CONTRACT shall equal \$25,600.
Item VI	The Maximum Amount Payable under this Contract including Fixed Fees unless this contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	Maximum Amount Payable under this Method shall be \$316,100.

ARTICLE 4. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Sponsor:

- A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e. labor, direct non-salary, overhead, and fee.
- B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the Sponsor.
- c. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the Sponsor.

5.2 In order to enable the Sponsor to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.

- II. Records of Direct Non-Salary Costs;
- III. Copies of any subcontracts relating to said contract;
- IV. Location where records may be examined; and
- V. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Sponsor will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Sponsor from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Contract or for any part thereof except as otherwise provided herein.

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Sponsor of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Sponsor on a monthly basis or such alternative interval as the Sponsor directs in writing.

7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Contract and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for execution after approvals have been obtained from necessary Sponsor officials, and, if required from the Federal Highway Administration.

7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Sponsor all assistance required by the Sponsor. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Contract for the additional services above described, the Sponsor's directions shall be exercised by the issuance of a separate Contract, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Contract.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Sponsor from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against the Sponsor beyond such as may legally exist irrespective of this Article or this Contract.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Contract. The CONSULTANT shall supply any certificates of insurance required by the Sponsor and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least \$1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Sponsor or existing in the offices of the CONSULTANT shall be made available to the other party to this Contract without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Sponsor may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Sponsor of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this contract.

ARTICLE 13. TERMINATION

The Sponsor shall have the absolute right to terminate this Contract, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Sponsor - if a termination is brought about for the convenience of the Sponsor and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause - if the termination is brought about as a result of the Sponsor's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Sponsor, of the total amount of work contemplated by the PROJECT CONTRACT.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Contract, and the Sponsor shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Sponsor or his duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Sponsor for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Sponsor, the Sponsor will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

The CONSULTANT specifically agrees that this Contract may be canceled or terminated if any work under this Contract is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The CONSULTANT, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Sponsor by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Sponsor, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Contract or of his right, title or interest therein, or his power to execute such Contract, to any other person, company or corporation, without the previous consent in writing of the Sponsor.

If this provision is violated, the Sponsor may revoke and annul the Contract and the Sponsor shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Contract without such consent in writing of the Sponsor.

ARTICLE 19. PROPRIETARY RIGHTS

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/ SUBCONSULTANTS

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Sponsor.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29¹) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

¹ <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=936406b1c92895795069232a53fb110f&rgn=div8&view=text&node=49:1.0.1.1.20.2.18.5&idno=49>

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Sponsor may in certain circumstances, provide compensation for such work.
- B. Neither the Sponsor's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Sponsor in accordance with applicable law for all damages to the Sponsor caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of the Sponsor provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work 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, CONSULTANT agrees that neither it nor its SUBCONSULTANTS 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. CONSULTANT 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.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- a. an existing contract for the PROJECTS ROW incidental work or construction engineering; or
- b. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the CONSULTANT from being awarded a future contract covering the work describe in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of \$5,000, the CONSULTANT shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the CONSULTANT shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The CONSULTANT shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. 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 CONSULTANT'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, CONSULTANT and its subconsultants 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.

ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION

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

ARTICLE 29. SERVICE OF PROCESS

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

ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA. At the time of completion of the work, the CONSULTANT shall make available to the Sponsor all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Sponsor. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the CONSULTANT shall make available to the Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the CONSULTANT shall bear thereon the endorsement of the CONSULTANT. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Sponsor.

ARTICLE 31. MUNICIPAL ADVISOR SERVICES ARE EXCLUDED. The services to be provided by CONSULTANT under this Contract do not include advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by CONSULTANT are understood by the parties to this Contract to be strictly engineering opinions, advice, information or recommendations. CONSULTANT is not a "municipal advisor" as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. The other parties to this Contract should determine independently whether they require the services of a municipal advisor.

IN WITNESS WHEREOF, the parties have duly executed this Contract effective the day and year first above written.

Reference: Sponsor Contract # _____

Oneida County	Barton & Loguidice, D.P.C.
by: _____	by: <u>Matthew J. Schooley</u>
Date: _____	Date: January 13, 2021

STATE OF NEW YORK

ss:

COUNTY OF _____

On this _____ day of _____, _____ before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the _____, New York; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

Notary Public, _____ County, N.Y.

STATE OF NEW YORK

ss:

COUNTY OF ONONDAGA

On this 13th day of January, 2022 before me, Matthew J. Schooley personally appeared to me known, who, being by me duly sworn, did depose and say; that he resides in the Town of Aurelius, New York; that he is the Principal of Barton & Loguidice, D.P.C., the corporation described in and which executed the foregoing instrument; that he is the authorized with the execution of the matter herein provided for, and that he signed and acknowledged the said instrument in his position as a duly authorized representative of Sponsor.

Joely J. Balduzzi
Notary Public, State of New York
No. 01216134753
Qualified in Onondaga County
Commission Expires 1/11/2023

Joely J. Balduzzi
Notary Public, Onondaga County, N.Y.

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).

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

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

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

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

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
 - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
 - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
 - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

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

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

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

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

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

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

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

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

13. GOVERNING LAW.

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

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

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

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

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

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

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

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

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

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

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

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

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

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

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

- a. For the purposes of this provision, the "use of tobacco" shall include:
 - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
 - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

- i. Upon all real property owned or leased by the County of Oneida; and
- ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

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

**Attachment A
Architectural/ Engineering Consultant Contract
Project Description and Funding**

PIN: 2754.27

Term of Agreement Ends: December 31, 2023

- Main Agreement Amendment to Contract [add identifying #]
 Supplement to Contract [add identifying #]

Phase of Project Consultant to work on:

- P.E./Design ROW Incidentals ROW Acquisition
 Construction, C/I, & C/S

Dates or term of Consultant Performance:

Start Date: April 12, 2021

Finish Date: December 31, 2023

PROJECT DESCRIPTION:

CR 30 – Middle Settlement Road Reconstruction

Project Location:

Oneida County

Consultant Work Type(s): See Attachment B for more detailed Scope of Services.

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:

\$316,100

Footnotes:

ATTACHMENT B
Architectural/ Engineering Consultant Contract

Scope of Services
or
Task List

SCOPE OF SERVICES

CONSTRUCTION PHASE SERVICES

**CR30 - Middle Settlement Road Reconstruction
PIN 2754.27**

April 2021

Section 9 - Construction Inspection

9.01 Equipment

The **Contractor** will furnish office space and basic office furnishings for the **Consultant**, as part of the contract.

The **Consultant** will furnish all other office, field and field laboratory supplies and equipment required to properly perform the inspection services listed below.

9.02 Inspection

The **Consultant** must provide, to the satisfaction of the **Municipality**, contract administration and construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining complete project records, processing payments, performing detailed inspection work and on-site field tests of all materials and items of work incorporated into the contract consistent with federal policies and the specifications and plans applicable to the project.

9.03 Municipal Project Engineer

The **Municipality** will assign a Project Engineer to the contract covered by this agreement. This Project Engineer will be the **Municipal's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Engineer.

9.04 Ethics

Prior to the start of work, the **Consultant** will submit to the **Municipality** a statement regarding conflicts of interest.

9.05 Health and Safety Requirements

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

9.06 Staff Qualifications and Training

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement. The **Consultant** will recommend inspectors to the Sponsor for approval prior to their assignment to the project. Resumes, proof of required certification and the proposed initial salary shall be furnished. The Sponsor may want to interview before approval, and reserves the right to disapprove any application. The employment of all consultant personnel is conditional, subject to satisfactory performance, as determined by the Sponsor.

For all construction inspection agreements, it is mandatory that all technician personnel be identified by the National Institute for Certification in Engineering Technologies (NICET) certification levels in the staffing tables. In addition, all Transportation Engineering Technicians-Construction assigned to the project at and above level III, Engineering and Senior Engineering Technicians, must be certified by NICET. Transportation Engineering Technicians-Construction below level III assigned to the project must have successfully completed the General Work Element requirements and at least those Special Work Elements which apply to their specific project assignments at the level of their rating.

In lieu of the NICET certification requirements, the Sponsor may accept evidence that the person proposed for employment (1) has satisfactorily performed similar duties as a former NYS Department of Transportation (NYSDOT) employee or (2) has a combination of education and appropriate experience commensurate with the scope of the position in question.

Technicians employed by the **consultant** that perform field inspection of Portland cement concrete shall possess a current certification from the American Concrete Institute (ACI) as a Concrete field-testing Technician-Grade 1, or have completed all of the following NICET work elements, which are equivalent to the ACI certification:

NICET LEVEL	NICET CODE	NICET WORK ELEMENT
I	82019	Sample Fresh Concrete
I	82020	Slump Test
II	84068	Air Content, Pressure
II	84069	Air Content, Gravimetric
II	84070	Air Content, Volumetric
II	84076	Field Prepared Test Specimens

Inspectors designated as the responsible person in charge of work zone traffic control must have sufficient classroom training, or a combination of classroom training and experience, to develop needed knowledge and skills. Acceptable training should consist of a formal course presented by a recognized training program which includes at least two full days of classroom training. A minimum of two days classroom training is normally required, although one day of classroom training plus responsible experience may be considered. Recognized training providers include American Traffic Safety Services Association (ATSSA), National Safety Council (NSC), Federal Highway Administration’s National Highway Institute (FHWA-NHI), and accredited colleges and universities with advanced degree programs in Civil/Transportation/Traffic Engineering. Former DOT employees may be considered on the basis of at least one day of formal classroom training combined with responsible M&PT experience.

Technicians employed by the **consultant** who perform field inspection of geotechnical construction (earthwork), including, but not limited to embankment construction, subbase placement, structure and culvert backfill placement, and testing of earthwork items for in-place density and/or gradation, shall possess a current certification and/or proof of training from the following organization:

North East Transportation Technician Certification Program (NETTCP) Soils and Aggregate Inspector Certification. An alternative to the certification/training listed above would be proof of previous training (within the past 5 years) of the NYSDOT Earthwork Inspectors School, given by the Department’s Geotechnical Engineering Bureau.

9.07 Scope of Services/Performance Requirements

- Quality

The Consultant will enforce the specifications and identify in a timely manner to the **Municipality** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

- Record Keeping & Payments to the Contractor

All records must be kept in accordance with the NYSDOT Manual for Uniform Record Keeping as well as any requirements required by the **Municipality**. The **Consultant** must take all measurements and collect all other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract to ensure that the Contractor complies with the Contract Plans and Specifications.

Any record plans, engineering data, survey notes or other data provided by the **Municipality** should be returned to the **Municipality** at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the **Consultant** will bear the endorsement of the **Consultant**. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.

Unless otherwise modified by this agreement, the **Consultant** will check, and when acceptable, approve all structural shop drawings.

The **Consultant** must submit the final estimate of the contract to the **Municipality** within four (4) weeks after the date of acceptance of the contract. All project records must be cataloged, indexed, packaged, and delivered to the **Municipality** within five (5) weeks after the date of the acceptance of the contract.

- Health & Safety/Maintenance and Protection of Traffic

1. The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per **Municipality** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety, and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.
2. The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

- Monitoring Equal Opportunity/Labor Requirements

The **Consultant** must assign to one individual the responsibility of monitoring the Contractor's adherence to Equal Opportunity and Labor requirements contained in the contract. When monitoring the Contractor's Equal Opportunity and Labor compliance, the Consultant, will utilize the guidance contained in the contract, standard specifications and the **Sponsor's** policies. The Consultant is also to input required disadvantaged business enterprise (DBE) information into the NYSDOT maintained Equitable Business Opportunities (EBO) database.

<https://www.dot.ny.gov/dotapp/ebo>

Section 10 – Estimating & Technical Assumptions – PIN 2754.27

10.01 Estimating Assumptions (Barton & Loguidice, D.P.C.)

Section 9 Estimate construction will be for a 48-week duration.

Estimated Staffing Hours						
		PRN	ME	CM	PE	PET
9.01	Equipment (Hours incorporated in other tasks)					
9.02	Inspection (See Staffing Table)					
9.03	Construction Manager reporting progress (Hours incorporated in other tasks)					
9.04	Ethics (Hours incorporated in other tasks)					
9.05	Health & Safety Requirements –(Hours incorporated in other tasks)					
9.06	Staff qualifications/training (Hours incorporated in other tasks)					
9.07	Scope of services/performance requirements					
	Quality	12				
	Progress payments/record keeping (1 payment/month)	12		12		
	As-Built plans/closeout			36		24
	Total	24		48		16

Construction Inspection will include but not be limited to:

- Providing on-site construction inspection and oversight to ensure the quality of construction and conformity with the final plans and specifications.
- Preparation of as-built plans.

Estimate construction will begin on August, 2021-November 2021 to complete utility relocations and will be shutdown for winter and restart April 2022 – November 2022 to complete the remaining road reconstruction.

Note: Refer to staffing table for miscellaneous hours required for support staff.

ATTACHMENT C
Architectural/ Engineering Consultant Contract

**Staffing Rates, Hours,
Reimbursables and Fees**

Exhibit A, Page 1
Barton & Loguidice, D.P.C
Salary Schedule

JOB TITLE	ASCE (A) OR NICET (N) GRADE		AVERAGE HOURLY RATES PRESENT 2021	MAXIMUM HOURLY RATES 2021
	Principal	X	(A)	\$ 99.00
Senior Vice President	IX	(A)	\$ 86.10	\$ 90.00
Vice President	IX	(A)	\$ 73.00	\$ 78.85
Associate	VIII	(A)	\$ 61.81	\$ 65.35
Associate Vice President	VIII	(A)	\$ 49.50	\$ 49.50
Senior Environmental Consultant	VII	(A)	\$ 57.50	\$ 57.50
Senior Managing Engineer	VII	(A)	\$ 56.04	\$ 61.50
Senior Managing Environmental Scientist	VII	(A)	\$ 62.00	\$ 62.00
Senior Managing Hydrogeologist	VII	(A)	\$ 58.75	\$ 58.75
Senior Project Manager	VII	(A)	\$ 59.37	\$ 62.00
Senior Managing Landscape Architect	VII	(A)	\$ 51.50	\$ 51.50
Senior Project Landscape Architect	V	(A)	\$ 37.00	\$ 37.00
Project Manager	VI	(A)	\$ 48.00	\$ 56.00
Managing Engineer	VI	(A)	\$ 47.77	\$ 53.00
Managing Landscape Architect	VI	(A)	\$ 43.35	\$ 46.00
Managing Hydrogeologist	VI	(A)	\$ 45.35	\$ 45.35
Construction Manager	VI	(A)	\$ 50.00	\$ 52.00
Senior Water Quality Scientist	V	(A)	\$ 44.08	\$ 51.00
Senior Land Use Planner	V	(A)	\$ 48.00	\$ 50.00
Senior Project Engineer	V	(A)	\$ 40.68	\$ 51.00
Senior Project Hydrogeologist	V	(A)	\$ 50.00	\$ 56.00
Managing Environmental Scientist	V	(A)	\$ 44.25	\$ 44.25
Managing Industrial Hygienist	V	(A)	\$ 43.50	\$ 43.50
Senior Engineer	V	(A)	\$ 37.00	\$ 39.05
Senior Project Environmental Scientist	V	(A)	\$ 40.00	\$ 40.00
Project Engineer	IV	(A)	\$ 34.98	\$ 36.75
Project Environmental Scientist	IV	(A)	\$ 34.10	\$ 38.50
Engineer III	III	(A)	\$ 31.35	\$ 32.20
Project Landscape Architect	III	(A)	\$ 28.80	\$ 28.80
Environmental Scientist III	III	(A)	\$ 26.50	\$ 26.50
Land Use Planner III	III	(A)	\$ 28.20	\$ 28.20
Industrial Hygienist III	III	(A)	\$ 28.25	\$ 28.25
Assistant Landscape Architect II	II	(A)	\$ 24.75	\$ 24.75
Engineering Designer I	II	(A)	\$ 37.85	\$ 38.50
Intern Architect II	II	(A)	\$ 26.80	\$ 26.80
Engineer II	II	(A)	\$ 29.51	\$ 30.00
Hydrogeologist II	II	(A)	\$ 21.40	\$ 21.40
Engineer I	I	(A)	\$ 27.87	\$ 30.50
Environmental Scientist II	I	(A)	\$ 21.02	\$ 22.00
Resident Engineer	IV	(N)	\$ 44.00	\$ 56.10
Principal Engineering Technician	IV	(N)	\$ 35.18	\$ 36.60
Engineering Technician	IV	(N)	\$ 31.79	\$ 36.50
Senior Designer	IV	(N)	\$ 26.75	\$ 26.75
Senior Inspector	III	(N)	\$ 40.00	\$ 43.95
Designer	II	(N)	\$ 25.00	\$ 25.00
CAD Technician	II	(N)	\$ 22.13	\$ 22.65
Assistant Landscape Architect I	II	(N)	\$ 21.40	\$ 21.40
Industrial Hygienist I	II	(N)	\$ 18.10	\$ 18.10
Field Technician	I	(N)	\$ 17.85	\$ 18.35
Engineering Aide	I	(N)	\$ 29.65	\$ 30.00
Project Administrator	N/A		\$ 27.00	\$ 28.00
Senior Group Technical Assistant	N/A		\$ 20.84	\$ 23.40
Group Technical Assistant / Technical Typist	N/A		\$ 17.02	\$ 18.70
Intern	N/A		\$ 13.00	\$ 14.00

OVERTIME POLICY

Category A - No overtime compensation

Category B - Overtime compensated at straight time rate

Category C - Overtime compensated at straight time rate x 1.50

Overtime applies to hours worked in excess of the normal working hours of 40 hours per week.

Exhibit B, Page 1
Estimate of Direct Non-Salary Cost

Middle Settlement Road Reconstruction
 PIN 2754.27

Construction Inspection & Administration

1. Travel, Lodging and Subsistence

Trips to	trips	miles per					
Site/County (by EIC)	240	5	miles/trip	1200			
Misc. (by CM)	24	125	miles/trip	3000			
		Total Mileage		4200	@	\$0.575	\$2,415.00

TOTAL TRAVEL, LODGING, & SUBSISTENCE \$2,415

2. Reproduction, Drawings & Report

	each	sheets/set	sets		
Reports					
Daily Inspection	0.05	240	2	\$24.00	
Miscellaneous	0.05	400	1	20.00	
Plans/Cross-Sections					
As-Built Drawings	1.00	40	3	120.00	

TOTAL DRAWING, REPORT, REPRODUCTION \$164

3. Mail, Postage & Shipping	\$200
4. Appia License (1 @ \$1900 each)	\$1,900
5. Plant Fabrication Inspection - Steel (Estimated)	\$0
6. Subconsultant Mussel Survey/Relocation	\$0
7. QA/QC Field Compaction/Concrete Testing (subcontracted: Estimated)	<u>\$25,000</u>
TOTAL DIRECT NON - SALARY COST	\$29,680

Exhibit C
Supplemental Scope Summary

Middle Settlement Road Reconstruction
 PIN 2754.27

		CA/CI - 09 <u>TOTAL</u> .321 Phase
Item IA, Direct Technical Salaries (estimated) subject to audit		\$ 14,188.56
		\$ 95,568.00
Item IB, Direct Technical Salaries Premium Portion of overtime subject to audit (estimate)		\$ 4,840.00
Item II, Direct Non-Salary Cost (estimated) subject to audit		\$ 4,680.00
Item II Direct Non-Salary Cost (estimated) subject to audit (Sub-Contractor Cost)		\$ 25,000.00
Item III, Overhead (estimated) subject to audit		\$ 24,829.98
	office rate 1.75 %	\$ 121,371.36
	field rate 1.27 %	
Item IV, Fixed Fee (negotiated)		\$ 25,600.00
Item II Direct Non-Salary Cost (estimated) subject to audit (Subconsultant Cost)		\$ -
TOTAL ESTIMATED PROJECT COST		<hr/> \$ 316,077.90
Maximum Amount Payable - Agreement No. 1		\$ 316,100.00



ONEIDA COUNTY DEPARTMENT OF
WATER QUALITY & WATER POLLUTION CONTROL

51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr.
County Executive

Karl E. Schrantz, P.E.
Commissioner

December 30, 2021

FN 20 22-050

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

PUBLIC WORKS

WAYS & MEANS

Re: Oneida County Water Pollution Control Plant Upgrades
Contract C-6B - Headworks Upgrades - HVAC Construction
J.W. Danforth Company
Capital Project No. HG-570

Change Order No. 5 - Contract Cost and Schedule Modification

Dear County Executive Picente:

On August 4, 2021, the Board of Acquisition and Contract approved Change Order No. 5 to Contract C-6B, HVAC Construction, Headworks Upgrades with J.W. Danforth Company. This adds \$100,000 to contract Bid Item B-4, Contingency.

At the recommendation of the Construction Manager (Ramboll), this proposed Change Order No. 5 (effective date July 23, 2021) provides an additional \$100,000 to cover the costs necessary to complete minor remaining work required to close out the construction contract.

The current contract amount is \$7,653,908.65. The revised contract amount will be \$7,753,908.65. The affected capital project is HG-570, Headworks Upgrades.

I respectfully request your approval and signature on the enclosed Change Order No. 5 document. Please feel free to contact me if you have any questions.

Sincerely,

Karl E. Schrantz, P.E.
Commissioner

Attachments: Change Order #5
Contract Summary CO#5
Acquisition and Contract Minutes dated August 4, 2021

cc: Robert Pronteau – Oneida County

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

Anthony J. Picente, Jr.
County Executive

Date 1-14-22

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

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: John W. Danforth Company
930 Old Dutch Road
Victor, NY 14564

Title of Activity or Service: Contract C-6B-HVAC Construction
Headworks Upgrades
Change Order No. 5 – Contract Cost and Schedule Modification

Proposed Dates of Operation: 2021

Client Population/Number to be Served: 110,000 people

Summary Statements

- 1) Narrative Description of Proposed Services: This proposed Change Order No. 5 will provide funds necessary to complete remaining work required to close out the construction contract. This Change Order also extends the Substantial Completion date by 423 days and Final Completion date by 552 days.
- 2) Program/Service Objectives and Outcomes: Construct headworks upgrades at the Oneida County Water Pollution Control Plant.
- 3) Program Design and Staffing: Ramboll (Construction Manager) recommends the adoption of this Change Order and, with the engineering consultant team (GHD, Ramboll, Brown and Caldwell) will provide project oversight of the work.

Total Funding Requested: \$100,000 **Account #:** HG-570

Oneida County Dept. Funding Recommendation: \$100,000

Proposed Funding Sources (Federal \$/ State \$/County \$): Funding comes from CWSRF financing through the New York State Environmental Facilities Corporation.

Cost Per Client Served: \$0.91

Past Performance Data: J.W. Danforth Company's performance has been satisfactory under this contract.

O.C. Department Staff Comments: This Change Order must be incorporated into the contract before NYSEFC will process payment requests from the County for this project.

Date of Issuance: July 23, 2021	Effective Date: July 23, 2021
Owner: Oneida County (Oneida County Sewer District)	Owner's Contract No.: 1864
Contractor: J.W. Danforth Company	Contractor's Project No.: 7686
Engineer: GHD	Engineer's Project No.: 8616504 (GHD)
CM: O'Brien & Gere (OBG a part of Ramboll)	67131 (OBG)
Project: WPCP Headworks Upgrades	Contract Name: C-6B HVAC

The Contract is modified as follows upon execution of this Change Order:

- ADD** Increase to Contingency Allowance, Bid Item B-4 in the amount of \$100,000 to fund the remaining Work Change Directives for Contract C-6B HVAC.....\$100,000.00

Change Order No. 5 Total: \$100,000.00

Attachments: C-6B HVAC Cost Change Tracking Sheet (dated 07/23/2021)

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$7,233,018.00</u>	Original Contract Times: Substantial Completion: <u>February 10, 2020 (880 days)</u> Ready for Final Payment: <u>May 8, 2020 (970 days)</u>
Increase from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : <u>\$420,890.65</u>	Increase from previously approved Change Orders No. <u>1</u> to No. <u>3</u> : Substantial Completion: <u>82 days</u> Ready for Final Payment: <u>82 days</u>
Contract Price prior to this Change Order: <u>\$7,653,908.65</u>	Contract Times prior to this Change Order: Substantial Completion: <u>May 2, 2020 (962 days)</u> Ready for Final Payment: <u>July 29, 2020 (1,052 days)</u>
Increase of this Change Order: <u>\$100,000.00</u>	Increase of this Change Order: Substantial Completion: <u>(423 days)</u> Ready for Final Payment: <u>(552 days)</u>
Contract Price incorporating this Change Order: <u>\$ 7,753,908.65</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>June 29, 2021 (1,385 days)</u> Ready for Final Payment: <u>February 1, 2022 (1,604 days)</u>

RECOMMENDED: GHD By: <u>Howard B. LaFever</u> Engineer (Authorized Signature) Date: <u>7/27/2021</u>	ACCEPTED: Oneida County By: _____ Owner (Authorized Signature) Date: _____	ACCEPTED: Danforth By: <u>Maureen D. Stephens</u> Contractor (Authorized Signature) Date: <u>7/26/21</u>
RECOMMENDED: OBG a Part of Ramboll By: <u>Jason G. P.M.</u> Construction Manager (Authorized Signature) Date: <u>7/27/2021</u>	APPROVED: NYSEFC By: _____ Funding Agency (Authorized Signature) Date: _____	

Date of Issuance: July 23, 2021	Effective Date: July 23, 2021
Owner: Oneida County (Oneida County Sewer District)	Owner's Contract No.: 1864
Contractor: J.W. Danforth Company	Contractor's Project No.: 7686
Engineer: GHD	Engineer's Project No.: 8616504 (GHD)
CM: O'Brien & Gere (OBG a part of Ramboll)	67131 (OBG)
Project: WPCP Headworks Upgrades	Contract Name: C-6B HVAC

The Contract is modified as follows upon execution of this Change Order:

- ADD** Increase to Contingency Allowance, Bid Item B-4 in the amount of \$100,000 to fund the remaining Work Change Directives for Contract C-6B HVAC.....\$100,00.00

Change Order No. 5 Total: \$100,000.00

Attachments: C-6B HVAC Cost Change Tracking Sheet (dated 07/23/2021)

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES [note changes in Milestones if applicable]
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Contract Price incorporating this Change Order: <u>\$ 7,753,908.65</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>June 29, 2021 (1,385 days)</u> Ready for Final Payment: <u>February 1, 2022 (1,604 days)</u>

RECOMMENDED: GHD	ACCEPTED: Oneida County	ACCEPTED: Danforth
By: <u>Howard B. LaFever</u> Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: <u>Maureen D. Stephens</u> Contractor (Authorized Signature)
Date: <u>7/27/2021</u>	Date: _____	Date: <u>7/26/21</u>
RECOMMENDED: OBG a Part of Ramboll	APPROVED: NYSEFC	
By: <u>Jason G. P.M.</u> Construction Manager (Authorized Signature)	By: _____ Funding Agency (Authorized Signature)	
Date: <u>7/27/2021</u>	Date: _____	



ONEIDA COUNTY DEPARTMENT OF
WATER QUALITY & WATER POLLUTION CONTROL

51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr.
County Executive

Karl E. Schrantz, P.E.
Commissioner

January 3, 2022

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

FN 20 22051

PUBLIC WORKS

Re: Oneida County Water Pollution Control Plant Upgrades

WAYS & MEANS

Empire State Development
Grant – Anaerobic Digesters Capital Project No. AA693 (CFA No. 53943)

Dear County Executive Picente:

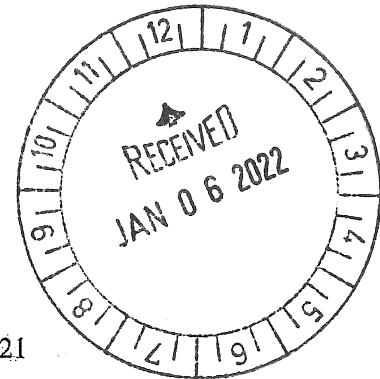
On March 3, 2016, Oneida County received a Regional Council Award – Inceptive Proposal to provide supplemental funding for the modernization of the Water Pollution Control Plant through construction of anaerobic digesters with energy recovery. On December 31, 2021 we received the enclosed Grant Disbursement Agreement from Empire State Development with a total value of \$830,525.

Empire State Development has requested that this agreement be executed and returned within 30 days. To accommodate their deadline, I respectfully request consideration of this agreement by the Board of Legislators at its January 12, 2022 Board meeting. Upon execution and return of the agreement, we will be able to request disbursement of the grant amount.

Should you have any questions or need additional information, please feel free to contact me.

Sincerely,

Karl E. Schrantz, P.E.
Commissioner



Attachments: Cover letter from ESD dated December 31, 2021
Grant Disbursement Agreement dated December 31, 2021

ecc: Robert Pronteau – Oneida County
Sheryl Brown – Oneida County

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

Anthony J. Picente, Jr.
County Executive

Date 1-6-22

Competing Proposal _____
Only Respondent _____
Sole Source RFP _____
Other X

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: Empire State Development
633 Third Avenue
New York, NY 10017

Title of Activity or Service: ESD Project #AA693
Oneida County Anaerobic Digesters

Proposed Dates of Operation: Beginning FY2019

Client Population/Number to be Served: 110,000 people

Summary Statements

1) Narrative Description of Proposed Services: Empire State Development (ESD) grant obtained in 2016 through the Consolidated Funding Application (CFA) project. Grant amount = \$830,525. ESD requires that Oneida County execute the attached Grant Disbursement Agreement.

2) Program/Service Objectives and Outcomes: Grant proceeds will be used to offset capital costs related to the construction of anaerobic digesters with energy recovery at the Water Pollution Control Plant

3) Program Design and Staffing: n/a

Total Funding Requested: \$0.00 **Account #:** HG 526

Oneida County Dept. Funding Recommendation: This grant will reimburse a portion of costs incurred by Oneida County to construct the anaerobic digesters and energy recovery system at the Water Pollution Control Plant.

Proposed Funding Sources (Federal \$/ State \$/County \$): The \$830,525 grant is being provided to Oneida County by Empire State Development.

Cost Per Client Served: n/a

Past Performance Data: n/a

O.C. Department Staff Comments: The Department recommends execution of ESD's Grant Disbursement Agreement. This will allow the County to request the full disbursement of the grant amount.

CAPITAL GRANT

This GRANT DISBURSEMENT AGREEMENT ("Agreement") includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT ("ESD" or "GRANTOR"):	44 Hawley Street Room 1508 Binghamton, NY 13901 Contact: Shakira Wallmar Phone: (607) 422-8941 E-mail: shakira.wallmar@esd.ny.gov
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THE GRANTEE:	Oneida County 51 Leland Avenue, PO Box 442 Utica, NY 13503-0442 Contact: Karl Schrantz, PE, Commissioner, Water Pollution Control Phone: (315) 798-5656 E-mail: kschrantz@ocgov.net Federal Taxpayer ID#: 15-6000458
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PROJECT NAME:	Oneida County Anaerobic Digesters Capital
PROJECT LOCATION:	51 Leland Ave, Utica
PROJECT NUMBER:	AA693
GRANT AMOUNT:	\$830,525
FUNDING SOURCE:	Regional Council Capital Fund - RC5

ESD APPROVAL DATE:	July 15, 2021
PACB APPROVAL DATE:	September 15, 2021
EXPIRATION DATE:	December 31, 2022

TERMS AND CONDITIONS

1. The Project

The Grantee shall:

- (a) complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the "Project").
- (b) comply with the design and construction requirements attached hereto as Exhibit B.

2. Employment Goals & Reporting

- (a) The Grantee represents and warrants that it currently employs not less than the Baseline Employment (as hereinafter defined) set forth in Exhibit C to this Agreement and that it shall (i) achieve the employment goals as set forth in Exhibit C by retaining existing or hiring new Full-time Permanent Employees or (ii) repay a portion of the Grant as set forth in Exhibit C.
- (b) For purposes of this Agreement, a Full-time Permanent Employee shall mean (i) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. Baseline Employment shall mean the number of Full-time Permanent Employees set forth in Exhibit C.
- (c) Grantee shall submit, by February 1 of each year during the term of this Agreement, the Employment Reporting Form attached hereto as Exhibit H, indicating the average number of Grantee's Full-time Permanent Employees for the 12 month period ending as of December 31 of the prior year. Full-time Permanent Employee Count, for each calendar year during the term of this Agreement, shall mean the greater of (i) the average number of Full-time Permanent Employees for the prior calendar year, computed by adding the number of Full-time Permanent Employees as of the Grantee's last payroll date in the months of March, June, September and December and dividing that sum by 4, or (ii) the number of Full-time Permanent Employees as of the Grantee's last payroll date in December of such year.

3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in compliance with the Terms and Conditions of this Agreement, including, but not limited to, Exhibit E (Disbursement Terms), and the following conditions have been satisfied (and as to 3(d) and 3(e) below continue to be satisfied prior to each disbursement):

- (a) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.
- (b) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.
- (c) ESD has received a commitment fee, plus out-of-pocket expenses incurred by ESD in the making of the Grant, if any, as set forth in Exhibit E.
- (d) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.
- (e) The Grantee employs at least the Baseline Employment as evidenced by the Employment Reporting Form attached hereto as Exhibit H.

4. Disbursement and Recapture Terms

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

- (a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E to this Agreement. Disbursements will be made upon submittal to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit H.
- (b) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.
- (c) The Grant, or a portion thereof, may be subject to recapture by ESD as provided in Exhibit C.

5. Non Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBEs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE participation goals need not be applied to this project.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Responsibility Provisions

- (a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.
- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee's expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.
- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the

State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations at the Project Location for the term of this Agreement.
- (j) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee will use ESD grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESD's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9 (a) (ii) of the GDA to provide information upon request to ESD.
- (m) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization

in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and

(iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

(n) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

9. Default and Remedies

(a) Each of the following shall constitute a default by the Grantee under this Agreement:

(i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, other than an employment default as set forth in (iv) below, to the reasonable satisfaction of ESD and within the time frames established under this Agreement.

(ii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.

(iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.

(iv) Failure of the Grantee, for any time period, to meet the minimum employment goals required by Exhibit C.

(v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.

(vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business at the Project Location. This includes, without limitation, the announced or actual cessation of business activities at

the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.

(vii) If the number of the Grantee's Full-Time Permanent Employees, as that term is defined in this Agreement, that are situated at the Project Location as of the Grantee's last payroll date on or prior to the end of any quarter (with the quarters being those the quarterly dates of March 31, June 30, September 30 and December 31, as set forth in the Report of Employment that is annexed as Exhibit H to this Agreement) is less than fifty percent (50%) of the number of Full Time-Permanent Employees, situated at the Project Location, required in accordance with the Employment Goals that are to be achieved as of the next Reporting Date, as specified in Exhibit C.

(viii) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.

(b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) or 9(a)(ii) cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraph 9(a)(iii), 9(a)(iv), 9(a)(v), 9(a)(vi) and 9(a)(vii) are not subject to the cure provisions provided herein.

(c) Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit C of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance, including, but not limited to, the insurance described hereafter, in such amounts and covering such risks as Grantor may require from time to time.

- (a) The Grantee shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended. The insurance required in this paragraph (a) shall provide coverage for an amount not less than the full replacement value of the buildings at the Project Location and the building equipment, or such other amount as the Grantor may reasonably require, provided that (i) the amount of insurance coverage shall be in an amount sufficient to satisfy, at all times, any co-insurance requirements, and (ii) the amount of any flood hazard insurance shall not exceed the maximum amount of coverage available under the National Flood Insurance Act.
- (b) When and to the extent required by the Grantor, the Grantee shall maintain in full force and effect insurance against (i) loss of rental income, (ii) loss of business income, (iii) damages to boiler, and (iv) any other risk as is customary in the industry of the Grantee. The insurance required in this paragraph (b) shall provide coverage in an amount satisfactory to Grantor.
- (c) The Grantee shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than

One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

- (d) All insurance required in this Section shall be issued by companies authorized to do business in the State of New York, satisfactory to Grantor pursuant to policies satisfactory to Grantor in form and substance. Without limiting the generality of the foregoing, the policies of insurance required hereby shall provide for thirty (30) days, or ten (10) days for non-payment, prior written notice of cancellation to Grantor.
- (e) The Grantee shall give prompt written notice to the Grantor in the event of substantial damage to the Project Location by reason of fire or other hazard or casualty.
- (f) Notwithstanding the provisions of Subdivision 4 of Section 254 of the Real Property Law, the Grantor shall be entitled to retain and apply the proceeds of any insurance required hereby to the payment of any obligations or, in the sole discretion of the Grantor, apply any or all such proceeds to the cost of restoration of the Project Location, in which case the Grantee shall proceed with reasonable diligence to repair, replace or rebuild the Project Location to substantially their condition prior to such damage in full compliance with all legal requirements.
- (g) The Grantee shall provide the Grantor with copies of all certificates for the required insurance coverages in form and substance satisfactory to the Grantor. In addition, the Grantee shall provide the Grantor with copies of renewal certificates or temporary binders in the event renewal policies have not been issued, in a timely manner. The Grantee must, in any event, provide Grantor with satisfactory confirmation of renewal coverage by the renewal date.
- (h) In the event that the Grantee fails to maintain the insurance required hereby, the Grantor may obtain such insurance and pay the premiums therefor and the Grantee shall, on demand, reimburse the Grantor for any insurance premiums paid, together with interest thereon computed at the highest rate per annum allowable under New York State law.
- (i) The Grantee will not take any action, or permit any condition to exist, with respect to the Project Location which may, in any manner, partially or wholly invalidate the insurance on the Project Location required hereby.

13. Survival of Provisions

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

14. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (v) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: Shakira Wallmar
Title: Project Manager
Address: 44 Hawley Street Room 1508, Binghamton, NY 13901
Telephone Number: (607) 422-8941
E-Mail Address: Shakira.wallmar@esd.ny.gov

With a copy to:

Title: General Counsel
Address: 633 Third Avenue, 34th Floor, New York, NY 10017
Telephone Number: (212) 803-3750
Facsimile Number: (212) 803-3975

Oneida County

Name: Karl Schrantz, PE
Title: Commissioner, Water Pollution Control
Address: 51 Leland Avenue, PO Box 442, Utica, NY 13503-0442
Telephone Number: (315) 798-5656
E-Mail Address: kschrantz@ocgov.net

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein, or in the case of facsimile transmission or email, upon receipt of a record, by the sender, that such a transmission has been completed.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

16. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

17. Integration/Modification

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Directors' materials attached hereto as Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

19. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to legal process.

20. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

21. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESD's costs including, without limitation, ESD's attorneys' fees. The Grantee shall also pay any and all of ESD's collection costs including, without limitation, its attorneys' fees.

22. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESD under the terms of this Agreement.

Oneida County Anaerobic Digesters Capital, Project Number AA693

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT



(Signature) Glendon McLeary, Vice President and Director, Loans and Grants

December 31, 2021
(date)

Oneida County

(Signature)

(Printed name and title)

(date)

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports & Design & Construction Requirements
EXHIBIT C	Employment Goals & Recapture Terms
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Project Cost Documentation
EXHIBIT F-3	Equity and Total Project Cost Expenditure Documentation
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT G-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT G-2	Staffing Plan
EXHIBIT G-3	Workforce Employment Utilization Report
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT I	Special Provisions

EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

Intentionally Deleted

EXHIBIT C: EMPLOYMENT GOALS AND RECAPTURE TERMS

Intentionally Deleted

EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
44 Hawley Street Room 1508
Binghamton, New York 13902

Attn: Shakira Wallmar

Re: Oneida County Anaerobic Digesters Capital, Project #AA693

Ladies and Gentlemen:

We have acted as special counsel to Oneida County, a municipality (the "Grantee"), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the "Agreement") between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee.

This opinion letter is being furnished to you at our client's request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and other

representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.
2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESD) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

EXHIBIT E: DISBURSEMENT TERMS

Upon compliance with the terms of this Agreement, and receipt of the fees as set forth below, ESD shall disburse the Grant to the Grantee as follows:

Fees due:

Commitment Fee:	\$8,305 (One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses	\$572.38
TOTAL due:	<u>\$8,877.38</u>

Up to \$830,525 will be disbursed to the Grantee in a lump sum upon documentation of construction project costs totaling \$52,648,887, and completion of the project substantially as described in Exhibit A. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments. Expenses must be incurred on or after December 10, 2015 to be considered eligible project costs.

Grantee must submit all documentation for the final disbursement of the Grant by no later than September 1, 2022.

ESD reserves the right to require additional documentation to support draw down requests.

Wire Transfer Information:

If ESD assistance is \$10,000 or greater, please provide a Letter from a financial officer of the company certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Account Name: _____

Account #: _____

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

Oneida County Anaerobic Digesters Capital, Project #AA693 Disbursement Request Amount: \$ _____

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Minimum Expense Incurred (per Exhibit E)		52,648,887				
Employment Goals (per Exhibit E)	Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
N/A	Construction/Renovation				\$830,525	
	TOTAL				\$830,525	

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which Oneida County is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Oneida County, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD's Internal Audit Department.
- 2) I have the authority to submit this invoice on behalf of Oneida County. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition (note N/A if not applicable for this request):
 - Exhibit F-1: Financial Condition Documentation
 - Exhibit F-2: Project Cost Documentation
 - Exhibit F-3: Equity Expenditures and Project Cost Affidavit
 - A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement
- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.
- 5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.
- 6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

EXHIBIT F: Capital Grant Payment Requisition Form, Cont.

Signature: _____ Print Name: _____

Title: _____ Date: _____

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Glendon McLeary, Vice President and Director of Loans and Grants, 633 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.
Thank you.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT
Oneida County Anaerobic Digesters Capital, Project Number AA693

EXHIBIT F-1: FINANCIAL CONDITION AFFIDAVIT

STATE OF NEW YORK)

COUNTY OF)

) ss.:

)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of (the "Grantee"), a municipality that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee dated the ____ day of _____, 20__.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Grantee's behalf, that there have been no materially adverse changes to the Grantee's financial condition since the time of ESD Directors' approval of the project. This affidavit is being made solely to assist ESD in determining whether there has been a bankruptcy filing of the Grantee or whether the Grantee has experienced a default on any of its debt obligations subsequent to the date of the ESD Directors' approval of the project.

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:

Name:

Title:

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

EXHIBIT F-3: EQUITY EXPENDITURES* AND PROJECT COST AFFIDAVIT**
Oneida County Anaerobic Digesters Capital, Project Number AA693

***Equity Amount** refers to the Grantee's share of the project cost, **not** the total project cost, and should not include financing from sources other than the Grantee.

****Project Cost** should correspond to the total stated in Exhibit F-2

STATE OF NEW YORK)
) ss.:
COUNTY OF)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of _____ (the "Grantee"), a municipality that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee dated the _____ day of _____, 20____.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Grantee's behalf, that the **equity* expenditures** by the Grantee were incurred in the manner set forth in the Agreement and such expenditures were equal to or greater than _____ Dollars (\$_____).

After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do further certify, on the Grantee's behalf, that the costs for the project were incurred in the manner set forth in the Agreement, that all such costs are capital expenses in accordance with applicable state and federal law, and the **total cost of the project**** as equal to or greater than _____ Dollars (\$_____).

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:
Name:
Title:

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the "Recipient" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of 0% for Minority and Women-Owned Business Enterprises ("MWBE") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
1. Recipient and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
 3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
 4. The Recipient's EEO policy statement shall include the following language:
 - a. The Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
 - d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. EXHIBIT G-2: Staffing Plan

To ensure compliance with this Section, the Recipient shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Recipients shall complete the Staffing plan form and submit it as part of the executed Contract.

D. EXHIBIT G-3: Work Force Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT G-4) either prior to, or at the time of, the execution of the Contract.

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A. For Waiver Requests Recipient should use the Waiver Request Form (EXHIBIT G-5).
- B. If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance and Payment Report (EXHIBIT G-6) to the ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages/Recapture - MWBE Participation

- A. Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds ("Recapture").
- B. Such liquidated damages or Recapture shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Recipient achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

- C. In the event a determination has been made which requires the payment of liquidated damages (and such identified sums have not been withheld by the ESD) or Recapture, Recipient shall pay such liquidated damages or Recapture to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Recipient has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages or Recapture shall be payable if Director renders a decision in favor of the ESD.



EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (REPRESENTATIVE), of the _____
(AWARDEE/CONTRACTOR) agree to adopt the following policies with respect to the project being developed
or services rendered at

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this _____ day of _____, 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____



**Empire State
Development**

**EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
STAFFING PLAN**

Intentionally Deleted



**Empire State
Development**

**EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT**

Intentionally Deleted



Empire State
Development

D IER DIVERSITY

**EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN**

Intentionally Deleted



**EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WAIVER REQUEST FORM**

Intentionally Deleted



**Empire State
Development**

**EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT**

Intentionally Deleted

EXHIBIT H: REPORT OF EMPLOYMENT

Intentionally Deleted

EXHIBIT I: SPECIAL PROVISIONS

In the event of any conflict between Exhibit A of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.

Neither the Grant, nor any equipment or facility funded in part or whole by the Grant, shall be used at any time or in any manner for religious worship, instruction or proselytizing.

The following sections of the Terms and Conditions of this Agreement are waived: Section 2; Section 3(e); the reference to "Exhibit H" in Section 4(a); Section 4(c); Section 9(a)(iv) and Section 9(a)(vii).

CAPITAL GRANT

This **GRANT DISBURSEMENT AGREEMENT ("Agreement")** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

**NEW YORK STATE
URBAN DEVELOPMENT
CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
("ESD" or "GRANTOR"):**

44 Hawley Street Room 1508
Binghamton, NY 13901
Contact: Shakira Wallmar
Phone: (607) 422-8941
E-mail: shakira.wallmar@esd.ny.gov

THE GRANTEE:

Oneida County
51 Leland Avenue, PO Box 442
Utica, NY 13503-0442
Contact: Karl Schrantz, PE, Commissioner, Water
Pollution Control
Phone: (315) 798-5656
E-mail: kschrantz@ocgov.net
Federal Taxpayer ID#: 15-6000458

PROJECT NAME:

Oneida County Anaerobic Digesters Capital

PROJECT LOCATION:

51 Leland Ave, Utica

PROJECT NUMBER:

AA693

GRANT AMOUNT:

\$830,525

FUNDING SOURCE:

Regional Council Capital Fund - RC5

ESD APPROVAL DATE:

July 15, 2021

PACB APPROVAL DATE:

September 15, 2021

EXPIRATION DATE:

December 31, 2022

TERMS AND CONDITIONS

1. The Project

The Grantee shall:

- (a) complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the "Project").
- (b) comply with the design and construction requirements attached hereto as Exhibit B.

2. Employment Goals & Reporting

- (a) The Grantee represents and warrants that it currently employs not less than the Baseline Employment (as hereinafter defined) set forth in Exhibit C to this Agreement and that it shall (i) achieve the employment goals as set forth in Exhibit C by retaining existing or hiring new Full-time Permanent Employees or (ii) repay a portion of the Grant as set forth in Exhibit C.
- (b) For purposes of this Agreement, a Full-time Permanent Employee shall mean (i) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. Baseline Employment shall mean the number of Full-time Permanent Employees set forth in Exhibit C.
- (c) Grantee shall submit, by February 1 of each year during the term of this Agreement, the Employment Reporting Form attached hereto as Exhibit H, indicating the average number of Grantee's Full-time Permanent Employees for the 12 month period ending as of December 31 of the prior year. Full-time Permanent Employee Count, for each calendar year during the term of this Agreement, shall mean the greater of (i) the average number of Full-time Permanent Employees for the prior calendar year, computed by adding the number of Full-time Permanent Employees as of the Grantee's last payroll date in the months of March, June, September and December and dividing that sum by 4, or (ii) the number of Full-time Permanent Employees as of the Grantee's last payroll date in December of such year.

3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in compliance with the Terms and Conditions of this Agreement, including, but not limited to, Exhibit E (Disbursement Terms), and the following conditions have been satisfied (and as to 3(d) and 3(e) below continue to be satisfied prior to each disbursement):

- (a) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.
- (b) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.
- (c) ESD has received a commitment fee, plus out-of-pocket expenses incurred by ESD in the making of the Grant, if any, as set forth in Exhibit E.
- (d) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.
- (e) The Grantee employs at least the Baseline Employment as evidenced by the Employment Reporting Form attached hereto as Exhibit H.

4. Disbursement and Recapture Terms

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

- (a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E to this Agreement. Disbursements will be made upon submittal to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit H.
- (b) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.
- (c) The Grant, or a portion thereof, may be subject to recapture by ESD as provided in Exhibit C.

5. Non Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBEs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE participation goals need not be applied to this project.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Responsibility Provisions

- (a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.
- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee's expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.
- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the

State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations at the Project Location for the term of this Agreement.
- (j) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee will use ESD grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESD's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9 (a) (ii) of the GDA to provide information upon request to ESD.
- (m) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization

in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and

- (iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

(n) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

9. Default and Remedies

(a) Each of the following shall constitute a default by the Grantee under this Agreement:

- (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, other than an employment default as set forth in (iv) below, to the reasonable satisfaction of ESD and within the time frames established under this Agreement.
- (ii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.
- (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.
- (iv) Failure of the Grantee, for any time period, to meet the minimum employment goals required by Exhibit C.
- (v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.
- (vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business at the Project Location. This includes, without limitation, the announced or actual cessation of business activities at

the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.

(vii) If the number of the Grantee's Full-Time Permanent Employees, as that term is defined in this Agreement, that are situated at the Project Location as of the Grantee's last payroll date on or prior to the end of any quarter (with the quarters being those the quarterly dates of March 31, June 30, September 30 and December 31, as set forth in the Report of Employment that is annexed as Exhibit H to this Agreement) is less than fifty percent (50%) of the number of Full Time-Permanent Employees, situated at the Project Location, required in accordance with the Employment Goals that are to be achieved as of the next Reporting Date, as specified in Exhibit C.

(viii) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.

(b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) or 9(a)(ii) cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraph 9(a)(iii), 9(a)(iv), 9(a)(v), 9(a)(vi) and 9(a)(vii) are not subject to the cure provisions provided herein.

(c) Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit C of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance, including, but not limited to, the insurance described hereafter, in such amounts and covering such risks as Grantor may require from time to time.

- (a) The Grantee shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended. The insurance required in this paragraph (a) shall provide coverage for an amount not less than the full replacement value of the buildings at the Project Location and the building equipment, or such other amount as the Grantor may reasonably require, provided that (i) the amount of insurance coverage shall be in an amount sufficient to satisfy, at all times, any co-insurance requirements, and (ii) the amount of any flood hazard insurance shall not exceed the maximum amount of coverage available under the National Flood Insurance Act.
- (b) When and to the extent required by the Grantor, the Grantee shall maintain in full force and effect insurance against (i) loss of rental income, (ii) loss of business income, (iii) damages to boiler, and (iv) any other risk as is customary in the industry of the Grantee. The insurance required in this paragraph (b) shall provide coverage in an amount satisfactory to Grantor.
- (c) The Grantee shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than

One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

- (d) All insurance required in this Section shall be issued by companies authorized to do business in the State of New York, satisfactory to Grantor pursuant to policies satisfactory to Grantor in form and substance. Without limiting the generality of the foregoing, the policies of insurance required hereby shall provide for thirty (30) days, or ten (10) days for non-payment, prior written notice of cancellation to Grantor.
- (e) The Grantee shall give prompt written notice to the Grantor in the event of substantial damage to the Project Location by reason of fire or other hazard or casualty.
- (f) Notwithstanding the provisions of Subdivision 4 of Section 254 of the Real Property Law, the Grantor shall be entitled to retain and apply the proceeds of any insurance required hereby to the payment of any obligations or, in the sole discretion of the Grantor, apply any or all such proceeds to the cost of restoration of the Project Location, in which case the Grantee shall proceed with reasonable diligence to repair, replace or rebuild the Project Location to substantially their condition prior to such damage in full compliance with all legal requirements.
- (g) The Grantee shall provide the Grantor with copies of all certificates for the required insurance coverages in form and substance satisfactory to the Grantor. In addition, the Grantee shall provide the Grantor with copies of renewal certificates or temporary binders in the event renewal policies have not been issued, in a timely manner. The Grantee must, in any event, provide Grantor with satisfactory confirmation of renewal coverage by the renewal date.
- (h) In the event that the Grantee fails to maintain the insurance required hereby, the Grantor may obtain such insurance and pay the premiums therefor and the Grantee shall, on demand, reimburse the Grantor for any insurance premiums paid, together with interest thereon computed at the highest rate per annum allowable under New York State law.
- (i) The Grantee will not take any action, or permit any condition to exist, with respect to the Project Location which may, in any manner, partially or wholly invalidate the insurance on the Project Location required hereby.

13. Survival of Provisions

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

14. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
- (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (v) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: Shakira Wallmar
Title: Project Manager
Address: 44 Hawley Street Room 1508, Binghamton, NY 13901
Telephone Number: (607) 422-8941
E-Mail Address: Shakira.wallmar@esd.ny.gov

With a copy to:

Title: General Counsel
Address: 633 Third Avenue, 34th Floor, New York, NY 10017
Telephone Number: (212) 803-3750
Facsimile Number: (212) 803-3975

Oneida County

Name: Karl Schrantz, PE
Title: Commissioner, Water Pollution Control
Address: 51 Leland Avenue, PO Box 442, Utica, NY 13503-0442
Telephone Number: (315) 798-5656
E-Mail Address: kschrantz@ocgov.net

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein, or in the case of facsimile transmission or email, upon receipt of a record, by the sender, that such a transmission has been completed.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

16. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

17. Integration/Modification

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Directors' materials attached hereto as Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

19. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to legal process.

20. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

21. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESD's costs including, without limitation, ESD's attorneys' fees. The Grantee shall also pay any and all of ESD's collection costs including, without limitation, its attorneys' fees.

22. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESD under the terms of this Agreement.

Oneida County Anaerobic Digesters Capital, Project Number AA693

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT



(Signature) Glendon McLeary, Vice President and Director, Loans and Grants

December 31, 2021
(date)

Oneida County

(Signature)

(Printed name and title)

(date)

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports & Design & Construction Requirements
EXHIBIT C	Employment Goals & Recapture Terms
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Project Cost Documentation
EXHIBIT F-3	Equity and Total Project Cost Expenditure Documentation
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT G-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT G-2	Staffing Plan
EXHIBIT G-3	Workforce Employment Utilization Report
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Employment Reporting Form (With Company's NYS Form 45 Attached)
EXHIBIT I	Special Provisions

EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

Intentionally Deleted

EXHIBIT C: EMPLOYMENT GOALS AND RECAPTURE TERMS

Intentionally Deleted

EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
44 Hawley Street Room 1508
Binghamton, New York 13902

Attn: Shakira Wallmar

Re: Oneida County Anaerobic Digesters Capital, Project #AA693

Ladies and Gentlemen:

We have acted as special counsel to Oneida County, a municipality (the "Grantee"), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the "Agreement") between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee.

This opinion letter is being furnished to you at our client's request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and other

representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.
2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESD) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

EXHIBIT E: DISBURSEMENT TERMS

Upon compliance with the terms of this Agreement, and receipt of the fees as set forth below, ESD shall disburse the Grant to the Grantee as follows:

Fees due:

Commitment Fee: \$8,305 (One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses \$572.38
TOTAL due: \$8,877.38

Up to \$830,525 will be disbursed to the Grantee in a lump sum upon documentation of construction project costs totaling \$52,648,887, and completion of the project substantially as described in Exhibit A. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments. Expenses must be incurred on or after December 10, 2015 to be considered eligible project costs.

Grantee must submit all documentation for the final disbursement of the Grant by no later than September 1, 2022.

ESD reserves the right to require additional documentation to support draw down requests.

Wire Transfer Information:

If ESD assistance is \$10,000 or greater, please provide a Letter from a financial officer of the company certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Account Name: _____

Account #: _____

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

Oneida County Anaerobic Digesters Capital, Project #AA693 Disbursement Request Amount: \$ _____

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Minimum Expense Incurred (per Exhibit E)		52,648,887				
Employment Goals (per Exhibit E)	Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
N/A	Construction/Renovation				\$830,525	
	TOTAL				\$830,525	

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which Oneida County is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Oneida County, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD's Internal Audit Department.
- 2) I have the authority to submit this invoice on behalf of Oneida County. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition (note N/A if not applicable for this request):
 - Exhibit F-1: Financial Condition Documentation
 - Exhibit F-2: Project Cost Documentation
 - Exhibit F-3: Equity Expenditures and Project Cost Affidavit
 - A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement
- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.
- 5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.
- 6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

EXHIBIT F: Capital Grant Payment Requisition Form, Cont.

Signature: _____ Print Name: _____

Title: _____ Date: _____

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Glendon McLeary, Vice President and Director of Loans and Grants, 633 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.
Thank you.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT
Oneida County Anaerobic Digesters Capital, Project Number AA693

EXHIBIT F-1: FINANCIAL CONDITION AFFIDAVIT

STATE OF NEW YORK)

) ss.:

COUNTY OF)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of (the "Grantee"), a municipality that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee dated the ____ day of _____, 20__.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Grantee's behalf, that there have been no materially adverse changes to the Grantee's financial condition since the time of ESD Directors' approval of the project. This affidavit is being made solely to assist ESD in determining whether there has been a bankruptcy filing of the Grantee or whether the Grantee has experienced a default on any of its debt obligations subsequent to the date of the ESD Directors' approval of the project.

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:

Name:

Title:

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

EXHIBIT F-3: EQUITY EXPENDITURES* AND PROJECT COST AFFIDAVIT**

Oneida County Anaerobic Digesters Capital, Project Number AA693

***Equity Amount** refers to the Grantee's share of the project cost, **not** the total project cost, and should not include financing from sources other than the Grantee.

****Project Cost** should correspond to the total stated in Exhibit F-2

STATE OF NEW YORK)
) ss.:
COUNTY OF)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of _____ (the "Grantee"), a municipality that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee dated the _____ day of _____, 20____.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Grantee's behalf, that the **equity* expenditures** by the Grantee were incurred in the manner set forth in the Agreement and such expenditures were equal to or greater than _____ Dollars (\$_____).

After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do further certify, on the Grantee's behalf, that the costs for the project were incurred in the manner set forth in the Agreement, that all such costs are capital expenses in accordance with applicable state and federal law, and the **total cost of the project**** as equal to or greater than _____ Dollars (\$_____).

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:
Name:
Title:

Subscribed and sworn to before me
this _____ day of _____, 20____

Notary Public

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the "Recipient" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of **0%** for Minority and Women-Owned Business Enterprises ("MWBE") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
1. Recipient and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
 3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
 4. The Recipient's EEO policy statement shall include the following language:
 - a. The Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
 - d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. EXHIBIT G-2: Staffing Plan

To ensure compliance with this Section, the Recipient shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Recipients shall complete the Staffing plan form and submit it as part of the executed Contract.

D. EXHIBIT G-3: Work Force Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
 3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT G-4) either prior to, or at the time of, the execution of the Contract.

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

- B. Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C. Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A. For Waiver Requests Recipient should use the Waiver Request Form (EXHIBIT G-5).
- B. If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance and Payment Report (EXHIBIT G-6) to the ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages/Recapture - MWBE Participation

- A. Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds ("Recapture").
- B. Such liquidated damages or Recapture shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Recipient achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

- C. In the event a determination has been made which requires the payment of liquidated damages (and such identified sums have not been withheld by the ESD) or Recapture, Recipient shall pay such liquidated damages or Recapture to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Recipient has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages or Recapture shall be payable if Director renders a decision in favor of the ESD.



EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (REPRESENTATIVE), of the _____
(AWARDEE/CONTRACTOR) agree to adopt the following policies with respect to the project being developed
or services rendered at

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this _____ day of _____, 20_____.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____



**Empire State
Development**

**EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
STAFFING PLAN**

Intentionally Deleted



**Empire State
Development**

**EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT**

Intentionally Deleted



Empire State
Development

D IER DIVERSITY

**EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN**

Intentionally Deleted.



**EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WAIVER REQUEST FORM**

Intentionally Deleted



**Empire State
Development**

**EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT**

Intentionally Deleted

EXHIBIT H: REPORT OF EMPLOYMENT

Intentionally Deleted

EXHIBIT I: SPECIAL PROVISIONS

In the event of any conflict between Exhibit A of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.

Neither the Grant, nor any equipment or facility funded in part or whole by the Grant, shall be used at any time or in any manner for religious worship, instruction or proselytizing.

The following sections of the Terms and Conditions of this Agreement are waived: Section 2; Section 3(e); the reference to "Exhibit H" in Section 4(a); Section 4(c); Section 9(a)(iv) and Section 9(a)(vii).



ONEIDA COUNTY
OFFICE OF THE COUNTY EXECUTIVE

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

January 13, 2022

Gerald Fiorini, Chairman
Board of Legislators
Oneida County
800 Park Avenue
Utica, NY 13501

FN 20 22-052

PUBLIC WORKS

WAYS & MEANS

Dear Chairman:

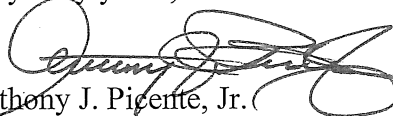
The estimates for the Oneida County Downtown Parking Garage have come in higher than originally expected. This is a result of the City of Utica rescinding on the original agreement of providing 350 parking spaces in the Kennedy Garage. To remedy the situation Oneida County had to increase the size of the garage to accommodate the additional 350 spaces and include the addition of a helicopter pad. These changes have been deemed a necessity for the Wynn Hospital to compete in today's healthcare market. As a result of this increase in price it is also necessary to amend to Capital Project.

I therefore request your Board's approval to amendment to **Capital Project H-566 DPW – Public Parking Garage:**

	<u>Current</u>	<u>Change</u>	<u>Proposed</u>
Bonds	\$ 20,900,000	\$ 10,000,000	\$ 30,900,000
State Aid	\$ 10,000,000	\$ 0	\$ 10,000,000
Federal (APR)	\$ 10,000,000	\$ 0	\$ 10,000,000
Totals	\$ 40,700,000	\$ 10,000,000	\$ 50,900,000

Thank you for kind attention to this request.

Very truly yours,


Anthony J. Picente, Jr.
County Executive

CC: Comptroller
County Attorney
Budget
Comm. DPW



ONEIDA COUNTY DEPARTMENT OF
WATER QUALITY & WATER POLLUTION CONTROL

51 Leland Ave, PO Box 442, Utica, NY 13503-0442
Phone: (315) 798-5656 Email: wpc@ocgov.net Fax: (315) 724-9812

Anthony J. Picente, Jr.
County Executive

Karl E. Schrantz, P.E.
Commissioner

December 30, 2021

FN 20 22-053

PUBLIC WORKS

WAYS & MEANS

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

Re: Oneida County Water Pollution Control Plant Upgrades
Contract C-6 - Headworks Upgrades Construction
General Construction - C.O. Falter Construction Corp.
Capital Project No. HG-570

Change Order No. 3 - Contract Cost and Schedule Modification

Dear County Executive Picente:

On August 4, 2021, the Board of Acquisition and Contract approved Change Order No. 3 to Contract C-6A, General Construction, Headworks Upgrades with C. O. Falter Construction Corp. This adds \$75,000 to contract Bid Item A-11, Contingency.

At the recommendation of the Construction Manager (Ramboll), this proposed Change Order No. 3 (effective date July 23, 2021) provides an additional \$75,000 to cover the costs necessary to complete minor remaining work required to close out the construction contract.

The current contract amount is \$44,713,101; the new contract amount will be \$44,788,101. The affected capital project is HG-570, Headworks Upgrades.

I respectfully request your approval and signature on the enclosed Change Order No. 3 document. Please feel free to contact me if you have any questions.

Sincerely,

Karl E. Schrantz, P.E.
Commissioner

Attachments: Change Order #3
Contract Summary CO#3
Acquisition and Contract Minutes dated August 4, 2021 (with corrected version dated August 18)

cc: Robert Pronteau - Oneida County

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

Anthony J. Picente, Jr.
County Executive

Date 1-14-22

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

**ONEIDA COUNTY BOARD OF LEGISLATORS
CONTRACT SUMMARY**

Name & Address of Vendor: C.O. Falter Construction Corp
403 W. Bear St.
Syracuse, NY 13204

Title of Activity or Service: Contract C-6A, CO#3
General Construction
Headworks Upgrades

Proposed Dates of Operation: 2021

Client Population/Number to be Served: 110,000 people

Summary Statements

1) Narrative Description of Proposed Services: This change order adds an additional \$75,000 to Bid Item A-11, General Contingency. These additional funds will cover the costs to complete a limited amount of remaining work necessary to close out the construction contracts.

2) Program/Service Objectives and Outcomes: Construct the headworks upgrades at the Oneida County Water Pollution Control Plant.

3) Program Design and Staffing: GHD Consulting Services, Inc. and the rest of the engineering team will provide project oversight with direction from WQ&WPC

Total Funding Requested: \$75,000 **Account #:** HG-570

Oneida County Dept. Funding Recommendation: the Department recommends approval.

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

Cost Per Client Served: \$0.68

Past Performance Data: C.O. Falter Construction Corp. has done work at the plant before and their work has been satisfactory.

O.C. Department Staff Comments: This change order must be incorporated into the contract before the NYSEFC will process payment requests from the County for this project.

Date of Issuance: July 23, 2021	Effective Date: July 23, 2021
Owner: Oneida County (Oneida County Sewer District)	Owner's Contract No.: 1864
Contractor: C.O. Falter Construction Corp.	Contractor's Project No.: 1705
Engineer: GHD	Engineer's Project No.: 8615203 (GHD)
CM: O'Brien & Gere (OBG a part of Ramboll)	67131 (OBG)
Project: WPCP Headworks Upgrades	Contract Name: C-6A General

The Contract is modified as follows upon execution of this Change Order:

1. **ADD** Increase to Contingency Allowance, Bid Item A-11 in the amount of \$75,000 to fund the remaining Work Change Directives for Contract C-6A General.....\$75,000.00

Change Order #3 Total: \$75,000.00

Attachments: C-6A Contingency Tracking Sheet, dated 7/23/2021

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$44,713,101.00</u>	Original Contract Times: Dates Substantial Completion: <u>February 10, 2020 (880 days)</u> Ready for Final Payment: <u>May 8, 2020 (970 days)</u>
Increase from previously approved Change Orders No. <u>1</u> to No. <u>2</u> : <u>\$0.00</u>	Increase from previously approved Change Orders No. <u>1</u> to No. <u>2</u> : Substantial Completion: <u>(82 days)</u> Ready for Final Payment: <u>(82 days)</u>
Contract Price prior to this Change Order: <u>\$44,713,101.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>May 2, 2020 (962 days)</u> Ready for Final Payment: <u>July 29, 2020 (1,052 days)</u>
Increase of this Change Order: <u>\$75,000.00</u>	Increase of this Change Order: Substantial Completion: <u>(33 days)</u> Ready for Final Payment: <u>(457 days)</u>
Contract Price incorporating this Change Order: <u>\$ 44,788,101.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>June 4, 2020 (995 days)</u> Ready for Final Payment: <u>October 29, 2021 (1,509 days)</u>

RECOMMENDED: GHD By: <u>Howard B. LaFever</u> Engineer (Authorized Signature) Date: <u>7/27/2021</u>	ACCEPTED: Oneida County By: _____ Owner (Authorized Signature) Date: _____	ACCEPTED: Falter By: _____ Contractor (Authorized Signature) Date: <u>7/23/21</u>
RECOMMENDED: OBG a Part of Ramboll By: <u>Jason G. P.M.</u> Construction Manager (Authorized Signature) Date: <u>7/27/2021</u>	APPROVED: NYSEFC By: _____ Funding Agency (Authorized Signature) Date: _____	

Date of Issuance: July 23, 2021	Effective Date: July 23, 2021
Owner: Oneida County (Oneida County Sewer District)	Owner's Contract No.: 1864
Contractor: C.O. Falter Construction Corp.	Contractor's Project No.: 1705
Engineer: GHD	Engineer's Project No.: 8615203 (GHD)
CM: O'Brien & Gere (OBG a part of Ramboll)	67131 (OBG)
Project: WPCP Headworks Upgrades	Contract Name: C-6A General

The Contract is modified as follows upon execution of this Change Order:

- ADD** Increase to Contingency Allowance, Bid Item A-11 in the amount of \$75,000 to fund the remaining Work Change Directives for Contract C-6A General.....\$75,000.00

Change Order #3 Total: \$75,000.00

Attachments: C-6A Contingency Tracking Sheet, dated 7/23/2021

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <u>\$44,713,101.00</u>	Original Contract Times: Dates Substantial Completion: <u>February 10, 2020 (880 days)</u> Ready for Final Payment: <u>May 8, 2020 (970 days)</u>
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Contract Price incorporating this Change Order: <u>\$ 44,788,101.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>June 4, 2020 (995 days)</u> Ready for Final Payment: <u>October 29, 2021 (1,509 days)</u>

RECOMMENDED: GHD By: <u>Howard B. LaFever</u> Engineer (Authorized Signature) Date: <u>7/27/2021</u>	ACCEPTED: Oneida County By: _____ Owner (Authorized Signature) Date: _____	ACCEPTED: Falter By: <u>[Signature]</u> Contractor (Authorized Signature) Date: <u>7/23/21</u>
RECOMMENDED: OBG a Part of Ramboll By: <u>[Signature]</u> Construction Manager (Authorized Signature) Date: <u>7/27/2021</u>	APPROVED: NYSEFC By: _____ Funding Agency (Authorized Signature) Date: _____	