



# ONEIDA COUNTY BOARD OF LEGISLATORS

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

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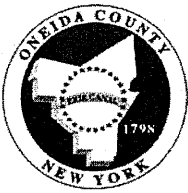
## COMMUNICATIONS WITH DOCUMENTATION May 8, 2013

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

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**ONEIDA COUNTY DEPARTMENT OF LAW**

Oneida County Office Building  
800 Park Avenue ♦ Utica, New York 13501-2975  
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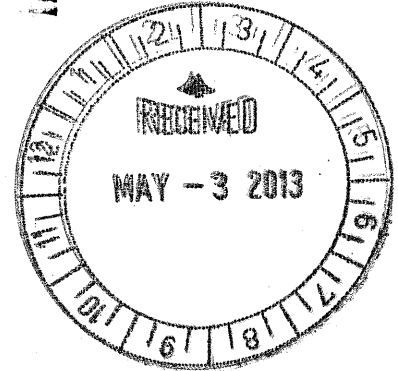
**ANTHONY J. PICENTE JR.**  
COUNTY EXECUTIVE

**GREGORY J. AMOROSO**  
COUNTY ATTORNEY

FN 20 13 - 165

May 3, 2013

**WAYS & MEANS**



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

**RE: Claim of Howard et al v. Soldato**

Dear Mr. Picente:

I enclose herewith a letter from Attorney David A. Bagley, counsel to Oneida County in the above referenced claim, recommending that the County agree to pay \$28, 500 in fees and expenses in connection with their monitoring compliance pursuant to the terms and conditions of the Stipulation of Order settling the litigation. As stated by Mr. Bagley, this amount will cover the activities of the plaintiff's attorneys and their staff through January 25, 2012 through March 4, 2013.

I agree with the recommendation made by Mr. Bagley. We would be happy to appear before you and the Board to answer any questions related to this settlement.

I ask that you forward this proposal to the Board of Legislators for their approval at their June 12, 2013 regular session.

Thank you.

Very truly yours,

*Greg J. Amoroso*

Gregory J. Amoroso  
County Attorney

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

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

Date 5/3/13

Cc: David Bagley, Esq.  
Lucille Soldato, Commissioner of Social Services  
John Herbowy, Esq.

KERNAN PROFESSIONAL GROUP, LLP

1310 Utica Street  
P.O. Box 750  
Oriskany, New York 13424  
Telephone: (315) 736-0816

David A. Bagley, Attorney  
Of Counsel

Also Admitted in Colorado,  
Oklahoma and Oregon

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Via E-Mail and First Class Mail

*Privileged Attorney-Client Communication and Work Product*

May 1, 2013

Gregory J. Amoroso, Esq.  
County Attorney  
Oneida County Office Building  
800 Park Avenue  
Utica, New York 13501

Re: Claim of Howard *et al.* v. Soldato, Commissioner  
Case Number 6:10-cv-1557, United States District Court, Northern District of New York

Dear Greg:

As shown in the e-mail to which this is attached, we have agreed with plaintiffs' counsel to pay \$28,500 in fees and expenses in connection with their monitoring compliance on the part of the Department of Social Services with the terms and conditions of the Stipulation and Order settling the litigation. This amount covers activities of plaintiffs' attorneys and their staff in reviewing case files and compiling related information from January 25, 2012 through March 4, 2013, and encompasses four review sessions.

The above amount was arrived at through negotiations in which the parties exchanged letters setting forth in some detail their respective positions on what should be compensable, and by inference the arguable outcome if plaintiffs' attorneys were to apply to the court for an award of fees and costs. (I believe I have provided you copies of those letters, and can make the same available again if needed.)

The \$28,500 reflects a reduction from the \$33,813.54 plaintiffs' attorneys demanded, and a greater one from what they would have sought in a fee application to the court. In my view, it represents the least the court would have awarded them at the present juncture in all reasonable likelihood. Accordingly, I commend it to your consideration and recommend that it be submitted for approval of payment.

Thank you as always for your continuing cooperation and assistance in the matter. Should you have questions or require anything further, please advise.

DAB/mma

Yours very truly,

  
David A. Bagley

cc: Oneida County Executive (e-mail)  
John Herbowy, Esq. (e-mail)  
L. G. Boucher



# Griffiss International Airport

592 Hangar Road, Suite 200  
Roine, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.  
County Executive

F. RICHARD GIFFORD, II  
Commissioner of Aviation

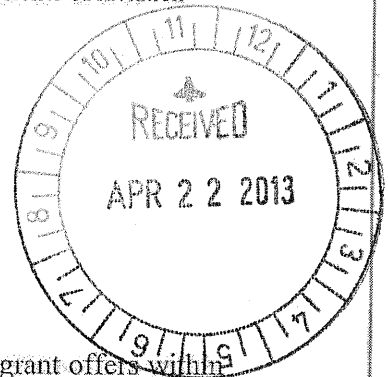
FN 20 13 - 166

April 15, 2013

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

**AIRPORT**

**WAYS & MEANS**



Dear County Executive Picente,

As you know, Griffiss International Airport is expected to accept and execute any grant offers within a one (1) week turnaround immediately following the release of any FAA Airport Improvement (AIP) funds to a particular airport. The Department of Aviation is currently designing and has applied to the FAA for the following AIP projects included in the Federal Airport Capital Improvement Program and County's Capital Project H-339.

Please see the enclosed Airport Capital Improvement Program (ACIP) table.

In anticipation of potential grant offers and considering the extremely short turnaround timeline for grant execution, the Department of Aviation respectfully requests the County Executive seek Board of Legislator approval to execute potential FY13 and FY14 FAA and State grant offer(s) for the project(s) identified in (ACIP) Airport Capital Improvement Plan. This is a 90% Federal participation, 5% State participation reimbursement program with the County providing a 5% local share. It is uncertain which projects, if any or all, will receive funding.

Please contact me with any questions you may have regarding this application.

Thank you for your assistance in this matter.

Sincerely,

F. Richard Gifford, II  
Commissioner of Aviation

enclosure

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

  
Anthony J. Picente, Jr.  
County Executive

Date 4/19/13



# GRIFFISS INTERNATIONAL AIRPORT (2013-2017) AIRPORT CAPITAL IMPROVEMENT PROGRAM



Airport: Griffiss International Airport												State	NY	NPIAS#	36-0119	LOCID	RME
Fiscal Year	Project Description	Federal Funds (\$1,000)		State Funds (\$1,000)	Other/County	Total (\$1,000)	Environmental Status	Est. Start Date	Est. Comp. Date								
		Discretionary	MAP									Entitlement					
2013	Terminal Building Construction		7,875.00		437.50	8,750.00	FONSI										
	Taxiway K Edge Lighting (Design & Construction)	232.50		150.00	21.25	425.00	CATX										
	Taxiway Rehabilitation - Phase 2 (Construction)	4,050.00			225.00	4,500.00	CATX										
	Taxiway Rehabilitation - Phase 3 (Design)	180.00			10.00	200.00	CATX										
	Nose Dock Rehabilitation - Building 785 & 786 (Construction) - Phase 1		1,500.00		83.33	1,666.67	CATX										
<b>Totals 2013</b>												9,375.00	150.00	777.08	777.08	15,541.67	
2014	Nose Dock Rehabilitation - Building 785 & 786 (Construction) - Phase 2		4,800.00		266.67	5,333.33	FONSI										
	Taxiway Rehabilitation - Phase 3 (Construction)	5,250.00		150.00	300.00	6,000.00											
	Taxiway Rehabilitation - Phase 4 (Design)		180.00		10.00	200.00	EA										
	Demolish Buildings 131 and 44		900.00		50.00	1,000.00	CATX										
	Aircraft Deicing Containment Facility (Design)	108.00			6.00	120.00	CATX										
<b>Totals 2014</b>												5,860.00	150.00	632.67	632.67	12,653.33	
2015	Taxiway Rehabilitation - Phase 4 (Construction)	3,900.00		150.00	225.00	4,500.00											
	SRE Building (Design)		225.00		12.50	250.00	FONSI										
	Construct Airport Entrance Road (Ph II) (Design)		108.00		6.00	120.00	FONSI										
	Aircraft Deicing Containment Facility (Construction)	3,617.10			200.95	4,019.00	FONSI										
	<b>Totals 2015</b>												7,517.10	150.00	444.45	444.45	8,889.00
2016	SRE Building (Construction)		3,600.00		200.00	4,000.00	FONSI										
	Construct Airport Entrance Road Ph II (Construction)		2,520.00		140.00	2,800.00											
	Apron Rehabilitation - Phase I (Design)	75.00		150.00	12.50	250.00	FONSI										
<b>Totals 2016</b>												6,120.00	150.00	352.50	352.50	7,050.00	
2017	Apron Rehabilitation - Phase I (Construction)	4,500.00			250.00	5,000.00	FONSI										
	Apron Rehabilitation - Phase II (Design)	75.00		150.00	12.50	250.00	FONSI										
	Replace Snow Removal Equipment	180.00			10.00	200.00											
<b>Totals 2017</b>												4,755.00	150.00	272.50	272.50	5,450.00	
2018	Apron Rehabilitation - Phase II (Construction)	4,350.00			250.00	5,000.00	FONSI										
		4,350.00		150.00	250.00	5,000.00											
		26,517.60	21,708.00	900.00	2,729.20	2,729.20	54,584.00										
<b>TOTALS:</b>												21,708.00	900.00	2,729.20	2,729.20	54,584.00	

# Griffiss International Airport



Oneida County Department of Aviation  
592 Hangar Road, Suite 200  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.  
County Executive

F. RICHARD GIFFORD, II  
Commissioner of Aviation

May 2, 2013

**WAYS & MEANS**

FN 20 13 - 167

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

**AIRPORT**

Re: Reference # H-339 Cost Plus Fixed Fee Agreement for Design and Construction Observation and Administration (CO&A) of Taxiway "K" Medium Edge Lighting Installation Project at Griffiss International Airport

Dear County Executive Picente,

Please consider acceptance of the Cost Plus Fixed Fee Agreement for Design, Construction Observation and Administration of Taxiway "K" Medium Edge Lighting Installation Project agreement from C&S Engineers for \$99,500.00 for providing necessary consultant services associated with the CO&A of Taxiway "K" at Griffiss International Airport. C&S Companies maximum amount payable under this agreement is \$99,500.00.

The Oneida County Board of Legislators designated C&S Companies as an approved Airport Consultant (F.N. 2009-#348).

C&S will provide professional design, contract observation and administration services of Taxiway "K", providing oversight of all building design to include general construction, mechanical and electrical systems. Services include letter update of Environmental Assessment (EA) and State Environmental Quality Review (SEQR) has classified this as a Type 2 action.

This project is funded 90% (\$89,550.00) with FAA Airport Improvement Program dollars; State share, 5% (\$4,975.00) and Oneida County share 5% (\$4,975.00).

Please charge account H-339.

If you concur with this request please forward to the Board of Legislators for consideration.

Thank you for your assistance in this matter.

F. Richard Gifford, II  
Commissioner  
Department of Aviation

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

Anthony J. Picente, Jr.  
County Executive

Date: 5/7/13

Oneida County Department: Aviation

Competing Proposal   x    
Only Respondent         
Sole Source RFP       

## Oneida County - Contract Summary

**Name of Proposing Organization:** C&S Companies

**Title of Activity or Service:**  
Design and Construction Observation  
and Administration for Taxiway K

**Client Population/No. to be Served:** N/A

**Summary Statements:**

**1) Narrative Description of Proposed Services:**  
Design and Construction Observation and Administration for Taxiway K

**2) Program/Service Objectives and Outcomes:** The Design and Construction of Taxiway Lights on Taxiway K.

**3) Program Design and Staffing Level:** N/A

**Total Funding Requested:** \$99,500

**Oneida County Department Funding  
Recommendation:**

**Account #** H-339

<b>Proposed Funding Source:</b>	<b>Federal</b> \$89,550.00	<b>State</b> \$4975.00	<b>County</b> \$4975.00
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**Cost Per Client Served:** N/A

**Past Performance Data:**

**Oneida County Department Staff Comments:**



**COST PLUS FIXED FEE  
CONSULTANT AGREEMENT  
FOR  
DESIGN AND  
CONSTRUCTION OBSERVATION & ADMINISTRATION  
OF THE  
TAXIWAY K MEDIUM INTENSITY EDGE LIGHTING  
INSTALLATION PROJECT  
AT  
GRIFFISS INTERNATIONAL AIRPORT  
ROME, NEW YORK**

FAA AIP NO. 3-36-0119-\_\_ -\_\_

NYSDOT NO. 2905. \_\_

ONEIDA COUNTY CONTRACT NO.: H\_\_

C&S PROJECT NO.: 146. \_\_.001 & 146. \_\_.002

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# COST PLUS FIXED FEE CONSULTANT AGREEMENT

## FOR

### DESIGN AND CONSTRUCTION OBSERVATION & ADMINISTRATION

**PROJECT:** Taxiway K Medium Intensity Edge Lighting Installation  
Griffiss international Airport

This Agreement, made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is by and between the County of Oneida, a New York municipal corporation, having an address at 800 park Avenue, Utica, new York 13501 (hereinafter referred to as the "SPONSOR"), and C&S Engineers, Inc., a New York business corporation having its principal offices at 499 Col. Eileen Collins Boulevard, Syracuse, New York 13212 (hereinafter referred to as the "CONSULTANT").

**WITNESSETH:** That the SPONSOR and the CONSULTANT, for and in consideration of the mutual obligations set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

#### ARTICLE 1—DESCRIPTION OF SERVICES TO BE PERFORMED

The SPONSOR hereby retains the CONSULTANT because of its ability and reputation, and the CONSULTANT accepts such retention, to perform for the SPONSOR the services of the Project more particularly described in Schedule(s) "A", attached hereto and made a part hereof (the "Basic Services"). The SPONSOR's resolution or other authorization for retaining the CONSULTANT is attached hereto and made a part hereof as Schedule "E". The SPONSOR has completed or will complete a "Certification for Selection of Consultant" in connection with the execution of this Agreement, a copy of which is attached hereto and made a part hereof as Schedule "D".

#### ARTICLE 2—PROVISION FOR PAYMENT – TIME FOR PERFORMANCE

**A. Basis for Payment**—The SPONSOR shall pay the CONSULTANT, and the CONSULTANT shall accept, as full compensation for the performance by the CONSULTANT of the Basic Services under this Agreement, the following:

**Item I:** Direct Technical Salaries of all employees assigned to the Project on a full-time basis for all or part of the term of this Agreement, plus properly allocable partial salaries of all employees working part-time on the Project, all subject to audit. Overtime in accordance with the terms of this Agreement shall be charged under this Item.

The cost of Principals' salaries (or allowable portion thereof) included in Direct Technical Salaries during the period that they are working specifically on the Project (productive time) are eligible if their comparable time is also charged directly to other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost.

**Item II**—Actual Direct Nonsalary Costs incurred during the term of this Agreement, as defined in Schedule(s) “B”, attached hereto and made a part hereof, all subject to audit.

**Item III**—Overhead Allowance based on agreed upon overhead during the term of this Agreement, as set forth in Schedule “C”, which is attached hereto and made a part hereof.

**Item IV—Fixed Fee**—A negotiated lump sum fee, which in this Agreement shall equal \$12,978.26. This Fixed Fee is not subject to audit, and is not subject to review or modification unless the SPONSOR determines that such review or modification is justifiable and advisable.

A summary of the monies due the CONSULTANT under Items I, II, III, and IV is set forth in Schedule(s) “B”.

**Item V**—In the event of any claims being made or actions being brought against the Project, the CONSULTANT agrees to render assistance to the SPONSOR in responding to the claim or action. Such assistance, and the costs associated therewith, shall be an Additional Service as described in Article 11 hereof.

- B. Partial Payments**—The CONSULTANT shall be paid in monthly progress payments based on actual allowable costs incurred during the month in accordance with Section “A” of this Article. Monthly invoices shall clearly identify the costs of the services performed. A percentage of the Fixed Fee described in Section “A”, Item IV, of this Article shall be paid with each monthly progress payment. The percentage to be used in calculating the monthly payment under Section “A”, Item IV, shall equal the ratio of the costs expended during the billing period to the maximum amount payable (exclusive of Fixed Fee) allocated to fulfill the terms of this Agreement as established herein.

Accounts of the CONSULTANT shall clearly identify the costs of the services performed under this Agreement and may be subject to periodic and final audit by the SPONSOR, the New York State Department of Transportation (NYSDOT), and the Federal Aviation Administration (FAA). Such an audit shall not be a condition for making partial payments.

- C. Final Payment**—Payment of the final invoice shall be made upon completion and acceptance of the Project by the SPONSOR, the NYSDOT, and the FAA.

The maximum amount payable under this Agreement, including the CONSULTANT’s Fixed Fee, shall be \$99,500.00 (\$37,500 design + \$62,000 construction administration/observation) unless there is a substantial change in the scope, complexity, character, or duration\* of the Basic Services.

\*Duration is applicable to construction observation only.

Execution of this Agreement by the SPONSOR and the CONSULTANT constitutes the SPONSOR's written authorization to the CONSULTANT to proceed as of the above-written date with the performance of Basic Services as set forth in Schedule(s) "A". The estimated time for completion of the Basic Services under this Agreement, subject to the provisions of the following paragraph and of Articles 12, 13, and 23 hereof, shall be as recorded in Schedule(s) "A".

If the SPONSOR fails to make any payment due the CONSULTANT for services and expenses within forty-five (45) days after receipt of the CONSULTANT's invoice therefor, then the amounts due the CONSULTANT shall be increased at the rate of 1.5% per month from said forty-fifth (45<sup>th</sup>) day. Payments will be credited first to principal and then to interest. Additionally, the CONSULTANT may, after giving seven (7) days' notice to the SPONSOR, suspend services under this Agreement until the invoice is paid. Upon payment in full by the SPONSOR, the CONSULTANT shall resume performance or furnishing of services under this Agreement, and the time schedule set forth in Schedule(s) "A" and compensation set forth in Schedule(s) "B" hereto shall be equitably adjusted to compensate for the period of suspension.

### **ARTICLE 3—STANDARD OF CARE, STANDARD PRACTICES, AND REQUIREMENTS**

The standard of care for all engineering and related services performed or furnished by the CONSULTANT under this Agreement shall be the care and skill ordinarily used by members of the CONSULTANT's profession practicing under similar conditions at the same time and in the same locality. Before beginning to perform or furnish any service hereunder, the CONSULTANT shall ascertain the standard practices of the SPONSOR, the NYSDOT, and the FAA, if any, for projects of a type similar to this Project. Where the CONSULTANT deems it practicable to do so, the services to be provided or furnished under this Agreement shall be performed in accordance with these standard practices as long as they are consistent with the standard of care. If any of these standard practices are inconsistent with the CONSULTANT's standard of care or are in conflict with one another, or if strict adherence to the same is impossible or undesirable, then the CONSULTANT's services may vary or deviate from such standards.

### **ARTICLE 4—ENTIRE AGREEMENT**

This Agreement, with its accompanying Schedule or Schedules, constitutes the entire agreement between the SPONSOR and the CONSULTANT with respect to its subject matter, and supersedes any prior agreement, whether written or verbal, with respect to that subject matter. This Agreement may be amended or modified only by written instrument signed by the SPONSOR and the CONSULTANT.

### **ARTICLE 5—TAXES, ROYALTIES, AND EXPENSES**

The CONSULTANT shall pay all taxes, royalties, and expenses incurred by the CONSULTANT in connection with performing its services under this Agreement, unless otherwise provided in Article 2.

## **ARTICLE 6—CONSULTANT LIABILITY**

To the fullest extent permitted by law, the CONSULTANT shall indemnify the SPONSOR against, and hold it harmless from, any suit, action, actual damage, and cost resulting solely from the negligent performance of services or omission of the CONSULTANT under this Agreement, up to the limits of any available insurance. Negligent performance of services, 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 services performed hereunder.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the SPONSOR beyond such as may legally exist irrespective of this Article or this Agreement.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the SPONSOR nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the SPONSOR and the CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

The provisions of this Article 6 shall survive termination or expiration of this Agreement.

## **ARTICLE 7—LABOR LAW REQUIREMENTS**

The CONSULTANT, and any subconsultant or subcontractor retained by it in connection with the performance or furnishing of services under this Agreement, shall comply with the requirements of state or federal statutes, regulations, or orders applicable to the employment of employees, as set forth in Schedules "H" and "I", which are attached hereto and made a part hereof.

The SPONSOR recognizes that the CONSULTANT will be required by the New York State Department of Labor (the "NYSDOL") to compensate its personnel performing field survey work in accordance with applicable state wage rates in effect at the same time services are performed. The SPONSOR understands that the CONSULTANT has no control over these labor rates and their periodic increases. Therefore, the SPONSOR agrees to compensate the CONSULTANT for field survey services included as a part of this Agreement in accordance with the NYSDOL Prevailing Rate Schedule, which is incorporated by reference into this Agreement. Furthermore, the SPONSOR shall compensate the CONSULTANT for all increases in labor costs, including applicable overhead and profit, when those increases occur by direction of the NYSDOL. Billings for, and payments by the SPONSOR of, these increases will take place routinely in accordance with the appropriate terms of this Agreement and these increases will be paid as an additional cost over and above the agreed amount.

## **ARTICLE 8—NONDISCRIMINATION PROVISIONS**

During the performance of its services under this Agreement, the CONSULTANT, and any subconsultant, subcontractor, or vendor retained by it, shall comply with the nondiscrimination requirements set forth in Schedules "H" and "I" hereto, as applicable to this Project.

The CONSULTANT will include the provisions of Schedules "H" and "I" in every subconsultant agreement,

subcontract, or purchase order in such a manner that such provisions will be binding upon each subconsultant, subcontractor, or vendor as to operations to be performed within the State of New York. The CONSULTANT will take such action in enforcing such provisions of such subconsultant agreement, subcontract, or purchase order as the SPONSOR may direct, including sanctions or remedies for non-compliance. If the CONSULTANT becomes involved in or is threatened with litigation by a subconsultant, subcontractor, or vendor as a result of such direction by the SPONSOR, the CONSULTANT shall promptly so notify the SPONSOR's legal counsel, requesting such counsel to intervene and protect the interests of the SPONSOR.

## **ARTICLE 9—WORKER'S COMPENSATION AND LIABILITY INSURANCE**

The CONSULTANT agrees to procure and maintain at its own expense, and without direct expense to the SPONSOR, until final acceptance by the SPONSOR of the services covered by this Agreement, insurance of the kinds and in the amounts hereafter provided, written by insurance companies authorized to do business in the State of New York. Before commencing the performance of services hereunder, the CONSULTANT shall furnish the SPONSOR a certificate or certificates, in form satisfactory to the SPONSOR, showing that it has complied with this Article. All policies shall provide for a 30-day notice of policy cancellation to the SPONSOR (except 10 days' notice should be provided for cancellation due to non-payment of premiums).

The kinds and amounts of insurance required are as follows:

- A. Policy or policies covering the obligations of the CONSULTANT in accordance with the provisions of any applicable worker's compensation or disability benefits law, including for the State of New York Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and amendments thereto, and Chapter 600 of the Laws of 1949, as amended, known as the Disability Benefits Law, and this Agreement shall be void and of no effect unless the CONSULTANT procures such policy or policies and maintains the same in force during the term of this Agreement.
- B. Policy or policies of commercial general liability insurance, with broad form endorsement covering, among other things, the CONSULTANT's obligation under Article 6 hereof, with limits of liability of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one (1) person in any one (1) accident; and, subject to that limit for each person; not less than Three Million Dollars (\$3,000,000) for all damages arising out of bodily injury, including death at any time resulting therefrom, sustained by two (2) or more persons in any one (1) accident; and not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one (1) accident, and, subject to that limit per accident, not less than Three Million Dollars (\$3,000,000) for all damages arising out of injury to or destruction of property during the policy period.
  1. Liability insurance issued to and covering the liability of the CONSULTANT's subconsultants and subcontractors, having the same policy limits as those set forth above, with respect to all services or work performed by said subconsultants or subcontractors under this Agreement.
  2. Protective liability insurance issued to and covering the liability of the CONSULTANT with respect to all services under this Agreement performed for the CONSULTANT by subconsultants or subcontractors.
  3. Professional liability insurance issued to and covering the liability of the CONSULTANT with respect to all professional services performed by it under this Agreement.

The SPONSOR, the NYSDOT, and the FAA shall be additional insureds, as their interests may appear, under the insurance coverages described in Paragraph B above, except for the coverage described in Subparagraph (3), which coverages shall be subject to all of the terms, exclusions, and conditions of the applicable policy.

**ARTICLE 10—ASSIGNMENT REQUIREMENTS**

The CONSULTANT specifically agrees that:

- A. It is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of this Agreement or of its right, title, or interest herein, or its power to execute this Agreement, to any other person, company, or corporation without the previous consent in writing of the SPONSOR, the Commissioner of the NYSDOT, and the FAA.
- B. If this provision of the Agreement is violated, the SPONSOR may terminate this Agreement for cause in accordance with the provisions of Article 12. Furthermore, the SPONSOR shall be relieved from any liability and obligation hereunder to the person, company, or corporation to whom the CONSULTANT shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement in violation of the foregoing paragraph (A), and such transferee shall forfeit and lose all monies assigned to it under this Agreement, except so much as may be required to pay its employees.

**ARTICLE 11—ADDITIONAL SERVICES**

If authorized in writing by the SPONSOR through a Supplemental Agreement, the CONSULTANT shall furnish or obtain from others any service that is beyond the scope of Schedule(s) "A" ("Additional Services"). The scope and time for performance, and payment from the SPONSOR to the CONSULTANT for, any Additional Services (which shall be on the basis set forth in Schedule(s) "B") shall be set forth in such Supplemental Agreement.

**ARTICLE 12—ABANDONMENT OR AMENDMENT OF PROJECT AND TERMINATION**

- A. **ABANDONMENT OR AMENDMENT OF THE PROJECT**—The SPONSOR shall have the absolute right to abandon or to amend its Project or to change the general basis of performance at any time, and such action on its part shall in no event be deemed a breach of this Agreement. If the SPONSOR amends its Project or changes the general basis thereof, and the CONSULTANT is of the opinion that Additional Services are made necessary thereby, then the provisions of Article 11 of this Agreement with respect to Additional Services shall apply. If the SPONSOR abandons the Project, then the provisions of paragraph B(1)(b) below shall govern payment to the CONSULTANT.
- B. **TERMINATION**  
The obligation to provide further services under this Agreement may be terminated:
  - 1. **For Cause:**



- a. By either party upon thirty (30) days' prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as the result of such substantial failure if the party receiving notice begins, within seven (7) days after receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within thirty (30) days of such receipt; provided that, if and to the extent that such substantial failure cannot reasonably be cured within such thirty (30)-day period, and if the party has diligently attempted to cure the failure and thereafter continues diligently to cure the problem, then the cure period may, in the discretion of the terminating party, be extended to sixty (60) days after the receipt of notice.
  - b. By the CONSULTANT upon seven (7) days' written notice if (a) the CONSULTANT believes that it is being requested by the SPONSOR to perform or furnish services contrary to or in conflict with the CONSULTANT's responsibilities as a licensed design professional or the standard of care set forth in Article 3 hereof; or (b) the CONSULTANT's services are delayed or suspended for more than ninety (90) days, consecutively or in the aggregate, for reasons beyond the CONSULTANT's control; or (c) the SPONSOR has abandoned, or is considered to have abandoned, the Project.
2. **For convenience** by the SPONSOR, effective upon the receipt of notice by the CONSULTANT.

C. PAYMENTS UPON TERMINATION

1. **For Cause:**

- a. By the SPONSOR: If the SPONSOR terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT and its subconsultants, subcontractors, and vendors through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for cause during any phase of Basic Services, the CONSULTANT will also be paid for such services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". The CONSULTANT will also be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services to the extent that such services have been performed or furnished in accordance with this Agreement through the effective date of the termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses.
- b. By the CONSULTANT: If the CONSULTANT terminates this Agreement for cause upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed or furnished by the CONSULTANT and its subconsultants, subcontractors, or vendors through the completion of such phase shall constitute total payment for such services. The CONSULTANT shall also be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" hereto measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

2. **For convenience**

If the SPONSOR terminates this Agreement for convenience upon completion of any phase of Basic Services, then progress payments due the CONSULTANT in accordance with this Agreement for all such services performed by or furnished through the CONSULTANT through the completion of such phase shall constitute total payment for such services. If the SPONSOR terminates this Agreement for convenience during any phase of Basic Services, the CONSULTANT will also be paid for such

services performed or furnished in accordance with this Agreement by the CONSULTANT during that phase through the date of termination on the basis specified in Schedule(s) "B". Additionally, the CONSULTANT will be paid for the charges of its subconsultants, subcontractors, or vendors who performed or furnished Basic Services through the effective date of termination. The SPONSOR shall also pay the CONSULTANT for all unpaid Additional Services and unpaid Reimbursable Expenses, as well as for the CONSULTANT's reasonable expenses directly attributable to termination in accordance with the rates for Additional Services set forth in Schedule(s) "B" measured from the date of termination, including fair and reasonable sums for overhead and profit and the costs of terminating the CONSULTANT's contracts with its subconsultants, subcontractors, or vendors.

#### **ARTICLE 13—SUSPENSION OF SERVICES**

If the CONSULTANT's services hereunder are delayed or suspended, in whole or in part, by the SPONSOR for more than thirty (30) calendar days, consecutively or in the aggregate, through no fault of the CONSULTANT, then the CONSULTANT shall be entitled to equitable adjustments of rates and amounts of compensation to reflect, among other things, reasonable costs incurred by the CONSULTANT in connection with the delay or suspension and reactivation and the fact that the time for performance of the CONSULTANT's services hereunder has been revised. If the delay or suspension persists for more than ninety (90) days, consecutively or in the aggregate, then the CONSULTANT may consider the Project to have been abandoned by the SPONSOR and may terminate this Agreement for cause.

Upon the SPONSOR's resumption of its Project, and if the CONSULTANT has not terminated this Agreement for cause, the CONSULTANT shall resume its services under this Agreement until the services are completed and accepted, subject to any adjustment in the rates set forth in Schedule(s) "B" because of the passage of time.

#### **ARTICLE 14—INTERCHANGE OF DATA**

During the performance of this Agreement, all technical data in regard to the Project whether (a) existing in the office of the SPONSOR or (b) existing in the office of the CONSULTANT, shall be made available to the other party to this Agreement without expense to such other party.

#### **ARTICLE 15—DISPOSITION OF PROJECT DOCUMENTS**

At the time of completion of its services and upon payment in full therefor, the CONSULTANT shall make available to the SPONSOR copies of documents prepared as the result of this Agreement. These documents shall then become the property of the SPONSOR and the maintenance of the data therein shall be the sole responsibility of the SPONSOR. Any reuse of the documents by the SPONSOR or others on extensions of the Project, or on any other project, without written verification or adaptation by the CONSULTANT and its subconsultants, subcontractors, or vendors, as appropriate, for the specific purpose intended will be at the SPONSOR's or other user's sole risk and expense and without liability or legal exposure to the CONSULTANT or its subconsultants, subcontractors, or vendors. The SPONSOR shall indemnify the CONSULTANT, its subconsultants, subcontractors, and vendors against, and hold them harmless from, all claims, damages, losses, and expenses (including reasonable expert and attorneys' fees) arising out of or resulting from such reuse.

In the event that this Agreement is terminated for any reason, then within ten (10) days after such termination, the CONSULTANT shall make available to the SPONSOR all data and material prepared under this Agreement, including cover sheets, in accordance with and subject to the terms of the above paragraphs.

## **ARTICLE 16—CODE OF ETHICS**

The CONSULTANT specifically agrees that this Agreement may be canceled or terminated if any service under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, as amended, and Schedule "G", which is attached hereto and made a part hereof.

## **ARTICLE 17—INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with its status as an independent contractor, shall conduct itself consistent with such status; shall neither hold itself out as nor claim to be an officer or employee of the SPONSOR by reason hereof; and shall not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the SPONSOR, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

## **ARTICLE 18—PATENT RIGHTS AND COPYRIGHTS**

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-how, data, and findings, shall be made available without cost to the State of New York or its licensees and the FAA for public use. No material prepared in connection with this Project shall be subject to copyright. The State and the FAA shall have the right to publish, distribute, disclose, or otherwise use any material prepared under this Project, subject to the provisions of Article 15 hereof.

## **ARTICLE 19—NEW YORK STATE PARTICIPATION**

The services to be performed in this Agreement are included in a NYSDOT Project, which is being undertaken and accomplished by the SPONSOR and the State of New York and pursuant to which the State of New York has agreed to pay a certain percentage of the allowable Project costs. The State of New York is not a party to this Agreement and no reference in this Agreement to the Commissioner of Transportation or any representative thereof, or to any rights granted to the Commissioner of Transportation or any representative thereof or the State of New York by the Agreement, makes the State of New York a party to this Agreement.

The CONSULTANT and the SPONSOR agree that properly authorized officials of the State of New York may from time to time inspect all Project documents for the purpose of insuring compliance with New York State laws and protecting the interests of the State of New York.

## **ARTICLE 20—FEDERAL PARTICIPATION**

The FAA is not a party to this Agreement, although the Project work program covered by this Agreement may be financially aided in part by a Grant Agreement between the SPONSOR and the FAA. The SPONSOR and the CONSULTANT hereby agree to comply fully with the conditions set forth in detail in the Grant Agreement as though they were set forth in detail in this Agreement, including the requirements set forth in Schedules "D", "F", "G", and "H" hereto. The CONSULTANT further agrees that, by reason of complying with the conditions of the Grant Agreement, no obligation is entailed on the part of the FAA to the CONSULTANT.

The CONSULTANT and the SPONSOR agree that properly authorized officials of the FAA may from time to time inspect all Project documents for the purpose of insuring compliance with Federal laws and protecting the

interests of the FAA.

**ARTICLE 21—MISCELLANEOUS**

- A. The CONSULTANT shall require all persons employed to perform services hereunder, including its subconsultants or subcontractors, vendors, agents, officers, and employees, to comply with applicable laws in the jurisdiction in which the Project is located.
- B. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
- C. By execution of this Agreement, the CONSULTANT represents that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining any approval of this Agreement.
- D. Any notice required under this Agreement shall be in writing, addressed to the appropriate party at the address set forth above, and shall be given personally; by registered or certified first-class mail, postage prepaid and return receipt requested; by facsimile transmission, with confirmation of receipt; or by a nationally-recognized overnight courier service, with proof of receipt. Notice shall be effective upon the date of receipt. For purposes of this Agreement, failure or refusal to accept receipt shall constitute receipt nonetheless. Either party may change its address for notice by giving notice to the other in accordance with the terms of this paragraph.
- E. This Agreement, and the interpretation and enforcement of the provisions hereof, is governed by the laws of the State of New York.

**ARTICLE 22— SUBCONSULTANTS/SUBCONTRACTORS AND VENDORS**

All subconsultants and subcontractors performing services for or work on this Project shall be bound by the same required provisions of this Agreement as is the CONSULTANT. As set forth above, all agreements between the CONSULTANT and a subconsultant, subcontractor, or vendor shall include all standard required contract provisions, and such agreements shall be subject to review by the NYSDOT and the FAA.

**ARTICLE 23 — FORCE MAJEURE**

Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including, but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; loss of utility services; blizzard; flood; fire; labor unrest; strikes; war; riot; or any cause the party is unable to prevent with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay. Additionally, if the delay resulting from any of the foregoing increases the cost of or time required by the CONSULTANT to perform its services hereunder in an orderly and efficient manner, then the CONSULTANT shall be entitled to an equitable adjustment in schedule and/or compensation.

**ARTICLE 24 — DISPUTE RESOLUTION**

- A. The SPONSOR and the CONSULTANT agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them prior to exercising their right under paragraph (B) below. The thirty-day period may be extended upon mutual agreement of the parties.
  
- B. If any dispute cannot be resolved pursuant to paragraph (A) above, and only if mutually agreed by the SPONSOR and the CONSULTANT, said dispute and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement or the breach of any provision hereof (“disputes”) shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to a party initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding. The cost of mediation shall be shared equally between the parties.

**IN WITNESS WHEREOF**, this Agreement has been executed by the SPONSOR, acting by and through its County Executive, who has caused the seal of his or her office to be affixed hereto, and by the CONSULTANT, acting by and through a duly-authorized officer, effective the day and year first above-written, subject to the approval of the Commissioner of the NYSDOT, the State Comptroller, and the FAA.

**SPONSOR**

**Oneida County, New York**

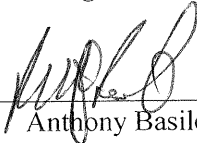
By: \_\_\_\_\_  
Hon. Anthony J. Picente

Title: County Executive

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

**CONSULTANT**

**C&S Engineers, Inc.**

By:  \_\_\_\_\_  
Anthony Basile

Title: Manager, Airport Services Group

Date: 4-30-13

**Approved As To Form  
ONEIDA COUNTY ATTORNEY**

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

## SCHEDULE A1

### SCOPE OF WORK

**Project Title:** Taxiway K Medium Intensity Edge Lighting Installation  
**Airport Name:** Griffiss International Airport  
**Services Provided:** Design

#### **Project Description:**

The CONSULTANT shall provide required services to design the Taxiway K Medium Intensity Edge Lighting Installation project (the "Project"). The Project will be performed and constructed by the SPONSOR with grant assistance from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) and the New York State Department of Transportation (NYSDOT).

An abandoned and closed section of taxiway, located between the holding bay to Runway 33 end and the entrance to Apron 2 will be rehabilitated and opened to aircraft as part of the Taxiway Rehabilitation – Phase I project. Once opened in the summer of 2013, the Taxiway will be named Taxiway K and is required to alleviate long-term traffic congestion at the entrance to Apron 1&2 as well as to act as a temporary detour during the construction of phase I. Taxiway K is approximately 1,150 ft long and 75 feet wide. Lighted signs will be installed as part of the original rehabilitation project; however taxiway edge lights were not included in the design or construction. This project generally consists of the design of the removal of abandoned USAF components and installation of new LED taxiway edge lights. This will include all associated cables, conduits, splice cans and pull boxes, regulators and other electrical equipment needed to operate the system.

Once Taxiway K is opened to aircraft traffic, no edge lighting will exist. The area is poorly illuminated due to the lack of light sources to provide ambient lighting. Numerous complaints have already been received from pilots operating at the entrance taxiway to Apron 1&2. Appropriate edge lighting will greatly enhance the operational safety of aircraft on Taxiway K and the entrance to Apron 1 & 2.

Services to be provided by the CONSULTANT shall include civil and electrical engineering services, as applicable, required to accomplish the following items ("Basic Services"):

#### **ADMINISTRATION PHASE**

The CONSULTANT shall aid the SPONSOR by acting as its liaison and Project coordinator with the NYSDOT and the FAA during the Project's design. In addition, the CONSULTANT shall assist the SPONSOR in the preparation of paperwork required to secure funds for the Project. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Preparation of grant application packages; coordination of their execution by the Sponsor; and submission to the funding agencies.
2. Preparation of reimbursement request packages; coordination of their execution by the Sponsor; and submission to the funding agencies.
3. During the Design Phase, aid the Sponsor by acting as its liaison and Project coordinator with the funding agencies.

4. The Sponsor's construction budget for the Project is \$325,000. The Consultant shall evaluate the feasibility of this budget, based upon the Consultant's experience as a design professional, and keep the Sponsor apprised during each phase of the Project of the results of such evaluation. The Consultant shall advise the Sponsor as to options available for reducing construction costs to stay within the budget, if it appears likely that contractor bid prices will exceed this budget.
5. The design schedule is anticipated to be as follows:

	<u>Time from Receipt of NTP</u>	<u>Anticipated Completion Date</u>
Contract Execution		June 2013
Notice to Proceed (NTP)		June 2013
Schematic Design	10 days	
Preliminary Design	20 days	
Final Design	30 days	

### **SCHEMATIC DESIGN PHASE**

The Schematic Design Phase is intended to identify and evaluate alternatives to provide cost-effective and practical solutions for the work items identified. The CONSULTANT will evaluate alternatives through contacts with local authorities, review of the pre-application, field investigations, and a practical design approach. The Project's design will take advantage of local knowledge and experience and will utilize expertise from recent construction projects in an effort to design a cost-effective Project. The specific services to be provided or furnished for this Phase of the Project are the following:

1. Schedule and conduct a pre-design meeting with the SPONSOR, the FAA, and the NYSDOT to review the scope of services and become familiar with the Project requirements and operational concerns during the Project's construction.
2. Acquire and review record documents (such as plans, specifications, reports, and studies) to become familiar with data that is available for the Project.
3. Perform a preliminary Project site inspection to familiarize the design team further with Project areas.
4. Perform a preliminary environmental review, including the collection and review of available documents such as published wetland maps, soil conservation survey maps, and previous master plan and environmental archaeological studies, to identify potential impacts the Project may have on the environment.
5. Develop schematic designs, including lighting layouts, and prepare preliminary opinion of probable construction costs for each major element of the Project.
6. Schedule and conduct a meeting with the SPONSOR to review the schematic design.

### **PRELIMINARY DESIGN**

The services to be performed during this Phase consist generally of services required to furnish the SPONSOR with a set of Preliminary Plans, Specifications, and Engineer's Report (prepared using the format set forth in Schedule "F" to the Agreement).

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Develop preliminary airfield lighting layouts, including light fixture spacing and cable circuitry requirements. Investigate existing electrical system capacities and perform preliminary design of electrical power distribution and control systems.
2. Develop preliminary designs of structural Project elements, such as manholes and equipment foundations.

3. Conduct site inspections to verify topographic survey (obtained and provided by others) and other Project-related existing physical features and facilities.
4. Prepare preliminary Contract Drawings (approximately 50% complete) providing sufficient detail for review of design concepts by the SPONSOR, the FAA, and the NYSDOT.
5. Prepare general specifications and preliminarily develop technical specifications expected to be required for the proposed work.
6. Develop a draft construction phasing and operations plan that endeavors to limit interference by the Project's construction with airport and tenant operations, in accordance with FAA advisory circular 150/5370-2 (current edition).
7. Assist the SPONSOR in conducting a SEQR and NEPA review of the Project, including completion of appropriate EAF forms and preparation and submission of letters to governmental agencies requesting their review and determination regarding what, if any, impact the Project is expected to have on sensitive environmental areas.
8. Conduct wetland delineation and mapping and archaeological and other environmental investigations as required by governmental agencies during the SEQR review process. The cost of these services, if required, is not included in the CONSULTANT's original Scope of Services and shall therefore be an Additional Service, as described in Article 11 of the Agreement.
9. Update opinion of probable construction cost to reflect the outcomes of preliminary Project design.
10. Prepare written design report documenting items such as design concepts, assumptions, and alternative designs. The contents of the report shall be consistent with Schedule "F". Identify conflicts with or deviations from FAA standards for design items, and request a waiver from the FAA if necessary, utilizing the Eastern Region Modification of Airport Design Standards form.
11. Submit sufficient copies of preliminary design documents to the SPONSOR, the FAA, and the NYSDOT for their review and comment.
12. Schedule and conduct a preliminary design review meeting to discuss and resolve SPONSOR comments.

### **FINAL DESIGN PHASE**

The services included under this Phase shall generally consist of services required to furnish the SPONSOR with a complete set of Contract Documents for the Project, including Final Plans, Specifications, Engineer's Design Report, and opinion of probable construction costs. Services to be performed or furnished during this Phase may include revising the preliminary submittal information to comply with SPONSOR comments and then completion of the final design. Plans and Specifications, suitable for unit price bidding, will be completed; final design will be coordinated with the SPONSOR; and a complete set of bid documents will be furnished to the SPONSOR. A final opinion of probable construction cost and the final Design Report will also be prepared and submitted. A final Construction Phasing and Operations Plan will be included as part of the specifications.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Finalize structure designs and detail Portland cement concrete, reinforcing bar, and other related installations.
2. Finalize airfield lighting layouts, electrical power distribution and system designs, and detail installations.
3. Prepare final Contract Drawings.
4. Perform a detailed quantity takeoff of all bid items to be included on the Contract Drawings and in the General Specifications of the Contract Documents.



5. Finalize General Specifications and prepare written Technical Specifications for all construction materials and installations. Finalize construction phasing and operations plan and include in Specifications.
6. Prepare final opinion of probable construction costs based upon the actual bid items and quantity takeoffs.
7. Finalize design report to be consistent with the final design.
8. Submit draft final documents to the SPONSOR, the FAA, and the NYSDOT for final review and comment. Schedule and conduct draft final review meeting with the SPONSOR to discuss and resolve final comments.
9. Reproduce and submit sufficient copies of bid documents to SPONSOR for bidding purposes. Bid documents shall consist of the Contract Drawings and Specifications. Cross-sections and soils investigation data shall also be provided to bidders for informational purposes.

### **BID PHASE**

The Bid Phase is that time frame between completion of the design process and beginning of actual construction when the SPONSOR publicly advertises and receives bids, awards contracts to the lowest responsible bidder, and executes a construction contract to perform the work with the successful contractor(s). The CONSULTANT shall assist the SPONSOR during this Phase as required.

The specific services to be provided or furnished for this Phase of the Project are the following:

1. Assist the SPONSOR in the advertisement of the Project and issuance of bid documents.
2. Receive and respond as required to questions from potential bidders regarding the Contract Documents.
3. Schedule and conduct pre-bid conference(s) if requested by the SPONSOR, and advise the SPONSOR on matters relating to design. Prepare meeting minutes of the pre-bid conference(s).
4. Prepare addenda to the bid documents after advertisement and prior to bidding, as required, upon the SPONSOR's approval.
5. Attend bid opening. Upon receipt of bids, perform bid reviews. The bid review shall include items such as a check of the contractor's bid extensions, bid security, execution of bid, non-collusive bidding certificate, EEO certification, statement of surety's intent, addenda receipt, "Buy American" certificate, subcontractors and suppliers list, Disadvantaged Business Enterprise (DBE) certification, eligibility certification, corporate bidder's certification, non-discrimination statement, and nonsegregated facilities certificate. Request evidence of competency and evidence of financial responsibility from the contractor. Review contractor's list of personnel, list of equipment, and financial statement. Formal contact of the contractor's references shall be made upon SPONSOR's request or if the contractor has no past working relationship with the CONSULTANT, the SPONSOR, the FAA, or the NYSDOT.
6. Prepare a final bid tabulation, recommendation/rejection of award to the SPONSOR, and a sample award letter. Request concurrence of award from the FAA and the NYSDOT.
7. Upon award of contract, prepare conformed copies of contracts; coordinate contractor's execution of contract; review contractor's bonds, insurance certificates, and DBE plan; review contractor's submission with SPONSOR; coordinate SPONSOR's execution of the contract; and assist in distributing copies of executed contracts to the contractor, the FAA, and the NYSDOT.
8. Coordinate Notice to Proceed (NTP) for construction. Contact FAA for permission to issue NTP. Prepare a sample NTP letter for the SPONSOR to send to the contractor.

END OF SCHEDULE

## SCHEDULE A2

### SCOPE OF WORK

**Project Title:** Taxiway K Medium Intensity Edge Lighting Installation  
**Airport Name:** Griffiss International Airport  
**Services Provided:** Construction Observation & Administration

#### **Project Description:**

The CONSULTANT shall provide the following services, including construction contract administration and full-time construction observation, during construction of the Taxiway K Medium intensity Edge Lighting Installation. The Project will be constructed by the SPONSOR with grant assistance from the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) and the New York State Department of Transportation (NYSDOT).

An abandoned and closed section of taxiway, located between the holding bay to Runway 33 end and the entrance to Apron 2 will be rehabilitated and opened to aircraft as part of the Taxiway Rehabilitation – Phase I project. Once opened in the summer of 2013, the Taxiway will be named Taxiway K and is required to alleviate long-term traffic congestion at the entrance to Apron 1&2 as well as to act as a temporary detour during the construction of phase I. Taxiway K is approximately 1,150 ft long and 75 feet wide. Lighted signs will be installed as part of the original rehabilitation project; however taxiway edge lights were not included in the design or construction. This project generally consists of the design of the removal of abandoned USAF components and installation of new LED taxiway edge lights. This will include all associated cables, conduits, splice cans and pull boxes, regulators and other electrical equipment needed to operate the system.

Once Taxiway K is opened to aircraft traffic, no edge lighting will exist. The area is poorly illuminated due to the lack of light sources to provide ambient lighting. Numerous complaints have already been received from pilots operating at the entrance taxiway to Apron 1&2. Appropriate edge lighting will greatly enhance the operational safety of aircraft on Taxiway K and the entrance to Apron 1 & 2.

Services to be provided by the CONSULTANT shall include the following:

#### **CONSTRUCTION CONTRACT ADMINISTRATION PHASE**

The Construction Contract Administration Phase shall consist of observation of the construction to become generally familiar with the progress and quality of the Contractor's work to determine if the work is proceeding in general conformity with the Contract Documents. In addition, the CONSULTANT shall aid the SPONSOR by acting as its liaison and Project coordinator with the NYSDOT and the FAA during the construction of the Project. Construction Contract Administration includes the following services:

1. Provide consultation and advice to the SPONSOR during construction, including the holding of a pre-construction conference, weekly construction coordination meetings, and other meetings required during the course of construction. Prepare and distribute minutes of all meetings.
2. Review, approve, or take other appropriate action on all Contractor-required submittals, such as construction schedules and phasing programs, shop drawings, product data, catalog cuts, and samples.
3. Review alternative construction methods proposed by the Contractor and advise the SPONSOR of the impact of these methods on the schedule and quality of the Project.
4. Prepare supplemental drawings and change orders necessary to execute the work properly within the

intended scope. Assist the SPONSOR in resolving contractor claims and disputes.

5. Provide interpretation of the Contract Document requirements and advise the Contractor of these on behalf of the SPONSOR when necessary.
6. Furnish the SPONSOR one reproducible set of the record drawings for the completed Project taken from the annotated record drawings prepared by the resident inspector based upon Contractor-provided information.
7. Prepare reimbursement request packages; coordinate their execution by the SPONSOR; and submit to the funding agencies.
8. Conduct pre-final and final inspections of the completed Project with the SPONSOR's airport personnel, the FAA, and the Contractor.
9. Issue certificates of construction completion to the SPONSOR, the FAA, and the NYSDOT.
10. Perform an orderly closeout of the Project as required by the SPONSOR, the FAA, and the NYSDOT.
11. Provide assistance to the SPONSOR as a witness in any litigation that may arise from the development or construction of the Project. Payment for this service will be as stated in Article 2(A), Item V, of the CONSULTANT Agreement for the Project, of which this Schedule forms a part.

#### **CONSTRUCTION OBSERVATION PHASE**

The construction observation phase shall consist of construction observation by a full-time resident engineer or inspector and supporting staff who will also:

1. Maintain a Project record in accordance with the Manual of Uniform Record Keeping (MURK) requirements of the NYSDOT for aviation capital projects.
2. Review documents and submissions by Contractor(s) pertaining to scheduling and advise the SPONSOR as to their acceptability.
3. Observe the Work to determine general conformity with the Contract Documents and to ascertain the need for correction or rejection of the Work. Neither the activities of the resident engineer or inspector and/or supporting staff nor the presence of any of them at a construction/Project site shall relieve Contractor nor make Consultant responsible for, Contractor's obligations, duties, and responsibilities, including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating the Work in accordance with the Contract Documents and any health or safety precautions or measures required by regulatory agencies.
4. Attend and conduct pre-construction and pre-installation conferences; weekly progress meetings; and final inspection of the completed Project.
5. Prepare and submit inspection reports of construction activity and problems encountered as required by the SPONSOR, the NYSDOT, and the FAA.
6. Prepare, review, and approve monthly and final payments to Contractor(s).
7. Prepare and implement a Quality Control and Assurance Plan as required by the FAA for monitoring material requirements and properties throughout the course of construction.

The CONSULTANT agrees to perform the services in the Construction Observation Phase of this Project during the construction contract period, estimated to be as follows:

Pre-Construction: Senior Construction Supervisor, 2 days @ 8 hrs/day

Resident Engineer, 2 days @ 8 hrs/day

Inspection: Senior Construction Supervisor, 2 days @ 8 hrs/day

Resident Engineer, 25 days @ 10 hrs/day

Post-Construction: Senior Construction Supervisor, 3 days @ 8 hrs/day

Resident Engineer, 4 days @ 8 hrs/day

## RESPONSIBILITIES/DUTIES OF INSPECTION STAFF

In general, the on-site inspection staff is responsible for monitoring construction activity on a project and documenting their observations in a formal project record. The Project record contents and its preparation shall be in accordance with the NYSDOT M.U.R.K.

The M.U.R.K. System consists of the following records and duties:

1. Engineer's Daily Project Diary
2. Inspector's Daily Reports
3. Summary of Inspector's Daily Reports
4. Preparation of FAA Weekly Reports
5. Prime/Subcontractor Work Summary
6. Preparation of Material Acceptance Reports
7. Preparation of Certification and Testing Log Book
8. Review Subcontractor approval forms
9. Prepare statement of days charged on a weekly basis
10. Conduct Wage Rate Interviews with prime/subcontractors employees
11. Conduct Project meetings with Sponsor and Contractors
12. Field measure quantities on a daily basis
13. Collect and monitor weekly payrolls for Davis Bacon Act Compliance
14. Preparation of Periodic Payment Request for Contractor
15. Record deviations from the contract plans for preparation of record drawings
16. Preparation and review of Change Orders/Force Account Work

The Resident Inspector will assist the SPONSOR and Contractor regarding construction activity as it relates to aircraft operations and coordination of Notice to Airmen (NOTAMS) as required.

END OF SCHEDULE



**ARCHITECTURAL/ENGINEERING  
COST SUMMARY  
SCHEDULE "B1"  
DESIGN PHASE**

PROJECT NAME: TAXIWAY K MITL INSTALLATION  
PROJ DESCRIPTION DESIGN

DATE: 16-Apr-13  
A/E: C & S ENGINEERS, INC.  
PROJECT NO: 146.\_\_\_\_.001  
C&S CONTACT: R. NAPOLITANO

CLIENT: ONEIDA COUNTY  
CLIENT MANAGER: CHAD LAWRENCE

**I. ESTIMATE OF DIRECT SALARY COSTS:**

	TITLE	MAXIMUM RATE OF PAY (\$/HR)	AVERAGE RATE OF PAY (\$/HR)	@	ESTIMATED HOURS		ESTIMATED COST
A.	SERVICE GROUP MANAGER	\$77.30	\$70.40	X	4	=	\$282.00
B.	DEPARTMENT MANAGER	\$63.60	\$59.10	X	4	=	\$236.00
C.	MANAGING ENGINEER	\$55.30	\$51.10	X	0	=	\$0.00
D.	CHIEF/PRINCIPAL ENGINEER	\$62.20	\$59.40	X	6	=	\$356.00
E.	SENIOR PROJECT ENGINEER	\$46.10	\$44.00	X	138	=	\$6,072.00
F.	PROJECT ENGINEER	\$43.30	\$38.60	X	0	=	\$0.00
G.	ENGINEER	\$43.20	\$33.50	X	64	=	\$2,144.00
H.	STAFF ENGINEER	\$34.10	\$29.50	X	0	=	\$0.00
I.	SENIOR DESIGNER	\$39.40	\$33.20	X	80	=	\$2,656.00
J.	DESIGNER	\$32.40	\$27.40	X	0	=	\$0.00
K.	CADD OPERATOR	\$27.70	\$23.60	X	0	=	\$0.00
L.	ADMINISTRATIVE ASSISTANT	\$25.50	\$22.50	X	4	=	\$90.00
M.	GRANTS ADMINISTRATOR	\$39.50	\$37.50	X	8	=	\$300.00
N.	MANAGER AIRPORT PLANNING	\$59.30	\$56.50	X	0	=	\$0.00
O.	SENIOR PLANNER	\$56.80	\$49.10	X	0	=	\$0.00
P.	PLANNER	\$34.10	\$32.40	X	0	=	\$0.00
Q.	STAFF PLANNER	\$34.10	\$29.50	X	0	=	\$0.00
R.	SENIOR/MANAGING ARCHITECT	\$54.50	\$51.20	X	0	=	\$0.00
S.	PROJECT ARCHITECT	\$43.20	\$41.10	X	0	=	\$0.00
T.	MANAGING GEOLOGIST (SOILS ENG)	\$59.10	\$56.30	X	0	=	\$0.00
U.	GEOLOGIST	\$28.50	\$27.00	X	0	=	\$0.00
V.	ENVIRONMENTAL SCIENTIST	\$36.10	\$34.40	X	0	=	\$0.00
W.	SENIOR CONSTRUCTION SUPERVISOR	\$68.50	\$65.30	X	0	=	\$0.00
X.	CONSTRUCTION SUPERVISOR	\$49.50	\$47.10	X	0	=	\$0.00
Y.	RESIDENT ENGINEER	\$51.20	\$43.10	X	0	=	\$0.00
Z.	CHIEF INSPECTOR	\$38.60	\$36.80	X	0	=	\$0.00
AA.	SENIOR INSPECTOR	\$34.10	\$30.50	X	0	=	\$0.00
BB.	INSPECTOR	\$32.40	\$27.20	X	0	=	\$0.00
CC.	JUNIOR INSPECTOR	\$22.70	\$21.60	X	0	=	\$0.00
DD.	SENIOR TECHNICAL ADMINISTRATOR	\$34.90	\$33.20	X	0	=	\$0.00
EE.	PARTY CHIEF	\$58.30	\$55.80	X	0	=	\$0.00
FF.	SURVEYOR I	\$54.90	\$52.40	X	0	=	\$0.00
GG.	SURVEYOR II	\$54.90	\$52.40	X	0	=	\$0.00

TOTAL ESTIMATED DIRECT SALARY COST: \$12,136.00

**II. OVERHEAD EXPENSES & PAYROLL BURDEN PER SCHEDULE "C" -**

(AUDITABLE, ESTIMATED AND EXPRESSED AS A PERCENTAGE  
OF DIRECT SALARY COST):

166.00% \$20,146.00

**III. SUBTOTAL OF ITEMS I & II:**

\$32,282.00

IV. ESTIMATE OF DIRECT EXPENSES:

A.	TRAVEL, BY AUTO:						
		4	TRIPS @	100	MILES/TRIP @	\$0.555	= \$222.00
B.	MISCELLANEOUS:						= <u>\$104.70</u>

TOTAL ESTIMATE OF DIRECT EXPENSES: \$326.70

V. FIXED FEE (PROFIT, LUMP SUM):

A.	LABOR PLUS OVERHEAD:			15%	(OF III.)	\$4,842.30
B.	DIRECT EXPENSES:			15%	(OF IV.)	<u>\$49.00</u>

TOTAL FIXED FEE: \$4,891.30

VI. TOTALS:

A. **MAXIMUM TOTAL COST FOR DESIGN SERVICES, AGREEMENT TOTAL & FAA ELIGIBLE:** **\$37,500.00**



# ARCHITECTURAL/ENGINEERING COST SUMMARY SCHEDULE "B2" INSPECTION PHASE

PROJECT NAME: TAXIWAY K MITL INSTALLATION  
 PROJ DESCRIPTION CONSTRUCTION OBSERVATION AND ADMINISTRATION

DATE: 16-Apr-13  
 A/E: C & S ENGINEERS, INC.  
 PROJECT NO: 146.\_\_\_\_002  
 C&S CONTACT: R. NAPOLITANO

CLIENT: ONEIDA COUNTY  
 CLIENT MANAGER: CHAD LAWRENCE

**I. ESTIMATE OF DIRECT SALARY COSTS:**

	TITLE	MAXIMUM RATE OF PAY (\$/HR)	AVERAGE RATE OF PAY (\$/HR)	@	ESTIMATED HOURS	=	ESTIMATED COST
A.	SERVICE GROUP MANAGER	\$77.30	\$70.40	X	0	=	\$0.00
B.	DEPARTMENT MANAGER	\$63.60	\$59.10	X	4	=	\$236.40
C.	MANAGING ENGINEER	\$55.30	\$51.10	X	0	=	\$0.00
D.	CHIEF/PRINCIPAL ENGINEER	\$62.20	\$59.40	X	0	=	\$0.00
E.	SENIOR PROJECT ENGINEER	\$46.10	\$44.00	X	8	=	\$352.00
F.	PROJECT ENGINEER	\$43.30	\$38.60	X	0	=	\$0.00
G.	ENGINEER	\$43.20	\$33.50	X	8	=	\$268.00
H.	STAFF ENGINEER	\$34.10	\$29.50	X	0	=	\$0.00
I.	SENIOR DESIGNER	\$39.40	\$33.20	X	8	=	\$265.60
J.	DESIGNER	\$32.40	\$27.40	X	0	=	\$0.00
K.	CADD OPERATOR	\$27.70	\$23.60	X	0	=	\$0.00
L.	ADMINISTRATIVE ASSISTANT	\$25.50	\$22.50	X	0	=	\$0.00
M.	GRANTS ADMINISTRATOR	\$39.50	\$37.50	X	12	=	\$450.00
N.	MANAGER AIRPORT PLANNING	\$59.30	\$56.50	X	0	=	\$0.00
O.	SENIOR PLANNER	\$56.80	\$49.10	X	0	=	\$0.00
P.	PLANNER	\$34.10	\$32.40	X	0	=	\$0.00
Q.	STAFF PLANNER	\$34.10	\$29.50	X	0	=	\$0.00
R.	SENIOR/MANAGING ARCHITECT	\$54.50	\$51.20	X	0	=	\$0.00
S.	PROJECT ARCHITECT	\$43.20	\$41.10	X	0	=	\$0.00
T.	MANAGING GEOLOGIST (SOILS ENG)	\$59.10	\$56.30	X	0	=	\$0.00
U.	GEOLOGIST	\$28.50	\$27.00	X	0	=	\$0.00
V.	ENVIRONMENTAL SCIENTIST	\$36.10	\$34.40	X	0	=	\$0.00
W.	SENIOR CONSTRUCTION SUPERVISOR	\$68.50	\$65.30	X	56	=	\$3,656.80
X.	CONSTRUCTION SUPERVISOR	\$49.50	\$47.10	X	0	=	\$0.00
Y.	RESIDENT ENGINEER	\$51.20	\$43.10	X	298	=	\$12,843.80
Z.	CHIEF INSPECTOR	\$38.60	\$36.80	X	0	=	\$0.00
AA.	SENIOR INSPECTOR	\$34.10	\$30.50	X	0	=	\$0.00
BB.	INSPECTOR	\$32.40	\$27.20	X	0	=	\$0.00
CC.	JUNIOR INSPECTOR	\$22.70	\$21.60	X	0	=	\$0.00
DD.	SENIOR TECHNICAL ADMINISTRATOR	\$34.90	\$33.20	X	40	=	\$1,328.00
EE.	PARTY CHIEF	\$58.30	\$55.80	X	0	=	\$0.00
FF.	SURVEYOR I	\$54.90	\$52.40	X	0	=	\$0.00
GG.	SURVEYOR II	\$54.90	\$52.40	X	0	=	\$0.00
<b>TOTAL ESTIMATED DIRECT SALARY COST:</b>							<b>\$19,400.60</b>

**II. OVERHEAD EXPENSES & PAYROLL BURDEN PER SCHEDULE "C" -**  
 (AUDITABLE, ESTIMATED AND EXPRESSED AS A PERCENTAGE  
 OF DIRECT SALARY COST):

166.00% \$32,205.00

**III. SUBTOTAL OF ITEMS I & II:**

**\$51,605.60**



IV. ESTIMATE OF DIRECT EXPENSES:

A.	TRAVEL, BY AUTO:	38 TRIPS @	100 MILES/TRIP @	\$0.555	=	\$2,109.00
B.	TRAVEL, ON SITE, BY AUTO:	25 DAYS @	5 MILES/DAY @	\$0.555	=	\$69.38
C.	MISCELLANEOUS:				=	<u>\$129.07</u>

TOTAL ESTIMATE OF DIRECT EXPENSES: \$2,307.45

V. FIXED FEE (PROFIT, LUMP SUM):

A.	LABOR PLUS OVERHEAD:	15%	(OF III.)	\$7,740.84
B.	DIRECT EXPENSES:	15%	(OF IV.)	<u>\$346.12</u>
	TOTAL FIXED FEE:			\$8,086.96

VI. TOTALS:

A. ESTIMATE OF MAXIMUM TOTAL COST FOR INSPECTION SERVICES, AGREEMENT TOTAL & FAA ELIGIBLE: \$62,000.00

## SCHEDULE "C"

### C&S ENGINEERS, INC AGREED OVERHEAD

	ALLOWABLE COST	% OF DIRECT LABOR
<b>SALARY OVERHEAD (PAYROLL BURDEN)</b>		
Vacation & Holiday	2,000,000.00	15%
Sick & Personal	306,000.00	2%
FICA Taxes	1,700,000.00	12%
U. E. Taxes	235,000.00	2%
WC Insurance	130,000.00	1%
Group Insurance	1,500,000.00	11%
Bonus	1,600,000.00	12%
Employee Benefits	700,000.00	5%
Payroll Preparation	45,000.00	0%
<b>TOTAL SALARY OVERHEAD</b>	<b>8,216,000.00</b>	<b>60%</b>
 <b>GENERAL &amp; ADMINISTRATIVE OVERHEAD</b>		
Indirect Labor	2,700,000.00	20%
Clerical & Administrative	2,200,000.00	16%
Project Development	2,600,000.00	19%
Training & Recruitment	300,000.00	2%
Office Supplies & Equipment Leases	1,814,000.00	13%
Travel & Auto Expenses	925,000.00	7%
Insurance	250,000.00	2%
Depreciation	780,000.00	6%
Rent , Janitorial, & Maintenance	1,830,000.00	13%
Utilities	190,000.00	1%
Telephone	380,000.00	3%
Dues & Fees	400,000.00	3%
Workshops, Seminars, & Education	125,000.00	1%
Legal & Accounting	90,000.00	1%
<b>TOTAL GENERAL &amp; ADMINISTRATIVE</b>	<b>14,584,000.00</b>	<b>106%</b>
 <b>TOTAL OVERHEAD</b>	 <b>22,800,000.00</b>	 <b>166%</b>
 <b>TOTAL DIRECT LABOR</b>	 <b>13,700,000.00</b>	

## SCHEDULE "D"

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
AIRPORT IMPROVEMENT PROGRAM  
SPONSOR CERTIFICATION**

**SELECTION OF CONSULTANTS**

Oneida County, NY  
*(Sponsor)*

Griffiss International Airport  
*(Airport)*

3-36-0119-\_\_\_\_-\_\_\_\_  
*(Project Number)*

Install Medium intensity Edge Lights on Taxiway K  
*(Work Description)*

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General standards for selection of consultant services within Federal grant programs are described in Title 49, Code of Federal Regulations (CFR), Part 18.36. Sponsors may use other qualifications-based procedures provided they are equivalent to specific standards in 49 CFR 18 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standard.

	Yes	No	N/A
1. Solicitations were (will be) made to ensure fair and open competition from a wide area of interest.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. For contracts over \$100,000, consultants were (will be) selected using competitive procedures based on qualifications, experience, and disadvantaged enterprise requirements with the fees determined through negotiations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. A record of negotiations has been (will be) prepared reflecting considerations involved in the establishment of fees, which are not significantly above the sponsor's independent cost estimate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. If engineering or other services are to be performed by sponsor force account personnel, prior approval was (will be) obtained from the FAA.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. The consultant services contracts clearly establish (will establish) the scope of work and delineate the division of responsibilities between all parties engaged in carrying out elements of the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Costs associated with work ineligible for AIP funding are (will be) clearly identified and separated from eligible items in solicitations, contracts, and related project documents.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	N/A
7. Mandatory contract provisions for grant-assisted contracts have been (will be) included in consultant services contracts.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. The cost-plus-percentage-of-cost methods of contracting prohibited under Federal standards were not (will not be) used.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. If the services being procured cover more than the single grant project referenced in this certification, the scope of work was (will be) specifically described in the advertisement, and future work will not be initiated beyond five years.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have prepared documentation attached hereto for any item marked "no" that is correct and complete.

Oneida County, New York

*(Name of Sponsor)*



*(Signature)*

F. Richard Gifford, II

*(Typed Name of Sponsor's Designated Official Representative)*

Commissioner

*(Typed Title of Sponsor's Designated Official Representative)*

*(Date)*

END OF SCHEDULE

**SCHEDULE E**

**(RESOLUTION TO BE INSERTED)**

# SCHEDULE F

## ENGINEER'S REPORT

The following has been compiled as guidance covering what will be reflected in an Engineer's Report:

### Chapter I - Introduction

1. **Scope**—A brief explanation of the scope of the proposed development as indicated in the Tentative Allocation, and how it fits in with the present and future development of the airport as shown on the approved Airport Layout Plan. This is not to be construed as another justification of the item(s) which has (have) already been accomplished during the development and processing of the Request for Aid. However, the Request for Aid and Tentative Allocation letter should be included in this section.
2. **Environmental and Safety Consideration**— Fulfillment of environmental consideration and commitments as per the project Environmental Clearance issued by the FAA and AC 150/5370-2, "Operational Safety on Airports During Construction."
3. State what is the critical aircraft for design purposes and the basis of selection.

### Chapter II - Design

1. **Design Standards**—A listing of the applicable Advisory Circulars that are current on the date of the Tentative Allocation as shown in the latest tri-annual listing in the Federal Register and which are mandatory as per Paragraph 83 and Appendix I of FAR Part 152. In the event the SPONSOR/Engineer wishes to use either draft or non-mandatory Advisory Circulars or other standards, a written request, including the rationale therefore, shall be promptly submitted through the SPONSOR for FAA consideration and inclusion in the report. The processing of the request shall be accomplished in accordance with Order 5300.1A. Include a discussion as to any variances from the design standards and request for waivers.
2. **Unusual Local Conditions**—Identification and explanation of local conditions not covered by the standards listed in above item (1) which will require modification. This should include a discussion of the local condition, alternative solutions, recommended solution, and the rationale for same. The discussion shall also include economics, scheduling, methods, and effect on other facilities, operations, parties, etc. Some typical items that may generate this type of discussion are:
  - A. unusual soil classification, including drainage and structural characteristics;
  - B. unusual weather conditions, such as precipitation and temperature;
  - C. availability, proximity, and costs of construction material, manpower, on and off-site equipment, and plans, etc.;
  - D. special design to accommodate unusual equipment and/or operations (e.g., off-hour construction or non-standard construction procedures).
3. **Lighting**—Discussion should include the following:
  - A. Lighting system layout
  - B. Series lighting design (MITL), including:
    - 1) Physical layout sketch;

- 2) Present regulator rating, condition, and load;
- 3) Proposed load under this project;
- 4) Future load;
- 5) Wire sizes and length of runs.

### **Chapter III - Contract Provisions and Eligibility**

1. **Contract Technical Provisions**—Discussion on the adaptation of the construction contracts' technical provisions in order to avoid conflicts between the technical requirements of the SPONSOR, the FAA, and other Grantor Agencies. Typical areas for consideration are:
  - A. Asphalt and concrete pavements (e.g., P-401 & P-501)
  - B. Concrete
  - C. Turfing
  - D. Excavation and embankment
  - E. Alternate bids
  
2. **Contract General Provisions—(Non-Technical)**. Discussion on the adaptation of the construction contract's general (non-technical) provisions in order to avoid conflicts between the procurement requirements of the SPONSOR, the FAA, and other Grantor Agencies. Typical areas for consideration are:
  - A. Definitions
  - B. State, Federal, and local wage rates and labor provisions
  - C. EEO provisions, including Hometown or Imposed Plans
  - D. Insurance
  - E. Bid, payment and performance bonds
  - F. Payment provisions and application
  - G. Change Orders
  - H. Claims
  - I. Extra work
  - J. Material submissions, substitutions and approvals
  - K. Survey and layout procedure and responsibility
  - L. Guaranty and warranty procedure and responsibility
  - M. "As Built" information and responsibility
  - N. Pre-Construction Conference
  - O. Notice to Proceed
  - P. Stop Orders
  - Q. Time extensions

- R. Airport operations and requirements
  - S. Repair and/or replacement or damage facility requirements
  - T. Work schedule (bar chart, PERT, etc.)
  - U. Bidding forms and requirements
  - V. SPONSOR and Grantor Agency authority and responsibilities
  - W. Safety (Order EA 5210.1)
3. **Non-Eligible Work.** Identification, justification and details of separation of non-eligible work to be included in ADAP contract. This shall also cover the impact that the non-eligible work will have on costs and scheduling of ADAP work.
  4. **Eligible Work to be Done by Others**—Identification, justification and details of eligible work to be done by others, such as utility companies, Sponsor Force Account, etc. This shall also cover the impact that others doing eligible work will have on costs and scheduling of ADAP work.
  5. **Scheduling and Coordination**—Identification, justification and details of scheduling and coordination where project work will impact or be impacted by other parties and/or activities such as airport users, airlines, public, FBO, National Weather Service, FAA Sponsor, other contractors, military, utilities, concessionaires, etc. This discussion shall also cover the economic conditions of the general and local construction market conditions, with a view to obtaining the most advantageous bids. Included in the discussions should be what effect the Grantor Agency's (FAA, State, Sponsor, etc.) commitments have on the schedule.
  6. **Submittal of the Engineer's Report.** The Engineer's Report will accompany each submittal of the plans and specifications, to the degree of development commensurate with the submittal itself. The Sponsor/Engineer must understand that without submittal of the Engineer's Report, the plans and specifications will be returned without comments.

END OF SCHEDULE



## SCHEDULE G

### CERTIFICATION OF CONSULTANT

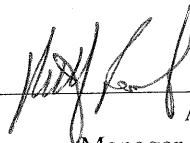
I hereby certify that I am the Manager of the Airport Services Group and a duly authorized representative of the firm of C&S Engineers, Inc., whose address is 499 Col. Eileen Collins Blvd., Syracuse, NY, and that neither I nor the above firm I here represent has:

- A. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this Contract.
- B. agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- C. paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Contract except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this Contract, involving participation of Airport Improvement Program (AIP) funds, and is subject to applicable state and Federal laws, both criminal and civil.

4-30-13

\_\_\_\_\_  
Date



\_\_\_\_\_  
Anthony Basile  
Manager, Airport Services Group

END OF SCHEDULE

**SCHEDULE H  
AIRPORT AID PROGRAM**

**Contractor Contractual Requirements**

**Civil Rights Act of 1964, Title VI – 49 CFR Part 21**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the regulation relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of material and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a programs set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the regulation or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanction as it or the FAA may determine to be appropriate, including but not limited to --
  - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor of the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

**Disadvantaged Business Enterprise (DBE) Assurances  
49 CFR Part 26**

1. **Policy.** It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds under this agreement.
2. **DBE Obligation.** The contractor agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

**Airport and Airway Improvement Act of 1982, Section 520  
General Civil Rights Provisions  
49 U.S.C. 47123**

The contractor assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### **Access to Records and Reports 49 CFR Part 18.36(i)**

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

### **Rights to Inventions 49 CFR Part 18.36(i)(8)**

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

### **Lobbying and Influencing Federal Employees 49 CFR Part 20, Appendix A**

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The contractor 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, 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.

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### **Trade Restriction Clause 49 CFR Part 30**

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

### **Termination of Contract 49 CFR Part 18.36(i)(2)**

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

### **Breach of Contract Terms 49 CFR Part 18.36**

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **Davis – Bacon Act Provisions**

1. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the

Secretary of Labor which is (are) attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this paragraph, contributions made or costs reasonably anticipated under Section 1(b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subparagraph 4 below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period [29 CFR 5.5(a)(1)(i)].

2. Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the SPONSOR to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination [29 CFR 5.5(a)(1)(ii)].
3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination [29 CFR 5.5(a) (1)(iii)].
4. If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract. Provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **Special Grant Condition**

Office of Management and Budget issued Memorandum M-08-03 implementing Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (TVPA) (22 U.S.C. 7104(g)).

#### **TRAFFICKING IN PERSONS:**

##### **a. Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, 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. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

END OF SCHEDULE

## SCHEDULE I

### NEW YORK STATE DEPARTMENT OF TRANSPORTATION REQUIREMENTS

#### A. Standard Clauses For All New York State Contracts (Appendix A).

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

1. **Executory Clause.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **Non-Assignment Clause.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **Comptroller's Approval.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$5,000 (\$20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective, or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **Worker's Compensation Benefits.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **Non-Discrimination Requirements.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **Wage and Hours Provisions.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **Non-Collusive Bidding Requirement.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. International Boycott Prohibition. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 240,1 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment, or modification thereto shall be rendered forfeit and void. The contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination, or disposition of appeal (2 NYCRR 105.4).
9. Set-Off Rights. The State shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. Records. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.
11. Identifying Information and Privacy Notification:
- (a) Federal Employer Identification Number and/or Federal Social Security Number. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, (i.e., the seller's or lessor's identification number). The number is either the payee's Federal employee identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.
- (b) Privacy Notification.
- (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
- (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.
12. Equal Employment Opportunities For Minorities And Women. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a

contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then:

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

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

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

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

13. Conflicting Terms. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.
14. Governing Law. This contract shall be governed by the laws of the State of New York except where the federal supremacy clause requires otherwise.
15. Late Payment. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.
16. No Arbitration. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.
17. Service of Process. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), contractor hereby consents to service of process upon it be registered or certified mail, return receipt request. Service hereunder shall be complete upon contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.
18. Prohibition on Purchase of Tropical Hardwoods. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility



of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St --7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development Division of Minority and Women's Business Development 30 South Pearl St --2nd Floor Albany, New York 12245 Telephone: 518-292-5250 Fax: 518-292-5803 <http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million: a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. Reciprocity And Sanctions Provisions. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.
22. Compliance with New York State Information Security Breach and Notification Act. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).
23. Compliance with Consultant Disclosure Law. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.
24. Procurement Lobbying. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made

in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. Certification of Registration To Collect Sales And Compensating Use Tax By Certain State Contractors, Affiliates And Subcontractors. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

END OF SCHEDULE

**TAXIWAY K MEDIUM INTENSITY EDGE LIGHT INSTALLATION PROJECT**  
**DESIGN AND CONSTRUCTION ADMINISTRATION/OBSERVATION**

**FAA AIP NO- 3-36-0119- -13**

**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).

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- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F. for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
  - 1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
  - 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

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

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
  1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  2. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
  1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  5. Make available protected health information in accordance with 45 CFR § 164.524;

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

## **5. Non-Assignment Clause.**

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



**6. 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.

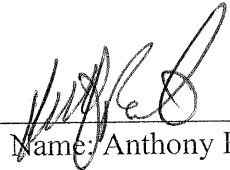
The County reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears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

**C&S Engineers, Inc.**

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

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

Oneida County Executive

Name: Anthony Basile

Approved as to Form only

\_\_\_\_\_

Oneida County Attorney

# Griffiss International Airport



Oneida County Department of Aviation  
592 Hangar Road, Suite 200  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

ANTHONY J. PICENTE, JR.  
County Executive

F. RICHARD GIFFORD, II  
Commissioner of Aviation

FN 20 13-168

April 26, 2013

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

**AIRPORT**

**WAYS & MEANS**

Re: Contract for Air Traffic Control Services request for a 3 year, plus 3 additional one (1) year options agreement with Midwest Air Traffic Control to provide air traffic control services for Griffiss International Airport Control Tower

Dear County Executive Picente,

Please consider acceptance of this contract agreement from Midwest Air Traffic Services, Overland Park, Kansas for the purpose of providing air traffic control services for the Griffiss International Airport Control Tower.

As you know, actions taken by the Federal Aviation Administration (FAA) will terminate Griffiss air traffic control service, 9:00 PM, Saturday, June 15, 2013. This new contract begins 08:00 AM, Sunday, June 16, 2013. The County of Oneida has signed agreements with two (2) of the three (3) major tenants on the airport to provide air traffic control services regardless of the actions taken by the FAA.

Midwest is the current FAA federal contract control tower service provider at the Griffiss International control tower. Midwest is one of the three (3) largest providers of air traffic control services in the continental United States.

If you concur, please sign and forward to the Oneida County Board of Legislators for further consideration.

Thank you for your assistance in this matter.

Sincerely,

F. Richard Gifford, II  
Commissioner of Aviation

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

Anthony J. Picente, Jr.  
County Executive

Date

5/7/13

Oneida County Department: Aviation

Competing Proposal   x    
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_

## Oneida County - Contract Summary

**Name of Proposing Organization:** Midwest Air Traffic Services

**Title of Activity or Service:** Air  
Traffic Control Services

**Client Population/No. to be Served:** N/A

**Summary Statements:**

**1) Narrative Description of Proposed Services:**

Midwest ATC will provide Air Traffic Control Services for Griffiss International Airport

**2) Program/Service Objectives and Outcomes: To provide continued Air Traffic Control Services to Griffiss International**

**3) Program Design and Staffing Level:** N/A

**Total Funding Requested:** \$ 140,136.00

**Oneida County Department Funding  
Recommendation:**

**Account #** A5620.493.3

<b>Proposed Funding Source:</b>	<b>Federal</b> \$	<b>State</b> \$	<b>County</b> \$ 140,136.00
	_____	_____	_____

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

**Past Performance Data:**

**Oneida County Department Staff Comments: Required as consequence for the defunding of the FAA Contract Control Tower program.**

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**AGREEMENT FOR OPERATION OF A NONFEDERAL AIR TRAFFIC  
CONTROL TOWER AT Griffiss International Airport**

This Agreement is entered into on this 29<sup>th</sup> day of April, 2013 by and between the County of Oneida and Midwest Air Traffic Control Service, Inc. (hereafter Midwest), a Kansas corporation with offices at 7285 W. 132<sup>nd</sup> St., Suite 340, Overland Park, Kansas 66213.

In consideration of the mutual promises, covenants, understandings, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1. Purpose**

The County of Oneida is the owner and operator of Griffiss International Airport. The County of Oneida desires an air traffic control tower operation equal to or comparable with the same type of airport traffic control tower service provided by the Federal Aviation Administration (hereafter FAA), and further desires that the air traffic control tower service provided be effective, safe, and courteous. Midwest is ready, willing, and able to provide the services desired by the County of Oneida.

**Section 2. Responsibility of Oneida County**

Oneida County shall provide:

- a. Access to an equipped air traffic control tower (hereafter Tower) at the Airport to be used for providing Services as hereafter defined.
- b. Maintenance of all Airport property.
- c. Access to electrical, water, sanitation, and telephone service reasonably necessary for operation of the Tower.

**Section 3. Responsibility of Midwest**

- a. Midwest shall provide air traffic control services at the Airport equal to or comparable with the same type of airport traffic control services provided by the FAA in accordance with federal regulations including FAA Order 7110.65 and 7210.3. Such services shall include but are not limited to coordination with the FAA concerning air traffic control, and coordination with the National Weather Service for operation of a Supplemental Aviation Weather Reporting Station with certified weather observation capability (hereafter SAWRS) (collectively Services). All Services shall be in compliance with applicable local, state and federal laws and regulations.
- b. The Services shall be provided by Midwest (7) seven days per week, 12 hours per day, between the hours of 8am and 8pm Monday – Friday, and between 8am – 4 pm local time on Saturday and Sunday. Hours of operation may be changed by mutual agreement of the parties.
- c. Midwest shall provide the Commissioner of Aviation or designee with:

- i. Copies of all Operational Agreements/Directives, letters and facility memorandum prepared by or at Midwest's direction,
  - ii. Monthly and quarterly traffic count reports, and
  - iii. The right to audit Midwest's operation of the tower.
- d. In the event that Midwest learns or discovers that the Tower equipment, or any Airport property, is in need of maintenance, repair, replacement, and/or upgrade, Midwest shall immediately notify the Commissioner of Aviation or designee of such.

#### **Section 4. Performance of Services**

a. Midwest is an independent contractor. Midwest shall be responsible for hiring, providing on-site job training including refresher and supplemental training, and supervision of any and all employees for operation of the Tower. All employees will meet or exceed the requirements outlined in FAR Part 65.31.

b. No portion of the Services shall be curtailed or delayed because a controller is performing non-control duties. All radio intercom, landline transmission, and operational telephone calls shall be responded to in a timely manner.

c. The Tower manager shall meet with Oneida County representative(s) as reasonably requested.

d. Midwest shall record traffic counts daily, monthly, and quarterly and provide counts to the Commissioner of Aviation or designee as required by this Agreement or upon request by the Commissioner of Aviation or designee.

e. Midwest shall not discriminate on the basis of race, color, creed, religion, sex or national origin against any person or group of persons in any manner prohibited by Title 49 Code of Federal Regulations, Department of Transportation, Sub-Title A, Office of the Secretary, Part 21, or as otherwise provided by law, including disability. The parties recognize the American with Disabilities Act (ADA) and ADA Accessibility Guidelines do not require access to raised areas used primarily for purposes of security or life, including, but not limited to, observation or lookout galleries, and that in air traffic control towers, an accessible route is not required to serve the cab and the floor immediately below the cab. Midwest agrees Oneida County may take such action against Midwest as is necessary to enforce this provision.

#### **Section 5. Compensation**

For the Services to be rendered under this Agreement, Oneida County shall pay to Midwest, on a monthly basis: (1) for the period of June 16, 2013 to June 15, 2014, at a rate of \$21,613 per month; (2) and for the period of June 16, 2014 through June 15, 2015 shall pay to Midwest \$22,261 per month (3) and for the periods of June 16, 2015 through June 15, 2016 shall pay to Midwest \$22,929 per month.

## Section 6. Term

a. The term of this Contract shall commence on June 16, 2013 and shall continue in full force and effect thereafter for an initial period of 3 years, (the "base contract period") with three additional one year option periods. The first option must be exercised by written notice given to Midwest no less than 30 days prior to the end of the base contract period. Subsequent options afterward must be exercised by written notice to Midwest no later than 15 days prior to the expiration of then current option period. The term of this Agreement shall be for a period of (3) three years commencing on June 16, 2013 and terminating on June 15, 2016, unless the additional (1) Year options are exercised.

b. Oneida County may terminate this Agreement, for any reason and in Oneida County's sole discretion, upon (30) days written notice to Midwest. Upon termination of this Agreement, Oneida County's sole liability to Midwest shall be for Services provided under this Agreement up to the date of termination. \

c. If full Federal funding for the operation of the air traffic control tower at Griffiss International Airport is restored, either through the FY13 FAA Contract Tower Program or any other federal program, either party may provide notice to the other party and this contract will be terminated, with the following understandings: (1) Service will continue uninterrupted until the actual date of restoration of full federal funding, which shall be the date of termination; and (2) Upon termination of this Agreement, Oneida County's sole liability to Midwest shall be for Services provided under this Agreement up to the date of termination.

## Section 7. Indemnity

Notwithstanding any limitation regarding indemnity and/or contribution which exists under the laws of the State of New York, the parties agree Oneida County, its officers, employees, agents and representatives, shall not be responsible for damages or injuries to persons or property that may arise from or be incident to the performance of this Agreement, or for the damages to the property of Midwest or for injuries to Midwest and its officers, agents, servants or employees, or others who may be on Airport premises at their invitation or the invitation of any one of them, arising from or incident to the performance of this Agreement or any other cause or activities. Midwest shall defend, indemnify and hold the County of Oneida, its officers, employees, agents and representatives harmless against any and all liability, claims, and demands for injury to or death of person or persons, and for loss or damage to property, occurring in connection with or in any way incident to or arising out of acts or omissions of Midwest directors, officers, agents, servants, employees or student trainees in the performance of this Agreement and use of Airport premises and facilities; provided, however, the provisions of this section do not apply where damage to property or injury to persons is proven to have arisen directly and exclusively from faulty equipment not owned or maintained by Midwest and used in

connection with the performance of this Agreement. The provisions of this section survive expiration or termination of this Agreement.

### Section 8. Insurance

Midwest shall maintain the following coverage's with minimum amounts as shown:

Air Traffic Control Professional Errors and Omissions	\$10,000,000 per occurrence
	And in the aggregate
Worker's Compensation	Per State Law

Air traffic control professional errors and omissions insurance shall include personal injury and accident coverage. This policy shall cover only the air traffic control operations at the Airport. A certificate of insurance showing the required insurance to be in full force and effect shall be provided to the Commissioner of Aviation or designee prior to the commencement of Services under this Agreement. Midwest shall require its insurer to notify the Commissioner of Aviation or designee in writing at least thirty (30) days prior to cancellation, modification or refusal to renew such policy. Failure to maintain this coverage shall be considered a material breach of this Agreement. The provisions of this section survive expiration or termination of this Agreement.

### Section 9. Miscellaneous

a. Midwest may not assign this Agreement or any of its obligations hereunder, without Oneida County's written consent. Oneida County is under no obligation to consent to any assignment.

b. This Agreement shall be governed in all respects and the legal relationship between the parties shall be determined in accordance with the law of the State of New York. If any term or provision of the Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement and any other application as such term or provision shall not be affected thereby. Oneida County is designated as the exclusive venue for any action filed arising out of this Agreement, and the parties agree that such action shall not be removed to federal court.

c. No consent or waivers, expressed or implied, by either party to any breach or default by the other party in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default of such party.

d. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, understandings, and negotiations, written or oral, between the parties with respect to its subject matter. Neither this Agreement nor any written term or provision hereof may be changed, waived, discharged or terminated, except by a writing signed by both parties.

e. The terms and provisions of this Agreement shall be binding upon Midwest, its successors and assigns, and shall inure to the benefit of Oneida County, its successors and assigns.

f. This Agreement has been drafted by both parties, and shall not be interpreted in favor of or against either party.

g. Notices to the parties shall be given at the below addresses, unless and until a party designates in writing some other place:


County Of Oneida  
Attn. County Executive  
800 Park Ave  
Utica, NY 13502  
315.798.5800

Midwest Air Traffic Control Service, Inc.  
ATTN: Deanna Dresel, Vice President Accounting & Finance  
7285 W. 132<sup>nd</sup> Street, Suite 340  
Overland Park, KS 66213  
Office Telephone: 913.782.7082 .223  
Mobile: 913.229.6415  
Email: [deanna.dresel@att.net](mailto:deanna.dresel@att.net)

h. The signatories to this Agreement verify they have read the complete Agreement, understand its contents, and have full authority to bind and do hereby bind their respective parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and signatures, the day and year above mentioned.

For Midwest Air Traffic Control Service, For: County of Oneida, New York  
Inc.

By 

Shane L. Cordes

President & CEO

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

Anthony J. Picente, Jr

Date \_\_\_\_\_

Title: County Executive

# Griffiss International Airport



Oneida County Department of Aviation  
592 Hangar Road, Suite 200  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

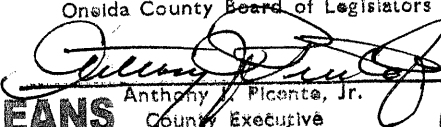
ANTHONY J. PICENTE, JR.  
County Executive

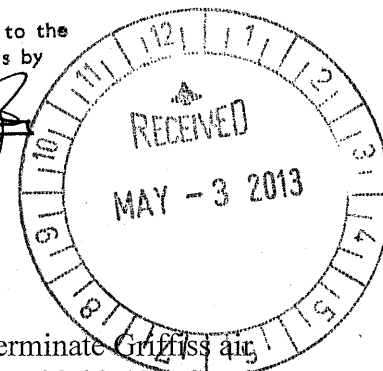
F. RICHARD GIFFORD, II  
Commissioner of Aviation

FN 20 13-169

April 26, 2013

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

**AIRPORT**  
Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by  
  
Anthony J. Picente, Jr.  
County Executive  
**WAYS & MEANS**  
Date 5/3/13



Dear County Executive Picente,

As you know, actions taken by the Federal Aviation Administration (FAA) will terminate Griffiss air traffic control service, 9:00 PM, Saturday, June 15, 2013. This new contract begins 08:00 AM, Sunday, June 16, 2013. The County of Oneida has signed agreements with two (2) of the three (3) major tenants on the airport to provide air traffic control services regardless of the actions taken by the FAA.

In light of these requirements, the Department of Aviation is requesting **2013 Supplemental Budget Appropriation** resourcing for the unforecasted cost of providing air traffic control services at Griffiss International Airport.

Midwest Air Traffic Services, Overland Park, Kansas is the selected provider for the identified air traffic control services required. While the contract with Midwest is for 3 years (with 3 one-year options), we are requesting funding for the period June 16, 2013 – December 31, 2013. The remaining balance will be budgeted through annual 2014-2016 budget programming years.

For the purpose of providing air traffic control services for the Griffiss International Airport for the period **June 16, 2013 – December 31, 2013**:

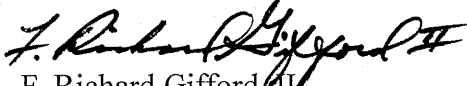
**To Account # A5620.493.3 -- Department of Aviation Air Traffic Control Services --- \$140,136.00**

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

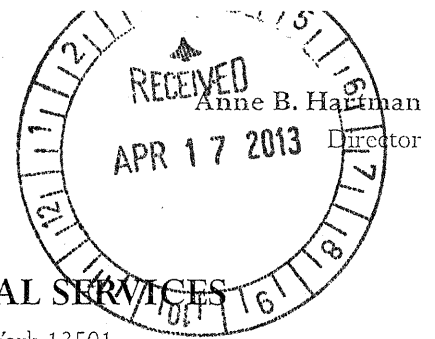
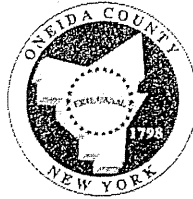
**Account # RA-3010 -- State & other aid --- \$140,136.00**

If you concur with this request please forward to the Board of Legislators for further consideration and approval.

Sincerely,

  
F. Richard Gifford, II  
Commissioner of Aviation

Anthony J. Picente Jr.  
County Executive



## ONEIDA COUNTY DEPARTMENT OF CENTRAL SERVICES

Oneida County Office Building ♦ 800 Park Avenue ♦ Utica, New York 13501  
(315) 798-5905 ♦ Fax: (315) 797-3047 ♦ Email: [helpdesk@ocgov.net](mailto:helpdesk@ocgov.net)

March 15, 2013

FN 20 13-170

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

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

GOVERNMENT OPERATIONS

**WAYS & MEANS**

Anthony J. Picente, Jr.  
County Executive

Date 4/17/13

Subject: Contract Recommendation – General Code Enterprise Content Management Services

Dear Mr. Picente:

Oneida County approved a new Capital Project, #H-472, in 2013 entitled Enterprise Content Management (ECM). The software product selected to form the basis of ECM in Oneida County is **Laserfiche Rio**. **Laserfiche Rio** was selected because it combines comprehensive ECM functionality with business process management, security and the auditing tools necessary to serve as the foundation of a solid ECM infrastructure. More specifically, **Laserfiche Rio**:

- Manages .pdf content
- Offers central control over standards, security and auditing and
- Provides individual departments the flexibility needed to customize filing structures and workflows

Once implemented, county users licensed for **Laserfiche Rio** will be able to scan paper records into .pdf format, store and share those records electronically and be able to conduct digital searches to identify and retrieve the specific records required to satisfy business needs. General Code of Rochester, NY, an authorized reseller of **Laserfiche Rio**, has submitted a proposal to us to provide software, licenses, support, and installation and training services under Dell's New York State Contract Number PT65191 to get us started on this Capital Project.

In their proposal, General Code has offered to assist in establishing the framework for our ECM infrastructure for a contract cost of \$142,110.00. As referenced on page 9 of the proposal, elements of cost includes:

- 50 licenses and the first year of support for **Laserfiche Rio** base software;
- Plug-ins to enable scanning, electronic search and a public portal to enable eDiscovery by the District Attorney's (DA) office;
- Installation, workflow development and training for the District Attorney's staff

If this 24-month contract is approved as recommended, Oneida County will purchase the licenses necessary for use by both the District Attorney's Office and the County Clerk's Office for the scanning projects each office desires. However, under the terms of New York State Contract Number PT65191, General Code cannot provide services exceeding 20% of the total contract value and the services for the District Attorney's Office under this contract are \$22,982.00 or 19% of the total contract value. In order to obtain services for the Oneida County Clerk and other county departments interested in scanning, retrieving, sharing and managing electronic records under the Enterprise Content Management Capital Project, Oneida County will issue a competitive RFP for installation, training and workflow development services. The RFP is being written now and is expected to be issued in mid-2013 with an anticipated award in the 3<sup>rd</sup> quarter

of this year. Oneida County will also be working toward obtaining a Grant from the State of New York for records management in 2014 to help offset the overall cost of the Capital Project.

Electronic records management is expected to enhance Oneida County's ability to store, retrieve and share important records in a timely and efficient manner. It is also expected to reduce the need to retain paper records which will have a positive impact on facilities costs and reduce the cost of paper and copying. Based on these anticipated positive outcomes, I request your approval of the Enterprise Content Management Services contract with General Code.

Respectfully submitted,



Anne B. Hartman  
Director, Central Services

Cc: (Electronic Copies Only)

Scott McNamara, Oneida County District Attorney  
Rob Bauer, Oneida County Assistant District Attorney  
Sandy DePerno, Oneida County Clerk

Attachments:

1. 3 Copies of General Code Contract signed by General Code
2. 3 Copies of Oneida County Standard Clauses Addendum signed by General Code
3. General Code, LLC Content Management Solutions Terms and Conditions
4. Laserfiche Software License Agreement



Oneida Co. Department: Central Services

Competing Proposal – No

Only Respondent – Yes

Sole Source RFP - NYS contract

### Oneida County Board of Legislators

**Name of Proposing Organization:** Central Services Department

**Title of Activity or Service:** Enterprise Content Management Services

**Proposed Dates of Operation:** From execution for 24 months

**Client Population/Number to be Served:** 40 users with the DA's Office plus 10 Laserfiche Rio Licenses for County Clerk

#### Summary Statements:

1. **Narrative Description of Proposed Services:** Laserfiche Rio installation, implementation and training for DA. Laserfiche licenses for County Clerk.
2. **Program/Service Objectives and Outcomes:** Scanned files will allow for digital search; reduce number of paper files and enable DA to share files electronically for e-discovery
3. **Program Design and Staffing :** n/a

**Total Funding Requested:** \$142,110.00

**Account #:** H-472

**Oneida County Dept. Funding Recommendation:** Paid for by H-472 Capital Funds

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

**Cost per Client Served:** \$2,842 per person for initial implementation. \$443.12 per person for annual maintenance

**Past Performance Data:** General Code has not worked for Oneida County in the past but is available via NYS Contract.

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**O.C. Departmental Staff Comments:** Recommend contract approval.

# GENERAL CODE PROPOSAL *for*

## ENTERPRISE CONTENT MANAGEMENT SERVICES

For  
County of Oneida  
New York

February 25th, 2013

Price Estimate valid for 2 months

Dell New York State Contract  
#PT65191

PRESENTED BY

**GENERAL  
CODE**

*Information made civil.*

Regional Representative: Liz Mistretta  
Phone: 585-705-7412  
Email: [lmistretta@generalcode.com](mailto:lmistretta@generalcode.com)



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## COMPANY DESCRIPTION

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General Code provides a variety of information management solutions to more than 2,700 local governments, educational and commercial organizations throughout the United States. We set the standard for improving document management processes, and are on the cutting-edge of technology, providing new and reliable tools to our customers to better serve their clients. We pride ourselves in our level of experience, our technical knowledge in the industry and our focus on the customer.

General Code is one of the leading Laserfiche value added resellers in the United States, offering more than twelve years of experience, coupled with an industry-leading service, integration, training and help desk team.

With Laserfiche at the center of your Enterprise Content Management Solution you get what nearly 30,000 other public and private organizations are already getting – the most powerful combination of electronic capture, storage and business process automation tools available today. We selected Laserfiche as our technology platform because of its open architecture, integration ability and the capacity to scale up as your demand for information sharing and access grows.

Every system designed and implemented by General Code fits your specific needs and requirements. Customization of your Enterprise Content Management Solution reduces the time and additional resources required to “adjust” or “optimize” a one-dimensional system.

As a values-based company we adhere to the principles outlined in our General Code. These guides for conduct are integral to building a comprehensive content management solution – one that leverages our 50 years of service to public organizations and governments of all sizes.

*Digital information must be designed and implemented in ways that support the success of the entire organization.*

*Our content management solutions must run on a platform that we believe in.*

*The quality of our service and support determines the ultimate value of the solution we develop.*

*Our content management solutions are based on the practical—if there is a better way to do something we will design and implement it.*

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-THE GENERAL CODE-

## LASERFICHE RIO SYSTEM OVERVIEW

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Laserfiche Rio combines comprehensive ECM functionality with powerful business process management (BPM), security and auditing tools, Laserfiche Rio provides a solid ECM infrastructure that:

- Manages your content.
- Grants the IT Department central control over standards, security and auditing.
- Gives individual departments flexibility to customize their filing structures, views and workflows

Laserfiche Rio integrates with your existing IT portfolio supporting intelligent decision making enterprise-wide.

With a fundamental design structure engineered to meet the needs of the IT Department, Laserfiche Rio is designed to be easy to purchase, easy to deploy, easy to support and easy to extend.

The Laserfiche Rio system includes:

- A **licensing server** to produce system licenses as you determine system topology based on your specific needs.
- Unlimited **Laserfiche content servers** that provide document imaging, document management and records management functionality as part of the core architecture – not through separate modules that are stacked together.
- A fully functional, **true thin-client interface** that does not require any software to be installed maintained or updated at the workstation level.
- The **Laserfiche Workflow system**, capable of automating business processes in high volume transactional environments, as well as customizing the way the system reacts to user input.
- A built-in **auditing solution** for security and compliance.
- DoD 5015.2-certified **Laserfiche Records Management Edition**, with integrated records management, security, auditing and reporting capabilities.

Laserfiche Rio was developed specifically to meet the needs of organizations that view ECM technology as a foundational component of their technical infrastructure. With bundled functionality, unlimited content servers and its own licensing server, the system provides with unmatched deployment flexibility:

- **Scale easily from one hundred to hundreds of thousands of users.** Named user licenses with significant volume discounts simplify the procurement process, eliminating long requisitions and making budgeting for an enterprise deployment must easier.
- **Integrate with your existing IT portfolio.** As an open platform, Laserfiche Rio facilitates and encourages integration with line-of-business and legacy applications to solve transactional document problems and provide a rapid ROI.
- **Extend local flexibility.** No ECM system will offer centralized control over content if it isn't used. Laserfiche Rio is designed to provide centralization and standardization without compromising the flexibility and customization of information delivery required for defined business applications.
- **Configure, don't customize.** Configuration of Laserfiche Rio's standardized solutions leverage existing administration platforms—including Microsoft skill sets—and offer a lower total cost of ownership.
- **Maintain control over your ECM environment.** Support for virtualization, mirroring, test, development and other environments without the need to purchase additional software licenses puts you in complete control of system topology, high availability and recovery.
- **Grow with your organization.** Because needs change, Laserfiche Rio maintains flexibility to change system attributes even after release to production. Changes are made with the same intuitive tools used for initial configuration.

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## PRELIMINARY DOCUMENT MANAGEMENT PROJECT PLAN

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Upon completion of contract signing, the Project Manager will call you to review the Project Plan and discuss the following:

- Designate a main contact for the project
- Discuss the proposed schedule and set dates
- Determine any necessary hardware purchase, installation or configuration that must take place prior to the system installation and schedule completion of that work
- Confirm availability of required personnel, equipment and facilities
- Address any outstanding questions, concerns or issues

Process Assessment (Consulting Tasks for the DA's Office):

- Process Assessment
- Process Assessment Documentation
- Process Assessment Review
- Laserfiche Workflow Design in demo system
- Laserfiche Workflow Creation in demo system
- Laserfiche Workflow Customer Review and Approval

Transparent Records Management Consulting:

- Information clarification and gathering
- Template development
- Load retention schedule in demo system
- Build user folders in demo system

Training Documentation Development

- DA End User Documentation
- DA System Documentation
- Records Manager Documentation

The System Design and Implementation Phase will include the following:

- Installation and configuration of the main server components
- Installation and configuration of the named user licenses, including Laserfiche client software, Snapshot Plug-In and the E-mail functionality, and also includes scanner configuration and testing.
- Complete system testing of all installed components
- A file structure review and creation of a hierarchical tree structure designed to maximize efficient use of the document management system
- Discussion of file-naming conventions to be used in the document management system
- Establishment of an initial set of Templates (electronic index cards)
  - DA Workflow
  - Transparent Records Management
- Production DA Workflow implementation
- Production Transparent Records Management Workflow implementation
- Configuration of users, groups, and user rights
- Training for end users
- Administrator training for up to two (2) people who will be responsible for administration of the system
- Records Manager training in records management functionality

See chart below of for additional information on the Suggested Workflow Implementation for the **District Attorney's Office**:

Step	Task	Description of Tasks	Estimate to Complete Task (Days)
1	Process Assessment	Meet on-site with key DA staff to review up to 3 workflow business processes that will be implemented into Laserfiche. The scope of the workflow business process is outlined on the Workflow Process tab of this spreadsheet.	2 days on-site
2	Process Assessment Documentation	Provide Visio and Narrative documentation around the 3 workflow processes that will be mapped into Laserfiche Workflow. This will include identification of each resource and activity of the business process.	3 days off-site
3	Process Assessment Review	Review the findings and the documentation produced as a result of the Process Assessment. Also includes time for updating the documentation for any changes identified during the review process.	.5 day off-site
4	Laserfiche Workflow Design	Using the documentation created in steps #2 & #3; create the workflow design for implementing the 3 workflows within Laserfiche including any desired folder and metadata structures necessary to implement the workflow.	1.5 day off site
5	Laserfiche Workflow Creation	Create and test the workflows outlined in step #4.	3 days off-site
6	Laserfiche Workflow Customer Review & approval	Review the workflows implemented as part of step #5 with the customer and obtain signoff prior to implementation in production.	.5 off-site
7	Training Documentation	Create training documentation specific for the District Attorney's office that outlines how they use Laserfiche specifically in their department. This will reflect any folder and metadata structures as outlined in step #4.	2 day off-site
8	System Documentation	Provide technical documentation regarding the 3 workflows to include printed copies of the workflow from the workflow designer, starting rules, notification rules, and integrations for each of the workflows.	1 day off-site
9	Initial System Installation	Installation of core components including the Rio License Manager, Laserfiche server, Audit Trail, Workflow server, Web Access and Public Portal websites. In this time slot several of the scanning or "power user" work stations would be installed and configured.	2 days on-site



10	End User Training	Train all end users on the use of Laserfiche as it applies to their specific job functions.	2 days on-site
11	Laserfiche Admin User Training	Train all users that will be responsible for Administrative tasks within Laserfiche such as folder structure creation / modification, metadata structure creation / modification, and user account creation / maintenance.	1 day on-site
12	System Admin Training	Train all IT users that will be maintaining Laserfiche from an IT Administrative function.	1 day on-site
13	Transparent Records Management Information Gathering On-Site Time	Information gathering session and requirements associated with CO2 schedule. Creation of records management folder structure.	1 day on-site
14	Transparent Records Management Development Off-Site Time	Information clarification and gathering, template folder and development work, loading of retention schedule, building templates, build user folders and build Workflow(s) directly related to the TRM (Transparent Records Management) process.	1 days off-site
15	Transparent Records Management Training	Training for the Records Manager includes records series creation, creation of reports as they relate to records management and the searching and management of documents for cutoff and disposition.  Training end users will include the proper document capture techniques to accommodate the Transparent Records Management process.	1 day on-site
16	Transparent Records Management Documentation	Creation of detailed documentation in relation to Transparent Records Management, including information on folder structures, templates, starting rules and all process of Workflows.	0.5 day off-site
17	Laserfiche Workflow Implementation	Implement Laserfiche Workflows in production.	1 days off site

Note: General Code will utilize a "train-the-trainer" approach to allow the client to deliver future training sessions across the organization and to make use of the training hours/days as efficiently as possible.

## INVESTMENT DETAIL & OPTIONS

*Hardware or any applicable taxes are not included in price.*

Line Item Description	Model #	Quantity	Unit Price	Total
<b>Base Software</b>				
Rio Named Full Users (50 Tier)	ENF01	50	\$875.00	\$43,750.00
Records Mgmt - Rio Named Full Users (50 Tier)	ERM	50	\$88.00	\$4,400.00
<b>Base Software Subtotal</b>				<b>\$48,150.00</b>
<b>Add-Ons/Plug-Ins</b>				
Rio Scan Connect	SC01	3	\$174.00	\$522.00
Rio Quick Fields Agent	QFA	1	\$10,500.00	\$10,500.00
Rio Quick Fields - Core Pkg	QC1	1	\$5,250.00	\$5,250.00
Rio Public Portal - 25 WebLink-only retrieval connections	PPM25	1	\$26,250.00	\$26,250.00
Affinity 51+ Users	DNAULR	1	\$6,300.00	\$6,300.00
<b>Add-Ons/Plug-Ins Subtotal</b>				<b>\$48,822.00</b>
<b>Support</b>				
LSAP Rio Named Full User w/SS & EM (50 Tier)	ENF01B	50	\$193.00	\$9,650.00
LSAP Rio RM Full Users (50 Tier)	ERMB	50	\$20.00	\$1,000.00
LSAP Rio Scan Connect	SC01B	3	\$42.00	\$126.00
LSAP Rio Quick Fields Agent	QFAB	1	\$2,500.00	\$2,500.00
LSAP Rio Quick Fields - Core Pkg	QC1B	1	\$1,250.00	\$1,250.00
Rio Public Portal - 25 WebLink LSAP	PPM25B	1	\$6,250.00	\$6,250.00
Affinity Maintenance 51 + Users	DNAULBR	1	\$1,380.00	\$1,380.00
<b>Support Subtotal</b>				<b>\$22,156.00</b>
<b>Install/Train</b>				
Laserfiche Install and Training Days - OnSite	LFITOS	5	\$945.00	\$4,725.00
Laserfiche Workflow Consulting Days - OffSite	LFWCDOS	12	\$788.00	\$9,456.00
Transparent Records Management Consulting Days - On_Site	TRMCDOS	2	\$945.00	\$1,890.00
Transparent Records Management Consulting Days - OffSite	TRMCDOS	2	\$788.00	\$1,576.00
Laserfiche Workflow Consulting Days - OnSite	LFWCDOS	3	\$945.00	\$2,835.00
Project Management	PM	25	\$100.00	\$2,500.00
<b>Install/Train Subtotal</b>				<b>\$22,982.00</b>
<b>Grand Total</b>				<b>\$142,110.00</b>

**Anticipated annual LSAP fees after the included 1<sup>st</sup> year for the above configuration would be \$22,156.00**

**Dell New York State Contract #PT65191**

**\*NOTE 1: The recommended Rio Public Portal add-on above will be used to meet DA's requirement for e-Discovery.**

**\*NOTE 2: Workflow consultative work will focus on 3 workflows utilized by the District Attorney's Office.**

**\*\*FURTHER NOTE: A workflow process is defined having the following:**

<b>Process Symbols</b>	<b>Maximum of 10</b>
<b>Decision Gateways</b>	<b>Maximum of 10</b>
<b>Interaction with external data sources</b>	<p><b>Maximum of 2 except in the instance of one of the three generated workflows. One workflow will contain integrations with the following external data sources::</b></p> <ul style="list-style-type: none"> <li>- <b>City of Utica Police Department</b></li> <li>- <b>New York State Police Department</b></li> <li>- <b>Oneida County Sheriff's Police Department</b></li> </ul> <p><b>NOTE: It will be the County's responsibility to obtain approval for access to each of the data sources listed above and to identify the appropriate contacts to work with to establish the integrations.</b></p>
<b>Document instances per process action</b>	<b>1</b>
<b>Custom scripts</b>	<b>None</b>

**Note: If these levels are exceeded, the business process will be broken down to stay within the scope of services to be offered herein.**

**SOFTWARE ORDER, PAYMENT AND PERFORMANCE SCHEDULE**

All software components will be ordered 30 days after authorization and shipped to customer. The software maintenance (annual support) will start 30 days after software order.

50% of the project price shall be invoiced upon authorization of the project – payable within 30 days of authorization.

50% of the project price shall be invoiced upon completion of the installation and training.

**CANCELLATION POLICY**

A fee of Ten Percent (10%) of the total Software Implementation Services amount will be charged to the County for any scheduled Laserfiche installation cancelled or rescheduled by the County six (6) or more, but fewer than ten (10) business days from the scheduled installation start date.

A fee of Twenty Percent (20%) of the Software Implementation Services amount will be charged to the County for any scheduled Laserfiche installation cancelled or rescheduled by the County fewer than six (6) business days from the scheduled installation start date.

## AUTHORIZATION & AGREEMENT

The **County of Oneida, New York** hereby agrees to the procedures outlined above and General Code's Document Management Solution Terms & Conditions which are available at: [www.generalcode.com/TCdocs](http://www.generalcode.com/TCdocs) and are incorporated herein by reference, and authorizes General Code to proceed with the project.

**Electronic Document Management Solution** **\$142,110.00**  
*Estimated Annual support fee second year forward (LSAP):* **\$22,156.00**

**X State Contract Option:**

***This contract will be processed through Dell Marketing***

*Procurement of this contract will utilize Dell Marketing for pricing and payment terms only. Upon receipt of General Code's signed agreement, a formal quote will be issued by Dell Marketing, LP to the County. The County will issue a P.O. to Dell Marketing and all invoicing and payments will be conducted between Dell Marketing, LP and the County. Delivery of products, installation, training and support will be conducted by General Code.*

**Estimated Total Investment:** **\$142,110.00**

**COUNTY OF ONEIDA, ONEIDA COUNTY, NEW YORK**

By: \_\_\_\_\_ In the Presence of: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

**GENERAL CODE, LLC**

By: *Amundson* In the Presence of: \_\_\_\_\_  
 Title: *VP Finance* Title: \_\_\_\_\_  
 Date: *3/19/13* Date: \_\_\_\_\_

*Please sign, fax and mail this page to General Code at (585) 328-8189.  
 A signed copy of this agreement will be mailed back to the municipality for its records.*

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## APPENDIX A – COUNTY ADDENDUM

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THIS ADDENDUM, entered into on this 19<sup>th</sup> day of March 2013, 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 Legislators 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;

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- 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).

General Code Offices  
781 Elmgrove Road  
Rochester, NY 14624

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

- 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: *Lynn M. Martin*

Oneida County Executive

Name: *Lynn M. Martin*  
*General Code, LLC*

Approved as to Form only

\_\_\_\_\_

Oneida County Attorney

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## APPENDIX B - PC AND SERVER SPECIFICATIONS

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Please refer to the file **LF RIO Hardware and Planning Specifications PDF** that was sent under separate cover for PC and Server Specifications detail.

### **Affinity Software Requirements**

Affinity version 2.0 requires Laserfiche® Client version 7.2.1.

Affinity version 2.1 requires Laserfiche® Client version 8.0.2 or above.

Laserfiche Avante and Rio are supported.

The Affinity installer package installs the required Laserfiche runtime tools: a separate toolkit installation is not required.

Affinity supports the following Microsoft® Windows® XP/2003/Vista/2008/Windows 7.

64-bit operating systems are supported.

Affinity requires Microsoft XML Core Services 6.0 (MSXML6). MSXML6 is not included in the Affinity installer package. Please download the latest release from Microsoft: <http://www.microsoft.com/downloads>.

### **GUI Screen Capture Requirements**

Affinity Screen Capture (including Freestyle) works with graphical user interfaces (GUIs) that utilize input controls based on standard Windows control classes. Other controls that implement window classes, handles, and standard message handling are also supported. Examples of common control classes that work with Affinity include: Edit (text boxes); Rich Edit; Combo Box (drop downs); Button (push and radio); and Static (labels).

Most screens can be configured to automate searches and import/scanning using screen recognition techniques. However, screens whose controls change size and position (such as when the window resizes) may prevent the screen from being recognized. In cases where the screen cannot be consistently recognized for automation, the Freestyle dialog can still be used to make searching/scanning functions easier and faster.

Application development environments that implement GUIs compatible with Affinity Screen Capture include (but are not limited to) Microsoft® Visual Basic, Microsoft® Visual C++, Microsoft® VB.NET, Microsoft® C#, Microsoft® J#, and Borland® Delphi®.

### **Web Application Requirements**

Affinity can image enable most web applications running in Internet Explorer 7. Other version of Internet Explorer may also work, but Affinity was designed and tested using version 7. Affinity can use practically any HTML content. However, it cannot use Adobe Flash or Microsoft Silverlight content.

### **Affinity API Requirements**

Affinity includes a fully-documented application programming interface (API) that is accessible from practically any development environment, including .NET and scripting languages like JavaScript and VBScript. Affinity exposes the interface through both command line (shell) functions, and an ActiveX/COM interface. The Affinity API is a perfect fit for Visual Basic for Applications (VBA) macros in ESRI® ArcMap® and Microsoft® Office. Many applications can be image enabled safely and quickly using examples directly from the online Affinity API documentation: <http://affinity.datanow.net/api>.



## APPENDIX C - DESCRIPTION OF RECOMMENDED COMPONENTS

<p><b>Laserfiche RIO</b></p>	<p>Laserfiche Rio is functionality and simplicity combined into an enterprise document/content management solution. Rio includes document management, business process management and Web publishing for your entire enterprise, all in one bundle. Rio’s named-user licensing makes budgeting and purchasing easy—all you need to do is count the number of users. And with its tiered pricing structure, Rio becomes more affordable with increased number of users. As your organization grows, Rio scales easily to accommodate new departments and an expanding workforce. In addition to volume discounts on user licenses, Rio includes an unlimited number of servers, so you can create failover clusters; redundant servers, departmental servers, or whichever structure best fits the way your organization runs.</p> <p><b><u>Included:</u></b></p> <p><b>Laserfiche Automated Workflow Module:</b> The Laserfiche Automated Workflow Module is a robust component that facilitates the flow of documents. By automating the flow of documents and/or folders between users, work can be distributed to different users in an orderly and predetermined manner. The Laserfiche Automated Workflow Module also can help enforce timelines by sending e-mail notifications when routed items are inactive beyond a designated time or when documents arrive in certain folders.</p> <p>Laserfiche Workflow activities can be triggered by any activity within your Laserfiche database.</p> <p><b>Web Access</b> is a browser-based thin client offering virtually all of the document management capabilities of the thick client interface. Authorized users organization-wide can simultaneously access documents, whether they are accessing Laserfiche from their desks or a remote location.</p> <p>IT can add new users without installing software on individual workstations. Users access Laserfiche through a Web browser. Authorized users scan, index and otherwise manage documents with Web Access. Staff can also search, retrieve, create, move, rename and annotate documents from the Web.</p> <p>Web Access has real time access to the Laserfiche repository, which means that information input into Laserfiche is instantly available to all users, whether connected directly to your server, or using Web Access.</p> <p><b>Advanced Audit Trail</b> provides you with the ability to track activity within your Laserfiche database (e.g., who accessed which</p>

	<p>document when, who input a document, who added pages, or moved a document, etc.). Advanced Audit Trail also tracks failed attempts to access or change content and allows custom auditing per trustee. It also tracks changes of rights to documents (who changed which rights), tracks search events, allows supplemental reasons for exporting, printing and e-mail, and supports tracking of printed documents via watermark. A built-in Report Wizard guides you through creating auditing reports and enables you to save frequently viewed reports. If you wish to create more advanced reports, you can also use 3rd party reporting software, such as Crystal Reports, with Audit Trail. Audit Trail is an excellent tool for an added level of security and/or for monitoring staff productivity.</p>
<p><b>Named Users</b></p>	<p>Named users have the ability to utilize all of the features of the software, including scanning, importing, file and volume management, search and retrieval, annotations, e-mail routing and workflow participation, as applicable and as security rights permit. Additional named user licensees can be added at any time.</p> <p><b><u>Included:</u></b></p> <p><b>SnapShot Functionality:</b> The SnapShot functionality allows designated users the capability to print existing electronic files into the Laserfiche system directly rather than having to print them out and then scan them into the system.</p> <p><b>E-Mail Functionality:</b> The E-Mail Plug-in allows users to send Laserfiche documents as e-mail attachments to anyone using a MAPI-compatible E-mail system.</p>
<p><b>Laserfiche Quick Fields Core</b></p>	<p><b>Included with QuickFields Core:</b></p> <p><b>Basic Quick Fields</b> enhances and cleans up images, provides a location zoom to facilitate entering index data information, and streamlines document previewing. Basic QuickFields is the required foundation module for all advanced QuickFields components.</p> <p><b>Quick Fields Zone OCR</b> allows you to automatically extract index information from an image (rubberbanding capability to select a given area with the mouse). Zone OCR can capture machine-readable text from the designated zone to automatically populate key index fields, name documents and file in Laserfiche. Zone OCR is ideal for uniform documents, where the same spot on each contains relevant index information.</p> <p><b>Quick Fields Pattern Matching</b> identifies patterns or formats that recur (such as dates, initial letters, etc.) and allows extraction of certain data within that pattern. Pattern Matching also enhances the capture capability of Zone OCR. For example, Pattern Matching enables you to file documents in an alphabetic folder (e.g., "A", "B")</p>

	<p>based on the initial letter of a last name, or in a "year" field based on the last digits of a date.</p> <p><b>Quick Fields Bar-Code</b> helps in the scanning process by automatically breaking up large groups of documents and automating population of index fields. Bar-coding saves valuable time while maximizing the number of documents that can be processed daily.</p> <p><b>Quick Fields Real-Time Lookup</b> enables you to extract data from 3<sup>rd</sup> party databases to automatically populate Laserfiche template fields.</p>
<p><b>Quick Fields Agent</b></p>	<p><b>Quick Fields Agent</b> is a powerful tool for automating your document processing. Used with Quick Fields functional components (such as Zone OCR, Bar Code Recognition, Real Time Lookup, etc.), Quick Fields Agent schedules Quick Fields sessions and runs them automatically at specified times. Processing can take place continuously, 24/7, since no one needs to start the session. Quick Fields Agent, through the use of the Laserfiche Capture Engine, can allow for centralized processing of documents. By having 1 Quick Fields Agent installed centrally, an organization can avoid cost and labor associated with having to have separate Quick Fields modules installed at multiple processing stations server.</p>
<p><b>Laserfiche ScanConnect</b></p>	<p>A software interface that allows Laserfiche to interface with a number of supported scanners using the ISIS communication standard.</p>
<p><b>Laserfiche 25 User Public Portal – Dual CPU Machine</b></p>	<p>The Laserfiche Public Portal includes Laserfiche WebLink and 25 concurrent WebLink read-only licenses. Laserfiche WebLink enables access to selected documents via a web browser (for internal or external access) without operator-heavy file conversion. The software converts your documents to HTML on the fly and provides instant access to them from a Web browser. Security is very important, and WebLink security will provide you with the assurance that public documents can be accessed globally, but that robust security will protect your sensitive documents.</p>
<p><b>RIO Records Management Edition</b></p>	<p>RIO Records Management is a turnkey solution for managing imaged, electronic, and physical (paper) records. Records Management is fully integrated within the Laserfiche interface, presenting a uniform look and feel to all users and simplifying the adherence to records management rules and policies. Records Management helps you to enforce consistent organization-wide records policies regardless of location or content, provides secure records tracking from cutoff to final destruction/disposition, and enables you to manage your paper records from the same application as your digital records. Records Management Edition (Laserfiche server software, Advanced Audit Trail and the Records Management Module) is one of the few software packages that have received Department of Defense records management standard 5015.2 certification. These standards have also been endorsed by the United States National Archives &amp; Records Administration (NARA).</p> <p><b>General Code implements "<u>Transparent</u>" Records Management"</b> for our clients. Laserfiche Records Management Module enables the Records Manager to maintain records in appropriate Record Series folders and to</p>

	<p>perform all records management functions, such as cutoffs, freezing, etc., as appropriate. However, end users often wish to access these same records/documents in a different organization to efficiently accomplish their daily duties. This often results in "righteous friction" between the Records Manager and end users - Who gets to have the records/documents organized the way they want? Using "Transparent" Records Management (Laserfiche Records Management Module, Automated Workflow and Laserfiche Security), everyone can have the organization they need/want without interfering with the others' need. Also, with Transparent Records Management, end users can input documents into the system without knowing complicated records retention rules, and Laserfiche Automated Workflow will automatically route the original to the Records Management folders and shortcuts to the proper end user folder(s). See the attached whitepaper for a more detailed description of Laserfiche Transparent Records Management.</p>
<p><b>DataNOW® Affinity</b></p>	<p>DataNOW® Affinity brings the power of Laserfiche® document management to other applications you use. Document searches can be reduced to a single click of a button. New documents can be added to your Laserfiche repository without manually entering template field values, file names, or folder locations. Affinity truly makes Laserfiche feel like part of your overall business process.</p>

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## APPENDIX D - INSTALLATION, TRAINING AND SUPPORT

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### **Pre-Installation Teleconference and Technical Review**

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Prior to the on-site installation and training, one of General Code's technicians will work with your technical staff or consultant to review the hardware and other technical requirements and ensure that all hardware is ready for the installation. We will also work with your designated contact person to establish the agenda for the on-site days.

### **Customized, Hands-On Training**

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General Code provides practical hands-on training sessions to ensure that your users keep pace with "best practices" and that your Laserfiche system continues to provide your organization with the maximum efficiencies possible. Our training experts will come on-site to your facility and provide thorough training for your staff with manuals customized to your specific system and needs. Whether you are a new Laserfiche user or an existing user seeking refresher training, we pride ourselves on maintaining a team of trainers who can relate to users at any level of expertise.

**Our standard Laserfiche user training** covers the basic functions of the program and provides you with the necessary skills to put the system into immediate use. Based on the file organization and file naming structures that were determined by your organization, the training covers input, search and manipulation features using your documents to address file-organization and file-naming structures

**Administrator Training** covers the system administrative functions and typically takes place throughout the on-site sessions, as appropriate.

### **Laserfiche Software Assurance Plan (LSAP)**

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**LSAP** is renewable on an annual basis and was created to deliver critical program updates and provide ongoing technical support for your Laserfiche document management system. With LSAP, you will always be confident that you are receiving the very best performance and quality possible.

#### **Technical Support:**

Technical Support covers all questions that might arise with your Laserfiche system should a technical issue arise. Technical Support covers the installation of software patches and minor upgrades as appropriate to address technical issues which render your current software inoperable.

The first line of technical support is via telephone, using our toll-free number (800-836-8834) or via e-mail at [lfsupport@generalcode.com](mailto:lfsupport@generalcode.com). With Basic LSAP service, technical support requests not immediately addressed will be acknowledged within 8 business hours, with the majority response times within two hours. General Code's support technician will discuss the issue with you. If there are more detailed diagnostics needed, the technician will log into your system remotely, using the Internet. In this way, the technician can see what the user is seeing, do diagnostics, and generally remedy the situation remotely during this initial contact. In situations that require additional research or work by the technician, we will let you know what still needs to be done and we'll provide you with a timeframe for getting back to you as well as a Case number for future reference. By providing remote diagnostics and remediation to our clients, we can provide you with quick resolution of your issues to keep you up and running.

All technical support issues (along with their resolution or current status) are logged into General Code's support database, and the current status of any open work order is available to you at any time during normal business hours by calling the Help Desk and providing your Case number. This log also enables all of our support technicians to know the history of your system, providing consistency and efficiency in our services to you.

**Software Patches and Upgrades:**

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In addition to receiving technical support, customers with a current LSAP contract will receive **critical program updates within the current version of Laserfiche**. This is extremely important because Laserfiche document-imaging systems are continuously improved to be even more powerful and efficient. You will receive routine system updates released by the manufacturer after a period of additional General Code in-house testing, as applicable. These patches and software upgrades are available for download at our FTP site. Customers are given the option of applying the patches themselves or having one of our Laserfiche technicians apply the patch remotely.

There is no additional cost for the installation of minor software updates or patches (typically called 'point releases'). Major software updates (typically called 'version releases') may have associated service charges to install, upgrade, or to migrate your Laserfiche software to the new major release level. Related training on new functionality of the upgraded software may also have associated service charges. Any additional charges will be outlined and quoted to you in advance.

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# TERMS AND CONDITIONS

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## GENERAL CODE, LLC. CONTENT MANAGEMENT SOLUTIONS

These Terms and Conditions, together with General Code, LLC's Proposal (the "Proposal") constitute a legal agreement between the Client/Licensee (Client) and General Code, LLC (General Code)

### 1. Definitions.

For purposes of these Terms and Conditions, the terms below shall have the meanings defined below. Additional terms are defined throughout these Terms and Conditions.

- A. "Client Content" means any data, information, files, images, text or other content that may be provided by Client or its authorized users for use in conjunction with the Software or Services.
- B. "Services" means the services provided by General Code or its vendors pursuant to this agreement.
- C. "Software" means the software product or products delivered to Client pursuant to this agreement.

### 2. Responsibility of General Code.

General Code shall be responsible for the performance of the services provided for in this agreement in accordance with the "Performance Schedule." General Code shall be responsible for the correctness and accuracy of its work, based upon the material and information supplied by the Client. Regardless of the Client's acceptance of completed materials when delivered, General Code shall correct errors found either by the Client or General Code. See "Warranties; Limitations" for General Code's liability for all services.

### 3. Responsibility of Client.

The Client shall be responsible for the correctness and accuracy of the information it supplies to General Code, for providing General Code with timely decisions and answers to questions raised by General Code, for inclusion of sufficient funds in the budget to pay General Code for services, and for the prompt payment of invoices. The Client shall also be responsible for completing its work in accordance with the "Performance Schedule." Client is responsible for maintaining its user desktops and providing users network access to the Software. Client is also responsible for ensuring that its users comply with these Terms and Conditions with respect to use of the Software and Services. Client shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access to Software hosted at the Hosting Site. General Code shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, used by Client in accessing the Internet to access the Software. Client shall provide adequate industry "best practice" standards to ensure reasonable security for integration between applications at the Client site and Software. Client shall provide accurate input information in the manner reasonably prescribed by General Code in connection with the Software and Services provided under these Terms and Conditions. Client shall advise General Code of any changes to Client's operations, Primary Contact, or other information that would require a change in the support, operation, or configuration of the hosted Software. Client shall be responsible for establishing any merchant accounts necessary for credit card transactions, if applicable. Client shall be responsible for ensuring that any Client Content is accurate, not corrupt in any way, and does not contain any viruses. The Software or Services may contain links to other Internet sites owned by third parties. Client's use of each of those sites is subject to the conditions, if any, that each of those sites have posted. General Code has no control over those sites, and General Code and its suppliers are not responsible for any use of such sites or content on them.

### 4. Protection of Confidential Information.

During the time this agreement is in effect, both the Client and General Code may have access to or receive information that is of a confidential nature. This information may include data relating to client information, products, product development, designs, processes, systems, computer software, computer hardware, methods of production, costs, pricing, finances, sales or marketing plans, customers, business partners, vendors, vendor

prospects, employees and municipal records and data. All such information, including any materials embodying such information, whether disclosed orally or otherwise and whether or not marked "Confidential" or "Proprietary," will be considered by officials of the Client and by General Code and General Code's employees as proprietary and confidential. Both the Client and General Code will use reasonable efforts to protect the confidentiality of the other's Confidential Information but in no case less than the same efforts as it uses to protect its own confidential information, and will not use any Confidential Information of the other for any purpose other than fulfilling its obligations under this agreement.

#### **5. Adjustments to Performance Schedule; Delays.**

- A. Adjustments to Schedule. Upon the mutual consent of the Client and General Code, the "Performance Schedule" may be changed or extended as provided under "Changes" below.
- B. Delays. Client must notify General Code, in writing, immediately upon learning or otherwise becoming aware, of any difficulties that may delay the delivery of services or deliverables. Such notification must identify the reason for the delay, as well as the anticipated period of delay. General Code may require a payment of 50% of the balance due under the contract for any delay on Client's part.
- C. Unauthorized Delays. In the event of any unauthorized delay on the part of the Client, General Code may impose delay charges upon providing notice thereof to the Client. An "unauthorized delay" shall mean any delay not authorized by both General Code and the Client.

#### **6. Variations from Standard Methods or Procedures.**

Variations from General Code's standard methods and procedures must be requested by the Client, in writing, specifying the exact nature of the desired variations. General Code will accommodate such variations wherever possible, with any additional charges for such variations, as determined by General Code and approved by the Client, to be paid by the Client.

#### **7. Additional Products and Services.**

As part of this Agreement, the Client may choose to purchase additional products or services offered by General Code, including but not limited to codification services, consulting, document management software, agenda management software, building, planning and zoning software, scanning services and electronic forms. Purchase of additional services may be subject to "Changes" below, or may require a new Agreement, dependent upon the type of product or service purchased.

#### **8. Payment Terms.**

- A. All invoices will be processed in accordance with the Payment Schedule set forth in the Proposal. However, the Client may choose to pay in advance of Payment Schedule for products and services provided in this agreement, if so desired. In such a case, General Code shall hold the funds on account and draw from them in accordance with the Payment Schedule until the Contract is completed, or for up to 12 months, whichever is later. If any funds remain on account after 12 months, or end of Contract, General Code will contact the Client regarding disposition of said funds.
- B. Unless otherwise specified in the Payment Schedule, all payments shall be made within 30 days of receipt of the invoice/voucher. The Client shall not discount nor withhold any portion of the amount for any reason. General Code reserves the right to issue progress billings for services that span several months.
- C. Late payments will be charged interest at the rate of 1.5% for each month or part thereof that such payment is in arrears. For Laserfiche® licensees, should late payment cause the Laserfiche Software Assurance Program (LSAP) to lapse, General Code reserves the right to charge, in addition to the original LSAP fee, a reinstatement fee that is equal to 10% of the annual LSAP fee times the number of months the payment was in arrears.

#### **9. Software.**

- A. Any Software being delivered pursuant to this agreement is being licensed to the Client pursuant to the applicable license agreement or agreements between the respective publishers of the software and the Client, attached hereto and made part hereof. The Client agrees that all terms, conditions and limitations set forth in such license agreement(s) shall apply to this agreement as it relates to the Software.



- B. If as part of this agreement, the Client purchases the Laserfiche SDK, the SDK Confidentiality and Software License Agreement will need to be fully executed by the Client and Compulink Management Center, Inc., before the Integrator Toolkit can be provided to the Client. If it cannot be fully executed, the SDK shall be severable from the project as set forth in this proposal without affecting the validity of the remainder of the agreement.
- C. If this agreement relates to hosted Services, General Code will make the Software available for Client's use during the term of this agreement on Client's computer systems that meet the General Code System Recommendations for the Software, as specified in General Code's proposal. General Code will provide Client with access to the latest General Code supported version of the Software via the Internet from a third-party hosting vendor.

**10. Computer Hardware.**

Any computer hardware being delivered in accordance with this agreement is being delivered with the manufacturer's warranty. The manufacturer's warranty is in lieu of all other warranties, express or implied, and General Code shall have no obligation or liability under "Warranties; Limitations" or otherwise with respect to hardware.

**11. Document Scanning Services.**

If applicable, the following provisions shall apply to document scanning services to be provided by General Code or its designated subcontractor:

- A. The Client shall be responsible for ensuring that each records storage box slated for conversion is marked with the main category describing its contents and that each file within each box is labeled with a description of its contents.
- B. General Code or its designated subcontractor shall use reasonable care in the handling of your documents.
- C. Upon return of the documents, the Client shall promptly inspect the documents to determine whether all documents have been returned. Unless the Client informs General Code of a discrepancy within 10 days, all claims with respect to completeness or condition of the documents shall be waived.

**12. Delivery of Completed Materials.**

General Code will deliver completed materials via USPS, UPS, motor freight, airfreight, FTP or whichever method offers the most efficient delivery at the time. Delivery, handling, packaging, insurance and/or shipping charges will be prepaid by General Code and added to the invoice/voucher for services to be paid by the Client.

**13. Support.**

- A. If this agreement includes support, General Code will provide online, telephone and e-mail support to Client as follows: General Code Product Support is available 9:00 a.m. to 5:00 p.m. U.S. Eastern Time, Monday through Friday, excluding holidays. Support is not available after 3 p.m. U.S. Eastern Time the day before Thanksgiving, Christmas Eve, and New Year's Eve.
- B. If this agreement includes support, General Code will remotely install minor releases of the Software which are generally made available to its other subscribers, including patches and/or fixes, as they are made available at no charge during the term of this agreement. Major releases and upgrades of the Software will be available at no charge for the software, but additional service charges may apply.

**14. Intellectual Property Rights.**

All Software and Services are proprietary products and services and that all right, title and interest in and to the Software and Services, including all associated intellectual property rights, are and shall at all times remain with General Code and its third party vendors. The Software contains trade secret and proprietary information owned by General Code or its third party vendors and is protected by United States copyright laws and international trade provisions. Client must treat the Software like any other copyrighted material and Client may not copy or distribute the Software, electronically or otherwise, for any purpose. Client hereby grants to General Code a nonexclusive right to use all Client Content as necessary solely for the purposes of providing the Software and Services to Client and its authorized users pursuant to these Terms and Conditions.

## **15. Other Restrictions.**

Client may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Software, Services (or any portion thereof, including without limitation any capacity), or any portions thereof, to any third party, and any attempt to do so is null and void. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Software. Software and Client Content shall not be used for any commercial purpose beyond the functionality driven by the Software. Client will not use the Software or Services to take any actions that (i) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (iii) are defamatory, trade libelous, threatening, harassing, or obscene; or (iv) constitute unauthorized entry to any machine accessible via the network. Client shall not interfere with or disrupt network users, services or equipment and will comply with the usage policies of General Code's suppliers.

## **16. Indemnification.**

A. Client hereby agrees to indemnify, defend and hold General Code harmless from and against any and all liability, losses, costs, and expenses (including reasonable attorneys' fees) incurred by General Code in connection with any claim arising out of or relating to:

1. Client's use of the Software or Services;
2. Any use or alleged use of Client's accounts or passwords by any person, whether or not authorized by Client;
3. The content, the quality, or the performance of Client Content;
4. Client's connection to the Services;
5. Client's violation of this agreement; or
6. Client's violation of the rights of any other person or entity.

## **17. Term and Termination.**

- A. Unless otherwise specific in the Proposal, the initial term of this agreement, unless sooner terminated as hereafter provided, shall be for one year, commencing on the date hereof, and will then be automatically extended for additional successive one-year periods unless either party notifies the other in writing not less than 90 days prior to the end of the initial term or any extension period that this agreement will not be extended.
- B. If this agreement relates to Hosted eForms, this Section 17B will apply instead of Section 17A. In such event, unless otherwise provided in the Proposal, the initial term of this agreement, unless sooner terminated as hereafter provided, shall be for one month, commencing on the date hereof, and will then be automatically extended for additional successive one-month periods unless either party notifies the other in writing not less than 30 days prior to the end of the initial term or any extension period that this agreement will not be extended.
- C. Either party shall have the right to terminate this agreement with immediate effect if the other party fails to cure to such party's reasonable satisfaction any material breach or violation of this agreement within 60 days after such party has given the other written notice thereof.
- D. Upon termination, all work prepared by General Code shall, at the option of the Client, become its property, and General Code shall be entitled to receive just and equitable compensation for all services performed.
- E. Section 3, 9, 10 and 14 through 31 shall survive any expiration or termination of this agreement.

## **18. Warranties; Limitations.**

- A. General Code warrants that the services provided hereunder will be performed by qualified personnel in a good and workmanlike manner and that any deliverables will be free of material defects. General Code's liability and the *Client's exclusive remedy for failure of any service or deliverable to meet this warranty shall be limited to* reperformance, at General Code's cost, of such service or deliverable. General Code's warranty does not extend to failures arising out of (i) incorrect or insufficient data, specifications or instructions provided by the Client or (ii) work or services performed by others.

- B. GENERAL CODE DOES NOT WARRANT THAT SOFTWARE WILL BE ERROR FREE OR WILL OPERATE UNINTERRUPTED. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. IMPLIED WARRANTIES OF FITNESS AND MERCHANTABILITY SHALL NOT APPLY. GENERAL CODE'S WARRANTY OBLIGATIONS AND THE CLIENT'S REMEDIES HEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN.**
- C. The limitations and protections against liability afforded General Code herein shall apply to any action or claim in connection with the services, whether based on contract, tort, statute or otherwise (including negligence, warranty and strict liability). The cumulative liability of General Code for all obligations, warranties and guaranties, whether express or implied, with respect to services performed hereunder shall be limited to the amount paid to General Code pursuant to this agreement. General Code shall not be liable to the Client or any other person or entity for lost profits, lost data, indirect, special, incidental, punitive or consequential damages arising from the performance or nonperformance of services or the use or inability to use any software or product, irrespective of whether the claims or actions for such damages are based upon contract, tort, negligence, strict liability, warranty or otherwise.
- D. No action may be maintained or proceeding commenced by the Client or others against General Code with respect to services unless such action or proceeding is commenced within one year after completion by General Code of the particular services to which such action or proceeding relates.

#### **19. Responsibility of Client's Counsel.**

In conjunction with the services rendered by General Code and the work of the Client and General Code, any and all questions requiring legal advice or opinion, analysis of legislation for legal sufficiency, interpretation of cases or statute, etc., shall be directed by the Client and General Code to the Client's counsel. At the request of the Client or its counsel, General Code shall make available to the Client's counsel information in its possession relating to legal issues or opinions obtained during its work with other clients, as well as sample copies of legislation as requested by the Client.

#### **20. Client Primary Contact.**

Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the "Primary Contact" with whom General Code should communicate matters regarding the Software and Services, such as maintenance notifications, and who has the authority to make Services requests including release of Client data, both internally to General Code and to the Client, restoration of data, and other configuration changes.

#### **21. System Monitoring.**

22. General Code will not systematically monitor Client Content, but General Code reserves the right to review Client Content from time to time at its discretion. General Code reserves the right to (a) disable access to or delete any Client Content which it determines in its sole discretion (such discretion to be exercised in good faith) to be illegal, obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive, and (b) disable access to or delete any other Client Content under justified exigent circumstances, as such circumstances are determined in good faith by General Code. General Code also reserves the right to monitor, the use of the Software if Client is using excessive computing resources which are impacting the performance of the Software for other subscribers. **Changes.**

The Client may at any time request changes in the scope of this agreement. Moreover, General Code may suggest changes. Where changes are agreed to by the parties, General Code shall issue a Change Order for the Client's review and signature describing the changes as well as the adjustments in schedule and fees occasioned by the changes in scope. General Code shall not be required to implement any change until the Client has signed and returned the Change Order.

#### **23. Notices.**

All notices and other communications which are required or permitted to be given pursuant to this agreement shall be in writing and shall be delivered either personally, by facsimile, by reputable overnight courier or by registered or certified mail and shall be deemed effectively received (i) if delivered in person, on the date of such delivery, (ii) if transmitted by facsimile, on the date indicated on the sender's receipt of confirmation,

(iii) if delivered by overnight courier, on the next business day following deposit thereof with such overnight courier, or (iv) if sent by mail, upon the third business day following the deposit thereof, postage prepaid.

**24. Force Majeure.**

If any performance by any party shall be prevented, hindered or delayed by reason of any cause beyond the reasonable control of such party (such event being hereafter called an "event"), including, without limitation, acts of God, riots, fires, floods, unusually severe weather, curtailment or termination of sources or supplies of energy or power, inability to obtain or delay in obtaining materials or supplies, strikes or other disputes involving such party or its subcontractors or suppliers, acts of war, insurrection, civil unrest, terrorism, elevated risk of terrorism, riot or disorder, acts of governmental authorities, changes in law or regulation, or any other cause beyond the reasonable control of such party, whether similar or dissimilar to those expressed hereinabove, such party shall be excused from performance to the extent that its performance is so prevented, hindered or delayed. Such excuse from performance shall extend so long as the event continues to prevent, hinder or delay the performance by such party. The party whose performance is affected shall give the other parties notice within 15 days of the event specifying the event, the performance affected and the anticipated date, if any, performance can be made.

**25. Disclaimer of Association.**

This agreement shall not be construed as creating a partnership, joint venture, agency or any other association that would impose upon one party liability for the acts or omission of the other, and neither party shall have the right to bind the other.

**26. No Waiver.**

Any failure by either party hereto to enforce at any time any term or condition shall not be considered a waiver of that party's right thereafter to enforce each and every term and condition.

**27. Severability of Provisions.**

If any part of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, that part shall be severed from this Agreement and shall be deemed to have never been a part of this Agreement and shall not affect the validity of the remainder of this Agreement.

**28. Entire Agreement.**

This agreement is the complete and exclusive statement of the mutual understanding of the parties and supercedes and cancels all previous written and oral agreements and communications relating to the subject matter.

**29. Dispute Resolution.**

The parties mutually agree to seek mediation as the preferred alternative of dispute resolution in the event of any disagreement over the terms of this agreement.

**30. Governing Law; Jurisdiction.**

This agreement is governed by the laws of New York, without regard to its conflict of laws doctrine. Each party consents to the exclusive jurisdiction of the courts sitting in Monroe County, State of New York with respect to any disputes arising out of this agreement. In any action or proceeding arising out of this agreement, the prevailing party shall be entitled to recover its reasonable legal fees and expenses.

**31. Counterparts; Signatures.**

This Agreement may be executed in any number of counterparts with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures delivered by facsimile or by electronic mail shall be deemed original signatures for all purposes of this Agreement.

**ADDENDUM TO TERMS AND CONDITIONS**

ADDENDUM TO TERMS AND CONDITIONS dated as of April 8, 2013 (this "Addendum") between General Code, LLC ("General Code") and Oneida County, New York ("Client").

WITNESSETH

WHEREAS, Client wishes to retain General Code to perform the services described in General Code's Proposal to Client, but it will only do so if certain provisions of General Code's Terms and Conditions for Document Management Solutions (the "Terms & Conditions") are amended in certain respects; and

WHEREAS, General Code is willing to amend the Terms & Conditions as provided in this Addendum;

NOW, THEREFORE, the parties agree as follows:

1. Amendments to the Terms & Conditions.

The parties agree that the Terms & Conditions are hereby amended, effective immediately, in each of the following respects:

1.1 Section 16 of the Terms and Conditions is hereby amended to add a new subsection 16B to read in its entirety as follows:

"B. General Code hereby agrees to indemnify, defend and hold Client harmless from and against any and all third party liability, losses, costs, and expenses (including reasonable attorneys' fees) incurred by Client in connection with any claim arising out of or relating to:

1. The negligence or willful misconduct of General Code; or
2. General Code's violation of this Agreement."

1.2 Section 17A of the Terms & Conditions is hereby amended to delete Section 17A in its entirety and to substitute the following in its place:

"A. The term of this Agreement, unless sooner terminated as hereafter provided, shall be for twenty-four (24) months, commencing on the date hereof."

1.3 Section 18C of the Terms and Conditions is hereby amended to delete the second sentence of Section 18C in its entirety and to substitute in its place the following:

“The cumulative liability of General Code for all obligations, warranties and guaranties, whether express or implied, with respect to this Agreement shall be limited to the amount of valid and collectible insurance available to General Code.”

1.4 Section 18D of the Terms & Conditions is hereby amended to delete Section 18 D in its entirety.

1.5 Section 30 of the Terms & Conditions is hereby amended to delete the phrase “Monroe County, State of New York” and to insert the phrase “Oneida County, State of New York” in its place.

1.6 The Terms and Conditions are amended to add a new Section 32 to read as follows:

“32. Insurance. General Code shall maintain, at its sole cost, at all times while performing services under this Agreement, Commercial General Liability Insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, naming Client as an additional insured .”

2. Section Headings. The section headings in this Addendum are for convenience of reference only and are not a part of this Addendum.

3. Governing Law. This Addendum shall be governed by and construed in accordance with the laws of the State of New York, without regard to its choice of law doctrine. In any action or proceeding arising out of this Addendum, the prevailing party shall be entitled to recover its reasonable legal fees and expenses.

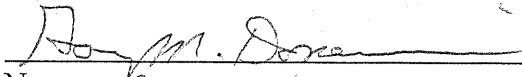
4. Effect of Addendum. Except as amended by this Addendum, all of the terms, conditions, provisions and covenants of the Terms & Conditions shall remain and continue in full force and effect and are hereby ratified, repeated and confirmed in all respects.

5. Entire Agreement. The Terms & Conditions, as amended by this Addendum, together with General Code’s Proposal, constitute the entire agreement and understanding among General Code and Client and supersede any and all prior agreements and understandings relating to the subject matter hereof.

6. Counterparts; Effectiveness. This Addendum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The exchange of copies of this Addendum, including executed signature pages, by electronic transmission will constitute effective execution and delivery of this Addendum for all purposes. Signatures transmitted electronically will constitute original signatures for all purposes.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, as of the date first above written.

**GENERAL CODE, LLC**

By:   
Name: Gary M Domenico  
Its: President & CEO

**ONEIDA COUNTY, NEW YORK**

By: \_\_\_\_\_  
Name:  
Its:

## LASERFICHE SOFTWARE LICENSE AGREEMENT

This Software License Agreement ("License Agreement") is made between Compulink Management Center, Inc., a California corporation doing business as Laserfiche and whose principal place of business is in Long Beach, California ("Laserfiche"), and the party (referred to as the "Licensee"), who has lawfully acquired the Software.

PLEASE READ THIS LICENSE AGREEMENT CAREFULLY. BY INSTALLING, COPYING OR USING THE SOFTWARE OR THE DOCUMENTATION THAT ACCOMPANIES THIS LICENSE AGREEMENT, YOU AGREE TO THE TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY OR USE THE SOFTWARE OR THE DOCUMENTATION AND, IF APPLICABLE, RETURN IT TO YOUR SUPPLIER FOR A FULL REFUND.

### RECITALS

A. Laserfiche has developed certain document imaging and management software programs which it markets under the trademark Laserfiche® ("Software").

B. The Software constitutes valuable proprietary products and trade secrets of Laserfiche embodying substantial creative efforts and confidential information, ideas, and expressions. Laserfiche has invested large amounts of capital and time to develop and promote the Software. Laserfiche claims copyrights and proprietary trade secrets in the Software.

C. Licensee understands that the Software is compatible only with certain types of computers and operating systems and that Licensee is responsible for assuring the compatibility between its computer systems, its software solutions, if any, and the Software.

THEREFORE, in consideration of the premises and covenants contained this License Agreement, Laserfiche and Licensee agree as follows:

### TERMS OF LICENSE AGREEMENT

1. Grant of License. Laserfiche grants Licensee a limited, non-exclusive, non-transferable license to use all of the Software purchased by Licensee. The Software includes, without limitation express or implied, some or all of the following types of software: (a) "Server Software" that provides document management services to other programs, and "Client Software" that allows a computer or workstation to access or utilize the services provided by the Server Software; (b) "Stand-alone Software" that operates on a single computer; and (c) "Plug-in Software Modules" that can be added to the previously mentioned Software packages.

Licensee may install one copy of the Server Software to a single physical or a single virtual operating system environment (the instance of the running Server Software shall be referred to as the "Server"). The maximum number of logged in Server sessions by Client Software programs that can concurrently access the Server (referred to as "User Connections") is equal to the number of User Licenses that Licensee has acquired and designated for use exclusively with that Server. Separate User Licenses are required for User Connections capable of modifying a repository governed by the Server (referred to as



“Full User Licenses”) and for User Connections capable of only read-only access (referred to as “Retrieval Licenses”).

The number of authorized Full User and Retrieval Licenses is shown in the Licensing File accompanying the Software. If Licensee desires to increase the number of concurrent User Connections, Licensee must acquire additional User Licenses. Hardware or software may not be used to reduce the number of User Connections required to access or otherwise utilize Server services (sometimes called "multiplexing").

2. Ownership of Software. Laserfiche shall retain ownership of, and title to, the Software and Documentation (including all adaptations or copies). Licensee is acquiring the license under the terms described in this License Agreement, and the Licensee acquires no other rights.

3. Protection of Software. During the term of this License Agreement and for a period of seven years thereafter, Licensee shall not directly or indirectly, alone or in conjunction with any other person or company, (a) attempt to write or develop software in order to discover the source code and/or the trade secrets contained in the source code; or (b) utilize the Software, Documentation, or Laserfiche’s trade secrets or confidential information, either directly or indirectly, to sell, market or distribute any software product which competes with the Software; or (c) utilize the Software, Documentation, or Laserfiche’s trade secrets or confidential information, directly or indirectly, to assist, advise or consult with any other person or company in selling, marketing or distributing any software product which competes with the Software; or (d) utilize the Software, Documentation, or Laserfiche’s trade secrets or confidential information, directly or indirectly, to convert, or to assist, advise or consult with any other person or company to convert, any end user of the Software to a software product which competes with the Software; or (e) shall not seek to discover Laserfiche’s trade secrets or confidential information by reverse engineering, decompiling, disassembling, copying or any other technique. Licensee shall not directly or indirectly attempt to challenge the validity of the copyrights, trademarks, and trade secrets in the Software claimed by Laserfiche. The software source code and the trade secrets therein are not licensed to Licensee, and all modifications, additions, or deletions are strictly prohibited.

4. Other Restrictions on Use. Except as expressly authorized in this License Agreement, Licensee shall not rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, or timeshare with any other person the Software or Documentation or any right granted by this License. All other uses of the Licensed Software, including, without limitation, use in the business of an Application Service Provider (ASP), or transferring, copying or other dissemination of the Licensed Software, are strictly prohibited.

5. Term and Termination. This License Agreement shall commence and terminate as follows:

A. The term of this Agreement shall commence upon Licensee’s acceptance of this License Agreement and continue until terminated as provided in this License Agreement. Laserfiche may terminate this License Agreement for cause immediately following a breach of this License. Laserfiche may also terminate this License Agreement if (i) Licensee violates, infringes or compromises any trademark, copyright, patent or Trade Secret of Laserfiche, or interferes with any relationship between Laserfiche and any of its other Licensees or End Users of the Software; or (ii) Licensee’s license to use its Software has been terminated.

B. Upon termination of this License Agreement, Licensee shall immediately cease all use of the Software and the Documentation and return to Laserfiche all versions and copies of the Software and the Documentation. Licensee shall remove and uninstall all such programs and materials from all hard drives and other devices on which the Software or the Documentation may be found.

C. The termination of this License Agreement shall not terminate Licensee's obligations under this License Agreement, nor shall it release Licensee from the obligation to pay any monies that it may owe Laserfiche or operate to discharge any liability that Licensee incurs before termination.

6. LIMITED WARRANTY; DISCLAIMER. THE MEDIA (NOT SOFTWARE) IS WARRANTED TO THE ORIGINAL LICENSEE AGAINST DEFECTS IN MATERIALS AND WORKMANSHIP FOR A PERIOD OF THREE (3) MONTHS FROM THE DATE OF ORIGINAL ACQUISITION. DEFECTIVE MEDIA WILL BE REPLACED WHEN IT IS RETURNED POSTAGE PREPAID WITH A COPY OF THE RECEIPT TO LASERFICHE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LASERFICHE PROVIDES THE SOFTWARE TO LICENSEE "AS IS" AND WITH ALL FAULTS. LASERFICHE EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LASERFICHE DOES NOT WARRANT THAT THE SOFTWARE WILL SATISFY THE REQUIREMENTS OF LICENSEE OR THAT IT IS WITHOUT DEFECT OR ERROR, OR THAT IT WILL OPERATE WITHOUT INTERRUPTION.

7. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL LASERFICHE OR ITS RESELLERS, AGENTS, EMPLOYEES, CONSULTANTS, AND SUPPLIERS (COLLECTIVELY, "REPRESENTATIVES") BE LIABLE TO LICENSEE OR ANY THIRD PARTIES FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSSES FROM BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR DATA, COSTS OF RECREATING LOST DATA, OR THE COST OF SUBSTITUTE EQUIPMENT OR PROGRAMS SUSTAINED BY LICENSEE OR CLAIMS BY ANY PARTY OTHER THAN LICENSEE, OR ANY OTHER PECUNIARY LOSS), REGARDLESS OF WHETHER LASERFICHE OR ITS REPRESENTATIVES HAVE BEEN WARNED OF SUCH DAMAGES OR CLAIMS. NO ACTION MAY BE BROUGHT AGAINST LASERFICHE OR ITS REPRESENTATIVES UNDER THIS LICENSE AGREEMENT MORE THAN ONE YEAR AFTER LICENSEE KNEW OR SHOULD HAVE KNOWN OF THE FACTS WHICH GAVE RISE TO THE CAUSE OF ACTION.

8. DAMAGES. ANY AND ALL DAMAGES SUFFERED BY LICENSEE FOR WHICH LASERFICHE IS LIABLE, WHETHER BASED ON A BREACH OF CONTRACT, BREACH OF WARRANTY, OR CLAIM OF NEGLIGENCE, MISREPRESENTATION OR OTHER TORT, OR ON ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE ACTUAL AMOUNT LICENSEE PAID FOR THE SOFTWARE.

9. Copyright. The Software and the Documentation are owned by Laserfiche and are protected by United States copyright laws and international treaty provisions. Licensee must treat the Software and Documentation like any other copyrighted material except Licensee may install the Software and the Documentation as expressly authorized by this License Agreement and may retain the original solely for backup or archival purposes. Licensee may not copy the Documentation.

10. Nonwaiver. No failure to exercise or delay in exercising any right, power, or privilege under this License Agreement on the part of either party shall operate as a waiver of any right, power, or privilege under this License Agreement. No single or partial exercise of any right, power, or privilege under this License Agreement shall preclude further exercise thereof.

11. Severability. If any part of this License Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, that part shall be severed from this License Agreement and shall be deemed to have never been a part of this License Agreement and shall not affect the validity of the remainder of this License Agreement.

12. Jurisdiction and Venue. This agreement will be governed and construed by the laws of the state where Licensee is located. The headings are for convenience only and are not to be used to interpret this Agreement. All disputes between Licensee and Laserfiche shall be litigated in the state and federal courts located in the state where Licensee is located.

13. Entire Agreement. This License Agreement is the complete and exclusive statement of the mutual understanding of the parties, and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this License Agreement. No course of performance, course of dealing, or usage of trade shall override the written terms of this License Agreement.

14. Limitation on Actions. No action or proceeding based on this License Agreement or arising out of its performance or breach shall be instituted by Licensee more than one year after the cause of action has accrued. Licensee waives the benefit of any statute of limitations which specifies a period longer than one year for filing an action.

15. U.S. Government Restricted Rights Notice. All software products provided to the United States Government pursuant to solicitations issued prior to December 1, 1995, are subject to restrictions as set forth in FAR, 48 CFR 52.227-14 (June 1987) or FAR, 48 CFR 252.227-7013 (October 1988), as applicable. All software products provided to the United States Government pursuant to solicitations issued on or after December 1, 1995 are provided with the commercial rights and restrictions described in this License Agreement. Contractor/Manufacturer is Laserfiche, a division of Compulink Management Center, Inc., 3545 Long Beach Blvd., Long Beach, California 90807.

16. Export Restrictions. The Software is subject to United States export jurisdiction. Licensee shall comply with all applicable federal and international laws and regulations, including U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the United States and other governments.

17. Captions. The captions used on this License Agreement are for convenience only and shall not be a part of this License Agreement.

Should you have any questions concerning this Agreement, or if you desire to contact Laserfiche for any reason, please write: Laserfiche, 3545 Long Beach Blvd., Long Beach, CA 90807, U.S.A.

**ADDENDUM TO LASERFICHE SOFTWARE LICENSE AGREEMENT**

This is an Addendum (Addendum") to the Laserfiche Software License Agreement ("License Agreement") between Compulink Management Center, Inc., a California corporation doing business as Laserfiche, whose principal place of business is in Long Beach, California ("Laserfiche"), and Oneida County, New York (referred to as the "Licensee").

This Addendum modifies the License Agreement as follows:

1. The cumulative liability of Laserfiche to Licensee for all obligations, warranties and guaranties, whether express or implied, with respect to the License Agreement shall be limited to the amount of valid and collectible insurance available to Laserfiche.

2. If a conflict arises between the language of this Addendum and that of the License Agreement, this Addendum shall govern.

Except as expressly modified or amended by this Addendum, the License Agreement between the parties shall remain in full force and effect. This Addendum will be effective as of the last date that it is executed by the parties.

**Laserfiche**

**County of Oneida**

By 

By \_\_\_\_\_

Name: Jerab Cheatham

Name: \_\_\_\_\_

Title: Vice President

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

Date: 04/10/2013

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



## ONEIDA COUNTY BOARD OF ELECTIONS

Union Station ♦ 321 Main St. ♦ 3<sup>rd</sup> Floor  
Utica, New York 13501  
Fax: (315) 798-6412

Anthony J. Picente Jr.  
County Executive

RUSSELL STEWART  
Democratic Commissioner  
(315) 798-5761

ROSE M. GRIMALDI  
Republican Commissioner  
(315) 798-5763

April 5, 2013

FN 20 13 - 171



Honorable Anthony J. Picente, Jr.

GOVERNMENT OPERATIONS

Oneida County Executive

**WAYS & MEANS**

Oneida County Office Building

800 Park Avenue

Utica, New York 13501

Dear County Executive Picente:

Attached you will find three original Agreements between the Oneida County Board of Elections and SOE Software Corporation which has been executed by the CEO of SOE Software Corporation.

The Agreement between SOE Software Corp., and the Oneida County Board of Elections encompasses the custom development and maintenance of an online poll worker training program, with various features along with the development and maintenance of a 508/ADA compliant website with additional capabilities and services.

The Agreement is for the sum of \$86,579.00, for a period of three years. 95% of this sum is reimbursable by the State through our Voter Educations Funds which we presently have a balance of \$104,055.00.

We are hereby requesting that the funding for this Agreement and be taken from Account #1450.19511, HAVA Poll Worker Training.

As you will recall, this Agreement was originally entered into by the previous Board of Elections Commissioners. Since it was not approved by the Board, this resulted in conversations between SOE and the County Attorney's office and a possible legal proceeding. As new Commissioners, we felt it necessary to resolve this issue and workout an Agreement with SOE that will be beneficial to our office and to avoid any legal action brought against our office or the County of Oneida, New York.

We are requesting that you approve this Agreement and forward onto the Board for approval. We would like to have this Agreement approved at the May 8, 2013, so that we may move forward with SOE Software.

Thank you for your anticipated cooperation.

Sincerely,

  
Russell Stewart

  
Rose Marie Grimaldi

Democratic Commissioner

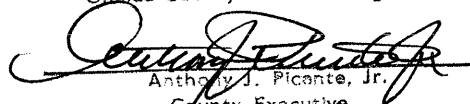
Republican Commissioner

Oneida County Board of Elections

Oneida County Board of Elections

Encls. (3)

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

  
Anthony J. Picante, Jr.  
County Executive

Date 4/24/13

Oneida Co. Department:

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Federal Agreement/Revenue \_\_\_\_\_

Oneida County Contract Summary

Name of Proposing Organization: New York State Board of Elections

Title of Activity or Service: Online Poll Worker Training and website design and maintenance

Proposed Dates of Operation: 3 years upon the execution of the Agreement.

Client Population/Number to be Served: n/a

Summary Statements

- 1) **Narrative Description of Proposed Services:** The custom development of maintenance of a jurisdiction specific online poll worker training program; Interactive exercises (filling out the required forms, processing voters, etc.); video customized to setting up/tearing down equipment, processing voters, assisting voters with special needs, etc.); PR consulting services assist with program roll-out, marketing, and introduction; online classroom management tool. Development and maintenance of a 508/ADA complaint county board of elections web site to include the following HAVA specific voter education capabilities, multi-lingual presentation of every web page within the website, presentation of voting system-specific instructional materials (video, manuals, processes and procedures), instructions on casting ballots on new voting equipment, display of sample ballot, voter's unique polling place look-up capability complete with directions and maps to the location.
- 2) **Program/Service Objectives and Outcomes:** See No. '1' above.
- 3) **Program Design and Staffing:** n/a

Total Funding Requested: \$86,579.00

Account #: 1450.19511

Oneida County Dept. Funding Recommendation: \$86,579.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** Voter Education Funds through the State Board of Elections. The Agreement price of \$86,579.00, is reimbursable 95%. Board of Elections share will be \$4,328.95 after reimbursement.

Cost Per Client Served: n/a

Past Performance Data: n/a

**O.C. Department Staff Comments:** SOE Software Contract for Online Poll Worker Training, known as Clarity Training and Voter Education Web Portal, known as Clarity Connect.

COPY

## CLARITY ELECTION SUITE HOSTING AND SUPPORT AGREEMENT

This Clarity Election Suite Hosting Agreement ("Agreement") is made and entered by and between Oneida County, a municipal corporation organized and existing under the Laws of the State of New York, through the **Oneida County Board of Elections**, with offices at 321 Main Street Utica, New York 13501 (hereinafter "Customer") and **SOE Software Corporation**, a Florida corporation, having its principal place of business located at 5426 Bay Center Drive, Ste. 525, Tampa, Florida, 33609 (hereinafter "Licensor").

**WHEREAS**, Licensor grants Customer a nonexclusive license to use its Online Poll Worker Training solution, known as Clarity TRAINING, its Voter Education Web Portal solution, known as Clarity CONNECT (hereinafter the "Software") and the associated documentation.

**WHEREAS**, Customer's use of the Software will be restricted to our hosted computer environment.

**WHEREAS**, Licensor will provide and maintain the hosted computer environment for Customer's use of the Software (the "Service").

**WHEREAS**, in addition to the maintenance and support services that are included in certain fees paid by Customer to Licensor, Customer may opt to acquire additional maintenance services for the Software and documentation in accordance with the terms and on the conditions set forth in this Agreement.

**WHEREAS**, Customer desires to receive a license for the Software and engage Licensor to provide the Service.

**NOW, THEREFORE**, in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties, by their authorized signatures below, hereby agree as follows:

### 1. Definitions

- 1.1. The term "Agreement" shall mean this Agreement and all Exhibits, Schedules and Attachments attached hereto now or in the future.
- 1.2. The term "Customer Data" shall mean the content and characteristics within the service that are modified through the use of the Service features by the authorized Account users of the Service.
- 1.3. The term "Documentation" shall mean all documentation and/or other materials (including manuals, instructions, training materials, specifications, flow charts, logic diagrams, and other support materials) relating to the use, operation and functionality of the Service.
- 1.4. The term "Effective Date" shall be shown at the end of this Agreement and is the date when the parties intend the Service to commence.
- 1.5. The term "Nondisclosure" shall mean that certain Confidentiality Agreement between Customer and Licensor.
- 1.6. The term "Service" shall have the meaning set forth in the Recitals above, and further described in Section 2.
- 1.7. The term "Service Level Agreement" shall mean Exhibit D, which sets forth the service levels at which identified portions of the Service are to be provided by Licensor and sets forth certain remedies for Customer in the event that Licensor does not attain such service levels.
- 1.8. The term "Term" shall mean a period of three (3) years commencing on the Effective Date and is subject to extension as provided herein.



## 2. Services

- 2.1. Services Scope - Licensor agrees to provide to Customer services for hosting the Software and for hosting other software required for the operation of the Software (the "Clarity Election Suite software,"). Licensor will permit Customer to, on a 24 x 7 basis, remotely access and use the Software herein referred to as the "Hosting Services". Licensor's performance of the Service shall be pursuant to the terms and conditions set forth herein and also must conform to Customer's standard technical support requirements set forth in Sec. 2.2 hereto. Customer will be given an account allowing it to access the Licensor site. Licensor shall serve as the single point of contact for all Service issues and shall be solely responsible for coordinating and ensuring the resolution of any problems involving the Service in a prompt and timely fashion.
- 2.2. Technical Support - As part of the Hosting Services, Licensor will provide the support set forth in Exhibit B, the Hosting Environment Agreement, and understands and agrees that Customer will be entitled to the remedies stated therein.

## 3. Grant of License

- 3.1 Licensor grants Customer and its operating divisions a non-exclusive, perpetual license to use the Hosted Software in machine readable form as long as Customer maintains its status in good standing as a Customer of Licensor's Annual Software Assurance and Support Agreement and has purchased all requisite licensing fees. Licensor also grants Customer a non-exclusive perpetual license to use the Documentation.
- 3.2 Software upgrades are full version releases (e.g. version 4.x to version 5.0) and are included as part of the Annual Software Assurance and Support Agreement provided by Licensor to Customer.
- 3.3 Software updates (e.g. version 4.1 to version 4.2), including bug fix builds, are included as part of the Service provided by Licensor to Customer provided that Customer is current on all monies due to Licensor.

## 4. Obligations

- 4.1. Implementation - As a condition to Licensor's obligation to provide the Hosting Services, both parties shall be responsible for fulfillment of all of their obligations under the Agreement and completion of the project implementation plan. The project implementation plan will be jointly developed by Licensor and Customer subsequent to execution of this Agreement by both parties and payment of fee(s) as outlined in Exhibit A.
- 4.2. Technical Environment - Licensor will provide the services and other products, as set forth on Exhibit B, (or similar services and products that provide a similar level of service), and will also provide any and all equipment, to provide the Hosting Services (the "Hosting Environment") per Exhibit B. Licensor shall be responsible for the costs associated with obtaining and maintaining the Hosting Environment, unless otherwise indicated on Exhibit A. Licensor also shall pay the costs of the services or other products necessary to permit Customer to transmit data to and receive data from the Hosting Environment; however Customer is responsible for the costs of its own communication lines. Licensor shall maintain and insure the server and shall indemnify Customer for any damage, loss or injury to the equipment (other than normal wear and tear).
- 4.3. Data Transmission - Should Customer require a special data transmission format to the Software, such as SSL, the format and any additional costs and implementation timeline effects will be agreed upon, in writing, between Licensor and Customer.
- 4.4. Coordination - Each party shall designate a contact to coordinate day-to-day communication with the other party.

## 5. Term, Termination, and Transition Assistance

- 5.1. The initial term of this Agreement will be for three (3) years commencing on the Effective Date (the "Initial Term").
- 5.2. Renewal Term - Customer may exercise its option to renew this Agreement at any time prior to the end of the current term. In the absence of notification, the Customer will be deemed to have effectively agreed to the renewal of this Agreement for an additional twelve (12) month term.
- 5.3. Termination for Material Breach - A party may terminate this Agreement if the other party commits a material breach or default (including nonpayment of fees) and fails to remedy such breach or default within thirty (30) days after written notice of the same from the other party. In the event of termination due to a breach or default by Customer, no refunds or credits will be due to Customer. In the event of termination due to a breach or default by Licensor, Customer will receive a refund of the fees for the remaining Annual Assurance Plan Payment.
- 5.4. Effect of Termination or Expiration - Upon the termination or expiration of this Agreement, all payment obligations of one party to the other under this Agreement incurred through the date of termination or expiration will immediately become due. Upon notification by Customer, and at Customer's sole discretion, Licensor shall either return all Customer's Data within thirty (30) days of the date of termination or expiration, or shall commence implementation of the Transition Plan as set forth below. Licensor shall invoice Customer for the transportation and insurance costs associated with returning the Customer Data to Customer. Termination of this Agreement by either party shall not operate to terminate the underlying Agreement.
- 5.5. Termination of Agreement Upon Bankruptcy - Either party may terminate this Agreement upon written notice to the other party if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- 5.6. Termination of Agreement Upon Service Level Failures - Customer may terminate this Agreement upon thirty (30) days written notice to Licensor upon the failure of Licensor to provide technical and customer support constituting a material breach of this Agreement in accordance with the service levels outlined in the Service Level Agreement. In the event of termination of this Agreement due to a material breach of this Agreement pursuant to this Section 5.6, Customer will receive a refund of the fees for the remaining Annual Assurance Plan Payment
- 5.7. Transition Services - The parties acknowledge that, prior to the termination or expiration of this Agreement, Customer may engage a successor vendor to perform such services or bring such services in-house. From the time that Customer notifies Licensor to whom Customer plans to migrate the services, Licensor agrees to cooperate with Customer (and, if applicable, the successor vendor) to effect an orderly and efficient transition. Within sixty (60) calendar days after termination or expiration of this Agreement by either party, Customer shall pay Licensor all undisputed amounts due and owing as of the termination of the Agreement, and, except to the extent reasonably necessary for the transition services described in this Section 5.8, shall immediately cease any and all use of the Service and materials or services provided by Licensor pursuant to this Agreement. At such time as Customer reasonably determines necessary to effect the transition, Licensor shall provide in electronic format a copy of all Customer information, without limitation, residing on Licensor's systems that is necessary for an effective transition. Cooperation by Licensor may include, without limitation, continuing to host Customer images, making qualified service personnel available for questions and consultations, transferring contact numbers or URL addresses, and providing any required technical assistance and cooperation to Customer as Customer may from time to time reasonably request. Such transition period will not extend past six (6) months from the termination or expiration of this Agreement, unless otherwise negotiated. Customer and Licensor agree to act in good faith in complying with these obligations. Customer will pay the reasonable expenses of Licensor in providing services during the transition period. Within thirty (30) days after the transition period ends, upon written request, each party shall deliver to the other party all copies of the Confidential Information of the other party in every form that such party continues to hold. On a party's written request, the other

party shall certify, in writing, to the requesting party that the other party has performed the foregoing delivery or destruction.

## 6. Fees Price - Payment

- 6.1. Fees - Customer shall pay the fees as set forth in Exhibit A.
- 6.2. Service Fees - Customer shall pay to Licensor the service fees set forth in Exhibit A, to the extent applicable. All service fees shall remain the same during the original Term and the initial 12-month extension, if Customer opts for such extension. If Customer and Licensor agree in writing to further extend the Term, such writing shall set forth the service fees that shall be applicable during the extension of the Term.
- 6.3. Payment Terms - Licensor shall submit invoices to Customer on a monthly basis. Payment on undisputed amounts shall be due within thirty (30) days after Customer's receipt of Licensor's invoice..
- 6.4. Taxes - Customer shall pay or reimburse Licensor for sales and use taxes, where applicable, and any other governmental charges levied, imposed or assessed on the Services, excluding, however, ordinary personal property taxes assessed against or payable by Licensor, taxes based upon Licensor's net income.

## 7. Licensor Representations and Warranties.

In addition to the representations and warranties in the Agreement:

- 7.1. General Licensor Warranties - Licensor warrants that (a) the Service provided hereunder and the underlying technology used by Licensor in performing the Service is owned free and clear of any encumbrances or is in the public domain; (b) Licensor has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; (c) there are no outstanding assignments, grants, licenses, encumbrances, obligations or agreements (whether written, oral or implied) that are inconsistent with this Agreement; (d) Licensor's compliance with the terms and conditions of this Agreement shall not violate any federal, state or local laws, regulations or ordinances nor shall it violate any third party agreements; (e) there is no claim, litigation or proceeding pending or threatened against Licensor with respect to the Service or its underlying technology or any component thereof alleging infringement or misappropriation of any patent, trademark, copyright or any trade secret or other proprietary right of any person; and (f) the Service does not infringe or misappropriate in any respect upon any patent, trademark, copyright or any trade secret or other proprietary right of any person or entity
- 7.2. Authority and Performance - Licensor represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations hereunder, and the performance of its obligations hereunder will not cause a breach of any agreements between Licensor and any third parties, including all vendors critical to its performance obligations hereunder.
- 7.3. Service Level Commitment - Licensor warrants that it will perform its services in accordance with Licensor's service level commitment as set forth in Exhibit D. Customer's sole and exclusive remedy for Licensor's failure to meet the service level commitment is the remedy set forth in Exhibit D.
- 7.4. NO OTHER WARRANTY - EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT THE HOSTING SERVICES ARE PROVIDED AS IS AND LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY THAT THE HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
- 7.5. LICENSOR AND ITS THIRD PARTY VENDORS SHALL NOT BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) WHICH CUSTOMER MAY INCUR OR EXPERIENCE ARISING FROM THE SOFTWARE OR ON

ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 8. Subscriber Representations and Warranties.

In addition to the representations and warranties in the Agreement:

- 8.1. Authority and Performance. Customer represents and warrants that it has the legal right and authority to enter into this Agreement and perform its obligations hereunder, and the performance of its obligations hereunder will not cause a breach of any agreements between Customer and any third parties.

## 9. Intellectual Property

- 9.1. Customer Data - Customer will own all Customer Data. Licensor will not sell, license or in any way distribute the Customer Data to any person or entity, and shall not permit the Customer Data to be used in any way (including any aggregation or summarized results of Customer Data) by any person or entity other than Customer without Customer's express written permission.
- 9.2. Aggregated Data - Notwithstanding the preceding section 9.1, Licensor may include in its benchmark/comparison studies performance data about the Services provided hereunder such as total number of users, overall customer count, average amount of disk usage, etc., so long as such performance data is aggregated with the performance data of Licensor's other customers so that Customer's information cannot be separately identified.
- 9.3. Licensor Technology - The Service and any technology, computer programs or computer codes developed, created or produced by or on behalf of Licensor existing as of the Effective Date of this Agreement, and any Licensor documentation relating thereto, are, as between Licensor and Customer, the sole property of Licensor. To the extent that, during the term of this Agreement, Customer pays in whole or in part for, or provides development personnel to work on, technical or functional developments related to the Service, Licensor agrees to incorporate such developments into the Service provided for Customer. Licensor shall have full right, title and interest in the developments and may incorporate the developments into the services made available to Licensor's other customers.
- 9.4. No Rights in Other Party's Intellectual Property - Neither party will have any rights in or with respect to the other party's property described in the preceding Section 9.1 and 9.2, other as expressly set forth in this Agreement and the exhibits hereto.

## 10. Indemnification

- 10.1. Licensor shall indemnify, defend, and hold harmless Customer, its respective employees, directors, shareholders and agents, from and against any expense, cost, damage, loss, fine, penalty, liability or judgment (including attorneys' fees and costs) suffered or incurred by Customer as a result of a third party claim, demand, action, arbitration, suit or similar proceeding (hereafter "Claim") related to Licensor's actual or alleged infringement of a patent, copyright, trade secret or other proprietary right of any such third party. Licensor's indemnification obligation is subject to: (i) Customer providing Licensor with prompt written notice of any Claim, (ii) Licensor having sole control of the defense and all negotiations for settlement or compromise thereof (provided, however, that any settlement or compromise that imposes any current or future obligation on Customer or directly or indirectly, explicitly or implicitly, acknowledges guilt or responsibility of Customer shall require the advance review and approval of Customer, which approval may be withheld in Customer's sole discretion) and (iii) Customer reasonably cooperating, at Licensor's expense, in the defense of such Claim. Failure to provide prompt written notice shall not abrogate or diminish Licensor's obligations under this Section if Licensor has or receives knowledge of the existence of such Claim by any other means or if such failure does not materially prejudice Licensor's ability to defend the same. Licensor agrees to pay all settlements entered into by Licensor, judgments finally awarded against Customer, and all attorneys' fees and expenses for counsel hired by Licensor. Customer may elect to participate in any such

action with counsel of its own choice and at its own expense. In the event Customer is precluded by a court of competent jurisdiction from using the Service as a result of Licensor's infringement of any such patent, copyright, trade secret or other proprietary right of such third party, Licensor shall do one of the following (the election of which option to pursue being in Licensor's reasonable discretion):

- a. obtain the right for Customer to use the Service; or
- b. replace or modify the Service so that it no longer infringes but maintains substantially the same functionality and performance; or
- c. if neither of the foregoing is, in Licensor's reasonable opinion, commercially reasonable: terminate this Agreement with respect to the Service and promptly reimburse to Customer all amounts unused prepaid fees paid by Customer and provide to Customer transition services as described in Section 5.8.

## 11. Limitation of Liability

11.1. LICENSOR'S AND ITS THIRD PARTY VENDORS' AGGREGATE LIABILITY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEE PAID BY CUSTOMER TO LICENSOR FOR USE OF THE SERVICE.

## 12. Insurance

12.1. During the Term, Licensor shall keep in full force and effect, policies of insurance meeting or exceeding the following specifications:

- a) Commercial General Liability insurance, with coverage including premises/operations, contractual (including without limitation coverage for all indemnities herein), personal and advertising injury, and products/completed operations, with aggregate coverage limits of not less than one million dollars (\$1,000,000).
- b) Workers' Compensation insurance, as required by law, and Employer's Liability insurance with limits of liability of not less than one hundred thousand dollars (\$100,000) per accident or disease and five hundred thousand dollars (\$500,000) aggregate by disease.

Such insurance shall be purchased from companies having a rating of A-VII or better in the current Best's Insurance Reports published by A. M. Best Company. Policies of insurance shall provide that they will not be canceled or materially changed without at least thirty (30) days prior written notice to Customer. Licensor shall, at Customer's request, provide a Certificate of Insurance indicating that the Customer is listed as additionally insured.

## 13 Dispute Resolution

13.1 Procedures - For any dispute arising under the Agreement that is not resolved informally, either party may give to the other party notice of the dispute, including reasonable detail concerning the alleged deficiency in performance of the other party. The parties shall arrange to meet at a mutually agreed upon location, or by other acceptable means and attempt in good faith to reach an agreement resolving the dispute. If they do not reach such an agreement within seven (7) days after such notice is given, then each of them shall produce a detailed report about the dispute for his or her appropriate management level (Second Level in the chart below), who shall meet in person at 321 Main Street Utica, New York 13501 or by other acceptable means and attempt in good faith to reach an agreement. If they do not reach such an agreement within the period specified below, then each party shall refer the dispute to higher levels of management as shown below. In each case, the parties' specified representatives shall arrange to meet at a mutually agreed upon location, or by other acceptable means, shall attempt in good faith to reach an agreement and, if they do not do so within the period specified, shall refer the dispute to the next level at the end of such period.

<b>Management Level</b>	<b>Customer Management Level</b>	<b>Licensors Management Level</b>	<b>Period of Resolution Efforts</b>
First Level	Project Mgr. or equivalent	Vice President, Sales	7 days
Second Level	Group Manager or equivalent	Vice President, COO	7 days
Third Level	Senior Level or equivalent	Chief Executive Officer	7 days

If the parties have not signed a written agreement to resolve the dispute by the end of the period specified for the Third Level, then either party may request mediation as provided for in Section 13.2 below. Except as otherwise specifically provided, neither party shall initiate mediation unless and until the procedures described in this Section 13.1 have been completed or waived by both parties.

- 13.2. Mediation - If a dispute between the parties arising out of or relating to the Agreement remains unresolved after the procedures in Section 13.1 have been completed or waived by both parties, then the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under the Commercial Mediation Rules, as modified by this Section 13.2. The mediation shall take place in Oneida County, New York. If the two parties cannot otherwise agree on the mediator, the mediator shall be selected according to the following process: (i) the parties shall request the American Arbitration Association to provide to both parties, within 15 days of receipt of the notice of mediation, a list of mediators that comply with the requirements set forth in this Section 13.2; (ii) within 5 days of receipt of the list of mediators from the American Arbitration Association, each party shall notify the other party of its selection of one person from the list; (iii) immediately following the parties' selection of the two persons, the parties shall send a notice to the two persons informing them that they have been selected, that their role will be to select another person from the list who will serve as the mediator of the dispute, and that they must inform both parties of their selection within 7 days; and (iv) if the two persons so selected fail to select an mediator within the stated 7-day period, the parties shall provide notice to the American Arbitration Association and direct the American Arbitration Association to select a mediator from the list within 7 days. Subject to the rules of the American Arbitration Association, the parties shall request that the mediation occur within a period of 20 days after the mediator is selected, and each party shall act in good faith to facilitate completion of the mediation within such period. The parties agree that a potential mediator's experience in the information-technology industry and experience in arbitrating disputes between service/equipment Licensors and purchasers of services and equipment shall be relevant factors in selecting the mediator.
- 13.3. No Effect on Injunctive Relief - A party must follow and participate in the processes outlined in Sections 13.1 and 13.2 above before pursuing litigation or any other remedy. Notwithstanding the preceding, a party shall not be precluded from seeking injunctive relief in connection with a breach of confidentiality under the Nondisclosure.
- 13.4. Performance Pending Outcome of Disputes - In the event of a dispute between the parties pursuant to which Customer in good faith believes it is entitled to withhold payment, Customer shall be entitled to withhold payment of the disputed amount during the pendency of the dispute-resolution process described in this Section 13 and any subsequent litigation or other proceeding and Licensor shall continue to provide the Service at the same level and quality required by this Agreement, so long as Customer continues to pay undisputed amounts to Licensor.

## 14. Other Provisions

- 14.1 Notice - All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt, the fifth business day after being mailed by first class, certified mail return receipt requested, or the first business day after being sent by a reputable overnight delivery service. Customer's address for notices is 321 Main Street Utica, New York 13501. Licensor's address for notices is the address shown at the beginning of this Agreement. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section 14.1.
- 14.2 Benefit of Successors and Assignees - This Agreement and all of the terms and conditions hereof shall be binding upon and inure to the benefit of Licensor and Customer and their respective successors, transferees, or assignees. Any terms of this Agreement containing a reference to Customer, Licensor, or a party hereto shall apply with equal effect to any such successor, assignee, or transferee of the party in question.
- 14.3 Assignment - Customer may not assign this Agreement or convey any rights or obligations under this Agreement to a third party; provided, however, Customer may assign this Agreement to a purchaser of all or substantially all of its assets, a subsidiary or business unit, or a successor by merger or operation of law so long as such purchaser, subsidiary, business unit or successor agrees to be bound by the terms of this Agreement. Licensor may not assign this Agreement or convey any rights or obligations under this Agreement to a third party; provided however, Licensor may assign this Agreement to a purchaser of all or substantially all of its assets, a subsidiary or business unit, or a successor by merger or operation of law so long as such purchaser, subsidiary, business unit or successor agrees to be bound by the terms of this Agreement.
- 14.4 Relationship - The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or agents. Nothing in this Agreement makes Licensor a sole supplier to Customer, grants any exclusive rights to Licensor, or prohibits Customer from obtaining similar or related services from other parties.
- 14.5 Severability - A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.
- 14.6 Headings Gender, Number and Language of Inclusion - Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including, but not limited to".
- 14.7 Governing Law - This Agreement shall be governed by and construed under the laws of the State of New York. Any matters requiring litigation shall take place in Oneida County, New York.
- 14.8 Publicity - Licensor may not use Customer's trade names, trademarks, logos, service marks, or other proprietary marks in any manner, including but not limited to advertising, publicity, user lists, or guest lists or websites, unless Licensor has received prior consent from an authorized representative of Customer to do so, which consent may not be unreasonably withheld by Customer.
- 14.9 Data Privacy - Licensor may use Customer's contact information, including names, phone numbers, and e-mail addresses only in connection with the performance of its obligations hereunder.
- 14.10 Remedies - The rights and remedies of Customer set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or equity. Notwithstanding anything to the contrary in this Agreement, in the event of an alleged breach of this Agreement by Customer, Licensor shall not use any type of electronic means to prevent or interfere with Customer's use of the Software without first obtaining a valid court order authorizing the use of such electronic means.

- 14.11 Entire Understanding - This Agreement, its Schedules and amendments constitute the entire agreement between the parties for the Software licensed hereunder, and will become binding when signed by both parties. There are no understandings, agreements or representations not specified herein with respect to Software licensed hereunder. This Agreement may not be modified, except by a written amendment signed by duly authorized representatives of both parties.
- 14.12 Force Majeure - Any delay or failure of performance of either party to this Agreement shall not constitute a breach of the Agreement or give rise to any claims for damages, if and to the extent that such delay or failure is caused by an occurrence beyond the reasonable control of the party affected, including acts of governmental authorities, acts of God, material shortages, wars, riots, rebellions, sabotage, fire, explosions, accidents, floods, or strikes or lockouts of third parties. In the event one of the parties intends to invoke this provision, that party shall (i) promptly notify the other party of the cause beyond its reasonable control, the expected duration thereof, and the anticipated effect of such cause on its ability to perform its obligations under this Agreement, and (ii) shall make reasonable efforts to mitigate any such effects.
- 14.13 Costs of Litigation - If a dispute should arise relating to the rights and obligations of the parties under this Agreement, and should that dispute result in litigation, each party shall be responsible for its' own costs incurred in the defense or prosecution of the claim, including, without limitation, court costs and attorneys' fees.
- 14.14 No Waiver - Except as expressly set forth in this Agreement, the failure of either party at any time to require performance of any provision of this Agreement or to exercise any right provided for herein shall not be deemed a waiver of such provision or right unless made in writing and executed by the party waiving such performance or right. No waiver by either party of any breach of any provision of this Agreement or of any right provided for herein shall be construed as a waiver of any continuing or succeeding breach of such provision or right or a waiver of the provision or right itself.
- 14.15 Survival - All representations, warranties, indemnities and obligations of confidentiality expressly set forth herein shall survive the termination of this Agreement.

## 15. Effective Date

The Effective Date, when the parties intend for the Service to commence, is the date signed by Customer below. This agreement supersedes and replaces any previous versions and agreements that may have been entered into by the Oneida County Board of Elections in previous election years.

## 16. Schedules


The following Exhibits are attached hereto and deemed part of this Agreement:

- Exhibit A Fees
- Exhibit B Hosted Environment – Annual Software Assurance and Support
- Exhibit C Technical Support Attachment
- Exhibit D Service Level Agreement



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by authorized personnel who, on the date of such signing, have the necessary and appropriate corporate authority to bind his or her respective organization hereunder.

**Licensor:**

By:   
Name: Marc J. Fratello  
Title: CEO  
Date: 3/25/13

**Commissioner:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Customer:**

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

**Commissioner:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form only

Oneida County Attorney

**EXHIBIT A**

**FEES**

**PRICING Overview**

The following outlines our pricing model for SOE Software's Online Poll Worker Training solution, known as Clarity TRAINING and Voter Education Web Portal, known as Clarity CONNECT.

**Assurance Plan** – This plan is included in the pricing listed below. The assurance plan provides the County with application hosting, customer support, maintenance, upgrades and the evolution of the products at no additional charge. The SOE team completes all of the upgrades for you eliminating an Information Technology burden on the County.

**PRICING FOR CLIENT ONEIDA COUNTY BOARD OF ELECTIONS**

The scenario below requires an implementation cost based on the selected products. These fees include the comprehensive project management process of implementation, install and training.

	<b>CLARITY TRAINING</b>	<b>CLARITY CONNECT</b>
<b>Year 1 Software &amp; Services Total Cost</b>	\$ 60,782	\$ 25,797
<b>Annual Software Assurance and Support Year 2</b>	N/A	N/A
<b>Annual Software Assurance and Support Year 3</b>	N/A	N/A

**Payment Terms**

Year 1 Software & Services are due upon execution of this agreement

**Other**

Actual Travel expenses will be billed when incurred.

**EXHIBIT B**  
**HOSTED ENVIRONMENT**  
**ANNUAL SOFTWARE ASSURANCE AND SUPPORT**

**1. Software Assurance Services - Operations**

The software assurance services (the "Assurance") provided by Licensor to the Customer hereunder are in consideration of the annual charge described in Exhibit A, unless otherwise specified herein. The Assurance shall consist of:

- 1.1 All day to day operations of hosted products will be managed by Licensor staff or its agents, including required operating system and system utility administrative tasks and system back up and recovery. This includes management of system logs, coordination and installation of operating system patches and upgrades and system tuning.
- 1.2 Licensor will act as the database administrator for the application. Licensor will perform data back-up and recovery activities, manage and control database access, monitor and tune database performance and implement any required database patches and/or upgrades. Daily incremental backups will be performed Monday through Friday, after standard business hours. Full database back-ups will be performed weekly, after standard business hours. Database patches and/or upgrades are implemented as required, after standard business hours.
- 1.3 All maintenance will be performed done by Licensor staff or their agents.
- 1.4 Use of Licensor's reasonable commercial efforts to correct errors in the licensed Software. Errors are defined as the failure of the Software to operate in substantial conformity to the applicable documentation provided by Licensor to Customer for such Software.
- 1.5 Licensor will manage and maintain other items necessary to Hosting Services, including Software, internal network, firewall, routers, servers and data transmission equipment (including Licensor's virtual private network (VPN)).

**2. Support**

- 2.1 Operations and Technical Support will be available Monday – Friday, 8:30 AM – 8 PM, Eastern Time ("Business Hours")
- 2.2 Access to after-hour support (8:00 PM to 8:30 AM PT Monday – Friday, plus Saturday – Sunday), will be available through our after-hours support team
- 2.3 Response by Operations / Technical Support personnel will be within 4 hours, during Business Hours
- 2.4 Operation / Technical Support will cover data transfer and database / application availability issues
- 2.5 Operation and Technical Support will not cover end-use or analytical issues or questions

**3. Bandwidth**

- 3.1 Licensor will provide equipment and related software to send and receive data at approximately a 100 Mbps (Megabits) per second rate. However, Licensor cannot guarantee Internet latency and over-all Internet performance.

#### **4. Redundancy**

- 4.1 Primary Production Facility – Licensor will provide and maintain a fault-tolerant state-of-the-art hosting facility, including redundant power and communications.
- 4.2 Licensor will also provide an out-of-state failover facility, in case of massive failure of all redundant systems, with similar capabilities as the main data center.

#### **5. Security**

- 5.1 Licensor will perform user ID and password management and dissemination. Access to Hosting Systems, Software and Ancillary Software will be coordinated with the Customer.
- 5.2 Licensor and Customer may agree to set-up and use a mutually agreed upon data encryption mechanism to transfer data between the Licensor's and Customer's sites within thirty (30) days from the execution of this Schedule.

#### **6. Additional Services**

Customer may request Licensor to perform services of a different nature than, or beyond the scope of, those described above, and Licensor may provide such services ("Additional Services") and shall be compensated therefore by Customer at rates for such services as are customarily charged by Licensor. Examples of such Additional Services are:

- 6.1 Retrieval of data lost by hardware malfunction or operator error.
- 6.2 Operational support beyond the allocated four hours per incident.
- 6.3 Designing, programming, or testing of "customer specific" customization or requested enhancements.
- 6.4 Changes required to Customer's unique modifications to interface with updates to the standard version of the Software.
- 6.5 Additional training and instruction (other than what is provided with normal implementation).

**EXHIBIT C**  
**TECHNICAL SUPPORT ATTACHMENT**

TECHNICAL SUPPORT RESPONSE AND RESOLUTION LEVELS SHALL BE AS FOLLOWS:

<b>Severity Classification</b>	<b>Description</b>	<b>Response Time*</b>	<b>Resolution Time Standard**</b>
<b>1 - Critical</b>	<ul style="list-style-type: none"> <li>• Business critical function is down</li> <li>• Major impact to Customer's business</li> <li>• No workarounds exists</li> </ul>	As soon as possible, using reasonable commercial efforts, but no more than one hour	24 hours^
<b>2 - Major</b>	<ul style="list-style-type: none"> <li>• Business critical function is impaired or degraded</li> <li>• There are time-sensitive issues that impact ongoing production</li> <li>• Workaround exists, but it is only temporary</li> </ul>	4 hours	2 days^
<b>3 - Minor</b>	<ul style="list-style-type: none"> <li>• Non-critical function down or impaired</li> <li>• Does not have significant current production impact</li> <li>• Performance is degraded</li> </ul>	1 business day	4 weeks^
<b>4 - Low</b>	<ul style="list-style-type: none"> <li>• Non-critical, function down or impaired</li> <li>• No business impact</li> <li>• Generic Service Enhancements</li> </ul>	1 business day	Mutually agreed timeframe based on prioritization.

\* Response Time is the elapsed time between Customer's first report of a problem and when the Vendor assigns a ticket number for the problem.

\*\* Resolution Time is the elapsed time between Customer's first report of the problem and the problem in the Software has been resolved.

^ Level 1 – 3 issues may require resolution times that exceed these Response Time Standards. If fixes to level 1 – 3 issues are not resolvable within the timeframes listed above, Licensor will immediately notify Customer of the anticipated time to resolve the issue.

In the event that the issue is classified as a level 1 or level 2, Licensor will immediately assign a senior Product Developer to work exclusively on the issue. Additionally, the COO will be notified and the issue resolution will be given top priority. If the fix will require more than one business week to implement, Licensor and Customer will mutually agree on a resolution timetable and Licensor will provide updates at agreed upon intervals via email and/or telephone calls. Interim workarounds, if any, will also be communicated during the initial meeting and any subsequent communications should a workaround become available after the initial meeting.

Failure to meet the mutually agreed upon maintenance response timetable in the preceding paragraphs using reasonable commercial efforts will result, at the Customer's option, in triggering the Dispute Resolution provisions outlined in section 13.

**EXHIBIT D**

**SERVICE LEVEL AGREEMENT**

1. Licensor may schedule no more than 5 hours per week for routine maintenance, back-ups and data loads. Licensor may or may not choose to use this time for maintenance, back-ups and data loads, but downtime in this period will not count against Licensor's service availability commitment. For major new releases Licensor may from time to time require longer planned maintenance window. In the case of longer planned maintenance due to major releases, Customer shall be notified twenty-four (24) hours in advance of any scheduled down-time. Release builds and routine maintenance will typically be performed on weekends between 7:00 a.m. Eastern Time Saturday morning and Sunday 12:00 p.m. Eastern Time. Occasionally, bug fix builds will need to be performed during the business week. If a bug fix build is required to be performed during the business week, it will take place after 9:00 p.m. Eastern Time.
2. The Hosting Services shall be deemed "unavailable" if Customer is unable for all practical business purposes to transmit data to or receive data from the Hosting Environment, provided that the inability to transmit and receive data is not due to problems with non-Hosting Environment equipment, services, communication lines, or other products.
3. Failure to meet Availability service levels will result in penalties and will not be considered a breach of this Agreement. Penalties will be calculated according to the following matrix if Licensor falls below minimum service levels detailed below. All percentages exclude planned maintenance.

<b>Availability</b>	
Guaranteed System Availability Percentage	97% of Total Hours Per Month (excluding planned maintenance referenced in 1.1 above)
Credit to Customer's Account	3% of monthly fee for each 1% of the time period that the Services are down beyond committed levels
Penalty Cap	Maximum = Monthly fee

## ADDENDUM

THIS APPENDIX, 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.2

### **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 (HIPPA).**

When applicable to the services provided pursuant to the Contract:

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

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

Approved as to Form only

\_\_\_\_\_  
Oneida County Attorney

ANTHONY R. CARVELLI  
COMMISSIONER

ONEIDA COUNTY



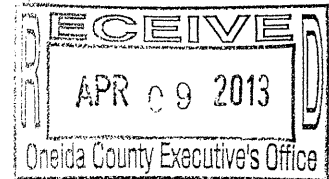
DEPARTMENT OF FINANCE

ANTHONY J. PICENTE JR.  
COUNTY EXECUTIVE

County Office Building ♦ 800 Park Avenue ♦ Utica, New York 13501  
(315) 798-5750 ♦ Fax: (315) 735-8371 ♦ www.ocgov.net

FN 20 13-172

April 8, 2013



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

GOVERNMENT OPERATIONS

**WAYS & MEANS**

Dear Mr. Picente:

Enclosed, please find a proposed resolution regarding the semi-annual report on Mortgage Tax Receipts.

Please submit this to the Board of Legislators for their approval.

Very truly yours,

Anthony Carvelli  
Commissioner of Finance

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

Anthony J. Picente, Jr.  
County Executive

AC/bad

Enclosure

Date 4/9/13

cc: Mikale Billard, Clerk of the Board





**MORTGAGE TAX RECEIPTS AND DISTRIBUTION**  
**FOR THE PERIOD ENDING MARCH 2013**

**WHEREAS:** The Oneida County Clerk and the Commissioner of Finance  
Have prepared and submitted to the Board of County Legislators their  
joint Semi-annual report on the Mortgage Tax Receipts, and:

**WHEREAS:** This report shows the credit statement to the sum of \$1,397,110.82 to be  
Distributed to the various towns, cities and villages pursuant to  
Section 261 of the Tax Law, now therefore, be it hereby

**RESOLVED:** That the Oneida County Commissioner of Finance be, and hereby is  
Authorized and directed to remit payments in the amount shown in  
Said semi-annual report on the Mortgage Tax Receipts.

**APPROVED:**

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COUNTY OF Oneida  
 CASH STATEMENT FOR TAXES COLLECTED PURSUANT TO ARTICLE 11

FOR THE PERIOD OF October 2012 THROUGH March 2013

ONEIDA COUNTY  
 COMMISSIONER OF FINANCE

NEW YORK STATE MORTGAGE TAX SEMI-ANNUAL REPORT

RECEIVED

APR 08 2013

TAX RATE: 0.9240622002

Months	BASIC TAX DISTRIBUTED				TREASURER			ALL OTHER TAXES DISTRIBUTED			
	1 Basic Tax Collected	2 Interest Received by Recording Officer	3 Recording Officer's Expense	4 Refunds or Adjustments	5 Amount Paid Treasurer (Col 1 + Col 2 - Col 3 - Col 4)	6 Interest Received by Treasurer	7 Treasurers Expense	8 Tax Districts Share (Col 5 + Col 6 - Col 7)	9 Local Tax	10 Additional Tax CNY	11 Special Assistance Fund
Oct	302,994.44	2.40	19,001.05	0.00	283,995.79	0.00	283,995.79	0.00	133,001.53		104,674.25
Nov	230,368.00	2.38	19,384.19	0.00	210,986.19	0.00	210,986.19	0.00	94,101.33		74,812.51
Dec	254,906.88	1.68	19,089.50	0.00	235,819.06	0.00	235,819.06	0.00	107,470.88		87,878.80
Jan	209,019.02	1.74	19,027.64	-1,550.00	188,443.12	0.00	188,443.12	0.00	84,829.59		72,937.99
Feb	258,654.00	1.76	19,006.63	0.00	239,649.13	0.00	239,649.13	0.00	109,783.58		90,649.24
Mar	257,872.97	2.01	19,315.06	-342.39	238,217.53	0.00	238,217.53	0.00	108,149.00		84,377.79
Apr											
May											
Jun											
Jul											
Aug											
Sep											
Totals	1,513,815.31	11.97	114,824.07	-1,892.39	1,397,110.82	0.00	1,397,110.82	0.00	637,335.91		515,330.58

*James B. Cavallo*  
 Recording Officer

*James Cavallo*  
 Treasurer

**PART II**

Distribution Statement  
 (Column 1 through 5) The "taxes collected" shown in column 2 were produced by mortgages covering real property in the respective tax districts. Additions and deductions to make adjustments and correct errors are recorded in column 3 and 4, respectively. Authority for these additions and deductions is given by the orders of the Taxation Department noted on the bottom of this part.

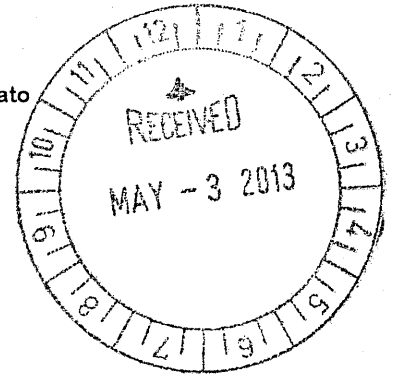
Credit Statement  
 (Column 6) This column is the net amount due to each tax district for which the Board of Supervisors shall issue its warrant or warrants.

MUNICIPALITY	2 Taxes Collected	3 *Additions	4 *Deductions	5 Taxes Adj. Corr	6 Amount Due Tax District
ANNSVILLE	8,552.00	0.00	0.00	8,552.00	7,902.58
AUGUSTA	7,501.00	0.00	0.00	7,501.00	6,931.39
AVA	7,930.50	0.00	0.00	7,930.50	7,328.28
BOONVILLE	28,883.72	0.00	-342.39	28,541.33	26,373.96
BRIDGEWATER	2,999.00	0.00	0.00	2,999.00	2,771.26
CAMDEN	69,996.00	0.00	0.00	69,996.00	64,680.66
DEERFIELD	47,152.50	0.00	0.00	47,152.50	43,571.84
FLORENCE	4,447.50	0.00	0.00	4,447.50	4,109.77
FLOYD	25,665.50	0.00	0.00	25,665.50	23,716.52
FORESTPORT	10,428.50	0.00	0.00	10,428.50	9,636.58
KIRKLAND	88,546.89	0.00	0.00	88,546.89	81,822.83
LEE	60,062.50	0.00	0.00	60,062.50	55,501.49
MARCY	59,640.50	0.00	0.00	59,640.50	55,111.53
MARSHALL	22,101.00	0.00	0.00	22,101.00	20,422.70
NEW HARTFORD	239,929.26	0.00	0.00	239,929.26	221,709.56
PARIS	44,801.01	0.00	0.00	44,801.01	41,398.92
REMSEN	17,338.50	0.00	0.00	17,338.50	16,021.85
ROME	156,885.25	0.00	0.00	156,885.25	144,971.73
SANGERFIELD	8,300.50	0.00	0.00	8,300.50	7,670.18
STUBEN	5,870.50	0.00	0.00	5,870.50	5,424.71
TRENTON	38,347.50	0.00	0.00	38,347.50	35,435.48
UTICA	167,267.37	0.00	0.00	167,267.37	154,565.45
VERNON	104,101.50	0.00	0.00	104,101.50	96,196.26
VERONA	35,850.14	0.00	0.00	35,850.14	33,127.76
VIENNA	43,104.24	0.00	0.00	43,104.24	39,831.00
WESTERN	19,165.50	0.00	0.00	19,165.50	17,710.11
WESTMORELAND	50,058.08	0.00	-1,550.00	48,508.08	44,824.48
WHITESTOWN	138,888.85	0.00	0.00	138,888.85	128,341.94
<b>Total Tax Districts 28</b>	<b>1,513,815.31</b>	<b>0.00</b>	<b>-1,892.39</b>	<b>1,511,922.92</b>	<b>1,397,110.82</b>

\*See refund, adjustment and special adjustment orders of Commissioner of Taxation and Finance, case numbers

Anthony J. Picente Jr.  
County Executive

Lucille A. Soldato  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES**

County Office Building 800 Park Avenue Utica, NY 13501

May 1, 2013

FN 20 13-173

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

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

HEALTH & HUMAN SERVICES

Anthony J. Picente, Jr.  
County Executive

**WAYS & MEANS**

Date 5/3/13

Dear Mr. Picente:

I am submitting the following Purchase of Services Agreement for review and approval by the Board of Legislators per Board Resolutions and Local Law #3 of 2001, amending Article VIII, Section 802 of the Administrative Code.

Enclosed is an Amendment to Purchase of Services Agreement with the House of Good Shepherd for the operation of Non-Secure Detention Services for Oneida County. This Amendment effective March 1, 2013 will increase the reserved beds from 7 to 8 beds with no added cost.

The House of Good Shepherd has provided this service for the Department of Social Services for several years. This co-ed facility provides a local temporary placement for Oneida County youth. Placements at non-secure detention are court ordered for youth either awaiting further court action or youth who are already adjudicated PINS (Person in Need of Supervision) or JD (Juvenile Delinquents).

The Amendment will become effective March 1, 2013 and will continue through December 31, 2013. The program's total budget will not exceed the original board approved contract cost of \$ 689,836.00 and is 49 % reimbursable through New York State Office of Children and Family Services, with a local cost of 51% in the amount of \$351,816.36.

I respectfully request that this matter be forwarded to the Board of Legislators.

Thank you for your consideration.

Sincerely,

Lucille A. Soldato  
Commissioner

LAS/tms  
attachment

5/1/13  
# 12902

**Oneida Co. Department Social Services**

**Competing Proposal \_\_\_\_\_**  
**Only Respondent \_\_\_\_\_**  
**Sole Source RFP \_\_\_\_\_**

**Oneida County Board of Legislators**  
**Contract Summary**

**Name of Proposing Organization:** House of the Good Shepherd  
1550 Champlin Avenue  
Utica, New York

**Title of Activity or Services:** Non-Secure Detention

**Proposed Dates of Operations:** January 1, 2013 through December 31, 2013  
**Amendment March 1, 2013 through December 31, 2013**

**Client Population/Number to be Served:** Youth placed by Family Court Remand PINS warrant, JD warrant or placed by Peace Officer.

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services**

The non-secure detention program has established a co-ed 8 bed facility for youth in need of Detention Services located at 1606 Sunset Avenue. The program reserves 7 non-secure beds for Oneida County youth January through February 2013. **Effective March 1, 2013 the program will reserve 8 non-secure beds for Oneida County youth.**

**2). Program/Service Objectives and Outcomes -**

Provides for the local temporary placement of youth who are placed by Family Court Remand PINS warrant, JD warrant or placed by a Peace Officer until or when a permanent placement is provided, determined or located.

**3). Program Design and Staffing Level -** A co-ed Non-Secure facility 24 hour supervision and care. Staffing level:

- 7 Full Time Child Care Workers
- 2 Full Time Shift Supervisors
- 1 Full Time Senior Child Care Worker
- 1 Full Time Program Manager
- 2 Full Time Relief Child Care Worker
- 1 Full Time Case Worker
- 20 % Service Coordinator
- 5 % Assoc. Exec. Dir. For Community Services
- 10 % Secretary
- 4% Accountant
- 1 Part-time Summer Teacher
- 3 Part-time Nurse/ Nurse Practitioner

- 1 Part-time Cook

**Total Funding Requested:** \$ 689,836

**There is no added cost associated with this amendment.**

**Oneida County Dept. Funding Recommendation:** Account #: A6123.495

**Mandated or Non-mandated:** Mandated to provide Non-Secure Detention Services.

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

<b>State</b>	49 %	\$ 338,019.64
<b>County</b>	51 %	\$ 351,816.36

**Cost Per Client Served:**

**Past performance Served:** The Department has contracted with this provider for this service since 1990 and is satisfied with their service. The average cost per available day is \$ 269.99. The budget for the year 2012 was for this contract and was \$ 695,264.

**O.C. Department Staff Comments:** The costs of other non-secure detention facilities that the Department of Social Services utilizes have higher rates than the daily rates of this contract. Example: Children's Home of Jefferson County current daily rate is \$298.50.

AMENDMENT

This is to Amend our Purchase of Services Agreement #12902 by and between the Oneida County Department of Social Services, an Agency of the County of Oneida, a municipal corporation organized and existing under the Laws of the State of New York and having principal offices at the Oneida County Office Building 800 Park Avenue, Utica, New York 13501 (hereinafter called Department) and the House of The Good Shepherd, 1550 Champlin Avenue, Utica, New York 13502 (hereinafter called Contractor).

WHEREAS, this Purchase of Services Agreement Amendment # 12902 for Non-Secure Detention will be effective March 1, 2013 through December 31, 2013 and will reimburse Contractor for cost of 8 beds for youth in need of Detention Services from Oneida County. The total cost for this contract from January 1, 2013 through December 31, 2013 will not change from the original contract amount and will not exceed \$ 689,836.00.

WHEREAS, with this Amendment and upon execution, the following paragraph will be deleted, number 2 located on page 1 and 2 of agreement # 12902:

2. The Contractor's Non-secure Detention program will provide 7 beds for youth in need of Detention Services from Oneida County. The Contractor will operate a co-ed 8 bed Non-Secure facility from the Sunset Ave., Location.

WHEREAS, with the execution of this Amendment effective March 1, 2013 the above deleted paragraph on page 1 and 2 of contract # 12902 will be replaced with the following and shall read:

2. The Contractor's Non-secure Detention program will provide 8 beds for youth in need of Detention Services from Oneida County. The Contractor will operate a co-ed 8 bed Non-Secure facility from the Sunset Ave., Location.

WHEREAS, with this Amendment and upon execution, the following paragraph will be deleted, Number 12 located on page 3 and 4 of agreement # 12902:

12. For the non-secure detention program provided by the Contractor, the County shall pay the Contractor, as billed monthly for 7/8ths of the total program cost, not to exceed an annual total of \$689,836.00 as per the attached budget. The Department will make payments to the Contractor on a monthly basis upon presentation of a County voucher with such verification of incurred expenses for that month and any other verifications as requested by the Department. This figure includes board bills, initial medical services and program services, including casework, education and recreation. Any expenses incurred due to severe medical problems or the need to provide extensive clothing will be the responsibility of the County and will be included in the claims to NYSOCFS. All beds are reserved by the County. The County may contract with other counties at a per diem rate, per child; Criteria established with N.Y.S Office of Children and Family Services approval for placement under said contracts shall be the same as for placements from the Department. In the absence of a contract, the Department may agree to have another county utilize the facility dependent on the availability of beds at a per diem rate per child, established with N.Y.S. Office of Children and Family Services approval.

WHEREAS, with the execution of this Amendment effective March 1, 2013 the above deleted paragraph number 12 on page 3 and 4 of contract # 12902 will be replaced with the following and shall read:

12. For the non-secure detention program provided by the Contractor, the County shall pay the Contractor, as billed monthly for the total program cost, not to exceed an annual total of \$689,836.00 as per the attached budget. The Department will make payments to the Contractor on a monthly basis upon presentation of a County voucher with such verification of incurred expenses for that month and any other verifications as requested by the Department. This figure includes board bills, initial medical services and program services, including casework, education and recreation. Any expenses incurred due to severe medical problems or the need to provide extensive clothing will be the responsibility of the County and will be included in the claims to NYSOCFS. All beds are reserved by the County. The County may contract with other counties at a per diem rate, per child. Criteria established with N.Y.S Office of Children and Family Services approval for placement under said contracts shall be the same as for placements from the Department. In the absence of a contract, the Department may agree to have another county utilize the facility dependent on the availability of beds at a per diem rate per child, established with N.Y.S. Office of Children and Family Services approval.

All other terms of the original agreement remain in effect without change or alteration. This Amendment shall be binding upon both parties effective March 1, 2013 and upon approval of the appropriate legislative bodies where required.

\*\*\*\*\*

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

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

\*\*\*\*\*

Approved as to Form \_\_\_\_\_  
Oneida County Attorney

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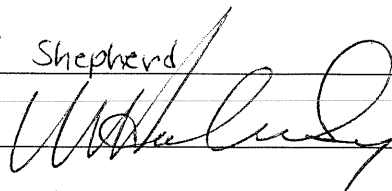
Date: \_\_\_\_\_

Oneida County Department of Social Services: \_\_\_\_\_  
Lucille A. Soldato, Commissioner

\*\*\*\*\*

Date: 4/2/13

Agency: The House of the Good Shepherd

Authorized Signature: \_\_\_\_\_  


Print Authorized Name: William Holicky

Title: Executive Director

\*\*\*\*\*



PURCHASE OF SERVICES AGREEMENT BETWEEN  
ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES  
AND  
HOUSE OF THE GOOD SHEPHERD

THIS AGREEMENT, made and entered in to, by and between the Oneida County Department of Social Services, an Agency of the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York and having its principal offices at the Oneida County Office Building, 800 Park Avenue, Utica, New York 13501, (hereinafter called Department), and House of The Good Shepherd, 1550 Champlin Avenue, Utica, New York 13502 (hereinafter called Contractor).

WITNESSETH THAT:

WHEREAS, the Oneida County Department of Social Services has responsibility for care and custody of Persons in Need of Supervision and Juvenile Delinquents immediately prior to and during judicial proceedings in relation to such persons; and

WHEREAS, the Department desires to obtain an operational Non-Secure Detention program and related services for such persons; and,

WHEREAS, the Department desires to have the program implemented in their facility at 1606 Sunset Ave, Utica, New York and,

WHEREAS, the Agency desires to conduct this Program on behalf of the County, and the County is willing to retain the Agency to provide such Program; and,

WHEREAS, the New York State Office of Children and Family Services has and will certify said Program; and,

WHEREAS, the Department and the Contractor each desire to enter into an agreement for such Program on the terms and conditions set forth.

NOW THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The Contractor will provide Non-secure Detention Services through a group care approach to the County of Oneida for the period of January 1, 2013 through December 31, 2013.
2. The Contractor's Non-secure Detention program will provide 7 beds for youth in need of

Detention Services from Oneida County. The Contractor will operate a co-ed 8 bed Non-Secure facility from the Sunset Ave., Location.

3. Non-Secure Detention, its operations, rules and regulations, are clearly defined under Executive Law, the Family Court Act, and the New York State Office of Children and Family Services Regulations. All operations under this contract would be established and implemented in accordance with all laws, rules and regulations relating to the operations of Non-secure Detention facilities.

The Contractor represents that it is familiar with and has a copy of all rules and regulations of the New York State Department of Social Services and the New York State Office of Children and Family Services pertaining to Contractor Shelters and Foster Boarding Homes as well as the operation of non-secure Family Foster Care. The Contractor agrees to comply with all such rules and regulations required by the New York State Department of Social Services and the New York State Office of Children and Family Services, including all amendments and additions thereto.

The Contractor agrees to comply and represents that the program complies with all Federal, State and Local laws, rules, regulations and ordinances including but not limited to the Labor Law, Workers Compensation Law, the Social Security Law, the New York State Civil Rights Law, Civil Rights Act of 1964 (including implementing regulations issued by United States Department of Justice and the Law Enforcement Assistance Administration).

The service will be available to those youth meeting the criteria for detention under Section 739 of the Family Court Act, with regard to alleged Persons in Need of Supervision and alleged Juvenile Delinquents.

4. All youth admitted:

(1) Must be accompanied by a Family Court Remand; or  
(2) Must be accompanied by a P.I.N.S. Warrant; or  
(3) Must be accompanied by a J.D. warrant; or  
(4) Must be placed by a Peace Officer, who is authorized to take a child who has run away from home, or who, in the reasonable opinion of the officer, appears to have run away from home. The facility receiving a child shall inform a parent or other person responsible for such child's care and the Family Court of its action.

(5) If a Peace Officer places a child in the Non-Secure Detention Facility at times when the Family Court is in session, a hearing must be held within 72 hours of the time detention commenced, or the next day the Court is in session, whichever is sooner.

5. Each youth in Non-secure Detention shall receive basic care and maintenance. Beyond the basic care and maintenance provided, each youth will receive 24 hour supervision. Each youth will be provided educational services by the Contractor and as agreed by the Department.

6. Each youth will receive recreational/social development services on a regularly scheduled basis from the Contractor's Child Care Workers.

7. For any youth in detention more than 72 hours; the youth will also receive a medical examination (not including psychological nor psychiatric services) and any necessary emergency medical care while in detention. The Department will make payment for all medical expenses through Medicaid if the child is eligible, or the expense will be paid and included in the reimbursements claim to the NYSOCFS.

8. The transportation of youth to and from the Department will be the responsibility of the Contractor. Oneida County Sheriff's Department and the Department have an agreement for transportation to the Detention Facility. In the event that the Sheriff's Department cannot transport to the facility, the Department will contact the Contractor to request their assistance. The Contractor will make every effort to respond to this need as soon as possible. All transportation for medical and other appointments pertaining to the youth's in Non-secure Detention will be assumed by the Contractor's Program Staff.

9. Twenty-four (24) hour intake and on-call duties for the program will be assumed by the Contractor's staff. Crisis intervention, admissions and related duties will be the responsibility of the Contractor staff. In the case of a youth absconding from the non-secure detention program, the following procedures will be followed:

1. A missing persons report will be filed with the local authorities.
2. Parents will be notified immediately.
3. The Placing Contractor will be notified within 24 hours.
4. It is the Department's and/or parent's responsibility to retrieve personal belongings, (i.e., clothing).

10. The Contractor agrees to appropriately train and supervise all Detention Services Staff.

11. The Contractor agrees to keep accurate records for each child placed in detention. All information contained in the Contractor's files shall be held confidential by the Contractor and the county pursuant to the applicable provisions of the Social Service Law and the Law of the Family Court of the State of New York and the New York State Division of Probation Rules and Regulations.

12. For the non-secure detention program provided by the Contractor, the County shall pay the Contractor, as billed monthly for 7/8ths of the total program cost, not to exceed an annual total of \$689,836.00 as per the attached budget. The Department will make payments to the Contractor on a monthly basis upon presentation of a County voucher with such verification of incurred expenses for that month and any other verifications as requested by the Department. This figure includes board bills, initial medical services and program services, including casework, education and recreation. Any expenses incurred due to severe medical problems or the need to provide extensive

clothing will be the responsibility of the County and will be included in the claims to NYSOCFS. All beds are reserved by the County. The County may contract with other counties at a per diem rate, per child; Criteria established with N.Y.S Office of Children and Family Services approval for placement under said contracts shall be the same as for placements from the Department. In the absence of a contract, the Department may agree to have another county utilize the facility dependent on the availability of beds at a per diem rate per child, established with N.Y.S. Office of Children and Family Services approval.

13. The Contractor agrees to maintain books, records and necessary supporting documents as required by Section 372 of the Social Services Law. The Contractor will use accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of the services provided under the Agreement. The financial and statistical records shall be subject at all reasonable times to inspection, review, or audit authorized by the County and State Governments.

14. The Contractor agrees that the equipment purchased under this Contract is the property of the Department and shall revert to the Department upon any termination or failure to renew the Contract.

15. The Contractor may not assign, subcontract, or otherwise dispose of this Agreement or any right, duty or interest herein without the prior written consent of the County.

16. This Agreement shall become effective on the first day of January 2013 and shall run through December 31, 2013. This Agreement can be renegotiated at any time by thirty days notice in writing by either party to the other. Such notice of renegotiation shall be given either personally or by certified or registered mail, return receipt requested. In this event, all obligations of both parties under this Agreement, with the exceptions of amounts due and owing from the county to the Contractor for services previously rendered, shall be modified at the end of thirty days from the date of notice of such modification, provided both parties agree in writing to any modifications.

17. This Agreement can be terminated with a 30 day written notice by either party.

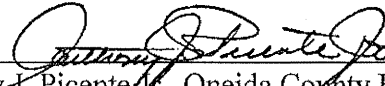
18. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto. No waiver, 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.

19. This Agreement shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

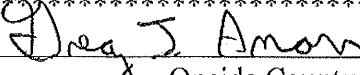
20. The obligations of the parties hereunder are conditioned upon the continued availability of Federal and/or New York State funds for the purposes set forth in this Agreement.

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

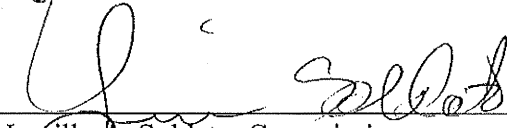
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Date: 12/21/12  
Oneida County Executive:   
Anthony J. Picente, Jr., Oneida County Executive

\*\*\*\*\*

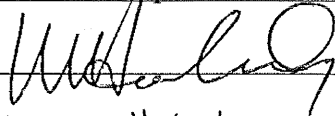
Approved as to Form   
Oneida County Attorney

\*\*\*\*\*

Date: 11/13/12  
Oneida County Department of Social Services:   
Lucille A. Soldato, Commissioner

\*\*\*\*\*

Date: 11/06/12  
Agency: House of the Good Shepherd

Authorized Signature: 

Print Authorized Name: William Holicky

Title: Executive Director

\*\*\*\*\*

House of the Good Shepherd  
 Non-Secure Detention  
 January 1, 2013 – December 31, 2013

**Expenses:**

Salaries	\$ 464,240
Fringe Benefits	\$ 133,627
Personal Service Contracts	<u>\$ 2,557</u>

**Total Personal Services** **\$ 600,424**

Admin & Overhead	\$ 88,262
Rent/Lease	\$ 6,389
Supplies	\$ 12,053
Postage/Shipping	\$ 566
Travel/Conference	\$ 1,725
Telephone/Utilities	\$ 14,340
Printing	\$ 0
Insurance	\$ 10,609
Award/Grants	\$ 0
Membership Dues	\$ 1,387
Professional Fees	\$ 0
Volunteer Stipend	\$ 0
Facility Repairs	\$ 4,805
Miscellaneous	<u>\$ 43,726</u>

**Total General Operating** **\$ 183,862**

Equipment Purchase/Rental	\$ 417
Equipment Maintenance	<u>\$ 3,681</u>

**Total Equipment Cost** **\$ 4,098**

Capital Projects	<u>\$ 0</u>
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**TOTAL EXPENSES** **\$ 788,384**

Minus In-Kind 1/8 <sup>th</sup> total cost	\$ 98,548
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**Oneida County DSS 7/8<sup>th</sup> total cost** **\$ 689,836**

Miscellaneous Expense Breakdown

January 1, 2013 through December 31, 2013

Miscellaneous Expenses:

Depreciation	\$ 7,576
Transportation & Wkrs Exp	\$ 5,403
Allowances – Parent	\$ 1,000
Activities – Children	\$ 1,166
POS	\$ 2,568
Food	\$ 22,009
Clothing	\$ 550
Interest	\$ 526
Administrative Expense	\$ 840
Books & Subscriptions	\$ 284
Personnel Adv & Publicity	\$ 156
Data Processing	\$ 1,648
Total Miscellaneous Expense	\$ 43,726

APPENDIX A

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 five 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 of 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 or 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 can not 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.

STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

Personnel

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable Federal, State and County laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants for, 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:
  - a. By certified or registered United States mail, return receipt requested;
  - b. By Facsimile transmission;
  - c. By personal delivery;
  - d. By expedited delivery service; or
  - e. By e-mail

Notices to the Department shall be addressed to the Program Manager assigned to this contract at the Address, Telephone Number, Facsimile Number or E-mail Address provided to the Contractor during contract development, or to such different Program Manager as the Department may for 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 register 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 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 contract, 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 contract will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
- 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 contract. The term "litigation" shall include commencing or threatening to commence a lawsuit joining or threatening to join as a party to ongoing litigation, or requesting any relief from 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.
  - 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
  - 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 Agreement, where applicable. The Contractor specifically agrees that he 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, 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 the 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
- j. If the Contractor intends to use materials, equipment or personnel paid for under this contract 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 closeout 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 years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this contract. 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:
  - a) 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.
  - b) Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
  - c) Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable
  - d) Receipt and Deposit of Advance and Reimbursements: Itemized bank stamped deposit slips, and a copy of the related bank statements.
  - e) 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 contract 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 years.

- n. By signing this contract, the Contractor certifies that within the past three 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 Contract. The actions that would potentially establish a basis for a finding by Department that the contractor is a non-responsible vendor include:
  - The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
  - The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.



- The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
- 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.
- 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
- The contractor has not paid all due and owed local, state and federal taxes to the proper authorities
- 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, Department may require as a condition precedent to entering into the contract 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 contract, the Contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, 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 contract, the contractor agrees to comply with State Tax Law section 5-a
- p. Contractors must maintain Workers Compensation Insurance in accordance with the Workers Compensation Law. If a contractor believes they are exempt from the Workers Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers Compensation Board website at:  
[http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp)
- q. All organizations that receive Federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that

involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance

## REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Office'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 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 ON 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 County 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 a 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, 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 other 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 a Employee Confidentiality Certification before any such employees and volunteers are permitted

access to any financial an/or client identifiable information concerning such youth.

- c. Contractor and any subsequent sub-contractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent sub - contractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for redisclosure in violations of State Law and Regulations.

The Contractor and any subsequent sub - contractor 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 Contractors, or it's sub-contractor'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 all Contract Staff shall complete Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this agreement and shall submit forms to the following address:

Oneida County Department of Social Services  
Contract Administration Office, 4<sup>th</sup> Floor  
800 Park Ave  
Utica, New York, 13501

## PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with Federal funds, the applicable federal funding agency, and (2) shall state that the

opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.

- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

#### PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the DEPARTMENT. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

#### TERMINATION

- a. This AGREEMENT may be terminated by the DEPARTMENT upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the

notice is received by the contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.

- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT 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 and 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 contract period or deem this contract 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 their 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 the contract. 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 Contract 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, or 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 :

- Recovery of any funds expended in violation of the AGREEMENT;
- Suspension of Payments
- Termination of the AGREEMENT; and/or
- Employment of another entity to fulfill the requirements of the 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 the 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 accordance with the Department, contractors may be placed on fiscal sanction when the Department identifies any of the following issues:

- The Contractor has received an Advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
- An Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
- The Contractor has not provided satisfactory services as required under the terms of

this or another Department agreement;

- The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
- A County, State or Federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
- The Contractor is not in compliance with State, Federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
- Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The contractor will be notified in advance of any proposed Fiscal sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

#### ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that 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 benefits. The Contractor agrees to 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 of omission of 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 to 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 the contract, 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 the contract, 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 the contract or based on any libelous or other unlawful matter contained in such data or written



materials in any form produced pursuant to the contract.

- b. The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit Corporation or entity other than a self-insured municipal Corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an amount not less than one million dollars (\$ 1,000,000). The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an amount not less than one million dollars (\$ 1,000,000). The Contractor 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 Department. Such coverage must be identified and entered upon a Standard Insurance Certificate or its acceptable substitute and be signed by the Contractor's Agency's insurance company, agent or broker.

The Contractor agrees that it will, at its own expense, at all times during the term of this agreement, maintain in force a policy of insurance which will insure against liability for property damage and/or injury/death with regard to any property of persons. The liability and property damage coverage of such insurance shall not be less than One Million dollars (\$ 1,000,000). The Contractor agrees to have the Department and Oneida County added to said insurance policies as named additional insureds, as their interest may appear, and to provide the Department and/or Oneida County with a certificate from said insurance company, or companies, showing coverage as herein before required, such certification to show the Department and the Oneida County as additional insureds and to provide that such coverage shall not be terminated without written prior notice to the to the Department and/or Oneida County of at least thirty (30) days.

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 the contract are at the discretion of the Department, which shall supply written notice of such renewal or termination within 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 local Department of Social Services. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attest they have not been disbarred 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 wavier, 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.

The House of the Good Shepherd  
NAME OF CONTRACTED AGENCY

William Holicky Executive Director  
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

 11/06/12  
SIGNATURE DATE

**Oneida County Department of Social Services  
Contractor and Contract Staff  
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of The House of the Good Shepherd, (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.

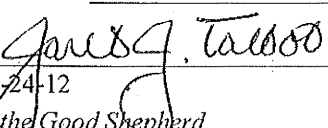
I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: William Holicky

Signature: 

Title: Executive Director

Date: November 6, 2012

Witness: 

Created 4/24/12

House of the Good Shepherd  
Non-Secure Detention

# 12902

January 1, 2013-December 31, 2013

**ADDENDUM**

THIS ADDENDUM, entered into on this 1st day of January, 2013, 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).

1606 Sunset Ave.  
Utica, NY 13502 (Oneida County)

- 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

2. modified by Congress or the Department of Health and Human Services; 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

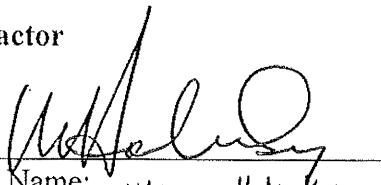
By:



Oneida County Executive

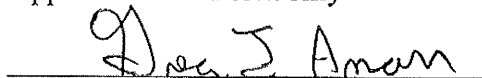
Contractor

By:



Name: William Holicky  
Executive Director  
The House of the Good Shepherd

Approved as to Form only



Oneida County Attorney

Anthony J. Picente, Jr.  
County Executive

Lucille A. Soldato  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES**  
County Office Building 800 Park Avenue Utica, NY 13501

April 15, 2013

FN 20 13-174



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

HEALTH & HUMAN SERVICES

**WAYS & MEANS**

Dear Mr. Picente:

Social Services requests a transfer for **2013** from the A6011.49537, Children and Adult Services, CAC contract account to A6011.102, temporary help account. A Social Welfare Examiner position which was budgeted as a contract position was filled under temporary help. Consequently, funds need to be transferred from the contract account to temporary help account.

Therefore, we are asking for your approval and, subsequent Board approval of the following transfer:

To:	A6011.102 Children & Adult Services – Temp Help	\$13,414
From:	A6011.49537 Children & Adult Services – Contracts	\$13,414

Sincerely,

Lucille A. Soldato  
Commissioner

Cc: T. Keeler

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

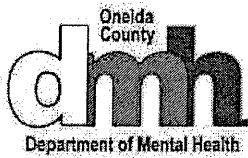
Anthony J. Picente, Jr.  
County Executive  
Date 4/29/13





Anthony J. Picente, Jr., County Executive

Linda M. Nelson, Commissioner



Phone: (315) 768-3660

Fax: (315) 768-3670

Website: www.ocgov.net

Email: mentalhealth@ocgov.net

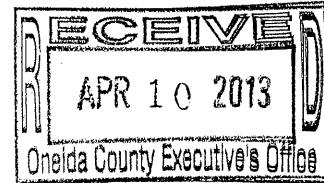
120 Airline Street  
Suite 200  
Oriskany, New York 13424

FN 20 13-175

April 9, 2013

HEALTH & HUMAN SERVICES

WAYS & MEANS



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

Dear County Executive:

I have been notified by New York State Office of Mental Health that the Oneida County Department of Mental Health will be receiving additional funding. This additional funding will be used to amend the current contract with Insight House Chemical Dependency Services, Inc. to provide additional services.

**There will be no additional cost to the County required in support of this request.**

I therefore request your Board's approval for the following **2013** supplemental appropriation:

TO:

AA# A4310.49515 - Insight House - Alcohol. .... \$ 18,200.

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

RA# A3490 - - - - State Aid --- OMH ..... \$ 18,200.

Respectfully submitted,

*Linda Nelson*  
Linda Nelson  
Commissioner of Mental Health

Attach.

CC: County Attorney  
Comptroller  
Budget



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

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

Date 4/11/13



County of Oneida

Undersheriff Robert Swenszkowski  
Chief Deputy Jonathan G. Owens

Chief Deputy Gabrielle O. Liddy  
Chief Deputy Dean Obernesser

*Sheriff Robert M. Maciol*

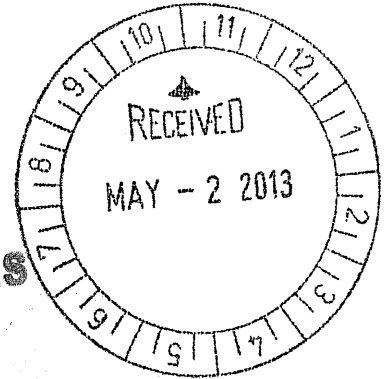
April 19, 2013

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

FN 20 13-176

**PUBLIC SAFETY**

**WAYS & MEANS**



Re: JPJ Electronic Communications

Dear County Executive Picente:

The Sheriff's Office is requesting approval of the renewal of a five year contract with JPJ Electronic Communications for the inspection, maintenance, repairs and other services to the communications equipment utilized by the Sheriff's Office. This covers approximately 190 pieces of radio equipment.

The contract is for a period of five years, payable in monthly installments of \$878.97.

If you find the enclosed contract acceptable, I am requesting your approval by way of signature. I would like to thank you for your time and diligent attention to this matter in advance. If you have any questions, require clarification or seek additional information from me in order to help you make a decision regarding my request, please do not hesitate to contact me at any point in time.

Sincerely,

*Robert M. Maciol*  
Robert M. Maciol  
Sheriff

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

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive  
Date: 5/2/13

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

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

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

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

**Oneida County Department/Office:** Sheriff's Office

**Competing Proposal:**  
**Only Respondent:**  
**Sole Source RFP: XXX**  
**Other:**

**ONEIDA COUNTY BOARD OF LEGISLATORS**

**Name of Proposing Organization:** JPJ Electronic Communications, Inc.

**Title of Activity or Service:** Communications Equipment Service Agreement

**Proposed Dates of Operation:** April 1, 2013 – April 1, 2018

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

**Summary Statements**

**1) Narrative Description of Proposed Services:** Equipment Service Agreement for approximately 190 pieces of equipment

**2) Program/Service Objectives and Outcomes:** Service agreement for approximately 190 pieces of radio equipment currently utilized by the Sheriff's Office. This includes inspection, maintenance, repairs and other services.

**3) Program Design and Staffing:**

**Total Funding Requested:** \$52,738.20 over a five year period

**Account #:** A3120.493

**Oneida County Dept. Funding Recommendation:** Recommend Funding

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

**Cost Per Client Served:**

**Past Performance Data:** Good

**Oneida County Department/Office Staff Comments:** This is a 5 year contract with JPJ with no cost increase in that time frame.

**Communications Equipment Service Agreement**

**JPJ Electronic Communications, Inc.** (JPJ) agrees to furnish inspection, maintenance, repairs and other services to the equipment listed on the attached or any amended schedule, at rates listed in such schedules, which will be performed in accordance with the terms and conditions specified on this and the reverse side of this agreement, and any future amendments made to this agreement.

SEE SEPARATE LIST FOR EQUIPMENT COVERED UNDER THIS AGREEMENT

**PLAN TYPE:**     Basic Service     Extended Service

**SPECIAL PROVISIONS:**

**NO SPECIAL PROVISION**

**EFFECTIVE: 12:01 AM, April 1, 2013, AND CONTINUING UNTIL April 1, 2018, UNLESS CANCELED BY EITHER PARTY AS PROVIDED IN PARAGRAPH 9;**

**ONEIDA COUNTY SHERIFF'S DEPARTMENT**

agrees to pay JPJ monthly for such services in accordance with the terms and conditions specified in this agreement and any attached schedules or amendments.

AGREED:

JPJ ELECTRONIC COMMUNICATIONS, INC.

By: *John F. Kautz*  
Title: *President*  
Date: 4/17/13

AGREED:

ONEIDA COUNTY, NEW YORK

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

10/24/2012

## Oneida County Sheriff Dept. Radio Inventory

Make	Model	Style	Serial	Rate
MOTOROLA	EX500	PORTABLE	004HDU4588	\$3.81
MOTOROLA	EX500	PORTABLE	004HDU4515	\$3.81
MOTOROLA	EX500	PORTABLE	004HDU4544	\$3.81
MOTOROLA	EX500	PORTABLE	004HESJ405	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5240	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5250	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5271	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5275	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5302	\$3.81
MOTOROLA	EX500	PORTABLE	004HEW5325	\$3.81
MOTOROLA	EX500	PORTABLE	004TCQB173	\$3.81
MOTOROLA	EX500	PORTABLE	004TCQB181	\$3.81
MOTOROLA	EX500	PORTABLE	004TDA0884	\$3.81
MOTOROLA	EX500	PORTABLE	004TDA0887	\$3.81
MOTOROLA	EX500	PORTABLE	004TDA0900	\$3.81
MOTOROLA	EX500	PORTABLE	004TDA0905	\$3.81
MOTOROLA	EX500	PORTABLE	004TGW0340	\$3.81
MOTOROLA	EX500	PORTABLE	004TGW0411	\$3.81
MOTOROLA	EX500	PORTABLE	004HESD887	\$4.23
MOTOROLA	EX500	PORTABLE	004HESD899	\$4.23
MOTOROLA	EX500	PORTABLE	004HESD957	\$4.23
MOTOROLA	MCS 2000	MOBILE	523CEY0223	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0224	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0225	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0225	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0227	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0418	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0419	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0420	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY0421	\$3.06
MOTOROLA	MCS 2000	MOBILE	523CEY5419	\$3.06
ERICSSON	MRK	PORTABLE	9155841	\$7.48
MOTOROLA	MT2000	PORTABLE	15E0582401	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0535	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0537	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0538	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0539	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0540	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0541	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0542	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0544	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0545	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0545	\$3.75

10/24/2012

## Oneida County Sheriff Dept. Radio Inventory

MOTOROLA	MT2000	PORTABLE	355ATN0547	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0548	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0549	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN054X	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0550	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0552	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0553	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0554	\$3.75
MOTOROLA	MT2000	PORTABLE	355ATN0555	\$3.75
MOTOROLA	MT2000	PORTABLE	355AWC0235	\$3.75
MOTOROLA	MT2000	PORTABLE	355AWC0237	\$3.75
MOTOROLA	MT2000	PORTABLE	355AWC0238	\$3.75
MOTOROLA	MT2000	PORTABLE	355AYU5152	\$3.75
MOTOROLA	MT2000	PORTABLE	355CDC0457Z	\$3.75
MOTOROLA	MT2000	PORTABLE	355CDC0458Z	\$3.75
MOTOROLA	MT2000	PORTABLE	355CDC0459Z	\$3.75
MOTOROLA	MT2000	PORTABLE	355CDS0344	\$3.75
MOTOROLA	MT2000	PORTABLE	355CEL0102	\$3.75
ERICSSON	ORION	MOBILE	1714594	\$3.75
ERICSSON	ORION	MOBILE	1721302	\$3.75
ERICSSON	ORION	MOBILE	1751584	\$3.75
ERICSSON	ORION	MOBILE	1751585	\$3.75
MA/COM	ORION	MOBILE	9008757	\$3.75
MA/COM	ORION	MOBILE	9010224	\$3.75
MA/COM	ORION	MOBILE	9010948	\$7.73
MA/COM	ORION	MOBILE	9010970	\$7.73
MA/COM	ORION	MOBILE	9010971	\$7.73
MA/COM	ORION	MOBILE	9011007	\$7.73
MA/COM	ORION	MOBILE	9011009	\$7.73
MA/COM	ORION	MOBILE	9011923	\$7.73
MA/COM	ORION	MOBILE	9011924	\$7.73
ERICSSON	ORION	MOBILE	98495388	\$7.73
ERICSSON	ORION	MOBILE	98495535	\$7.73
ERICSSON	ORION	MOBILE	98495537	\$7.73
KENWOOD	TK-2170	PORTABLE	70500571	\$2.18
KENWOOD	TK-2170	PORTABLE	70500572	\$2.18
KENWOOD	TK-2170	PORTABLE	70500574	\$2.18
KENWOOD	TK-2170	PORTABLE	70500575	\$2.18
KENWOOD	TK-2170	PORTABLE	B1300982	\$2.18
KENWOOD	TK-2170	PORTABLE	B1300983	\$2.18
KENWOOD	TK-290K	PORTABLE	00300214	\$2.18
KENWOOD	TK-290K	PORTABLE	00300220	\$3.54
KENWOOD	TK-290K	PORTABLE	80500013	\$3.54
KENWOOD	TK-290K	PORTABLE	80500014	\$2.18

10/24/2012

## Oneida County Sheriff Dept. Radio Inventory

KENWOOD	TK-290K	PORTABLE	80500172	\$3.75
KENWOOD	TK-290K	PORTABLE	80500299	\$3.75
KENWOOD	TK-290K	PORTABLE	80500300	\$3.75
KENWOOD	TK-290K	PORTABLE	80701082	\$3.75
KENWOOD	TK-290K	PORTABLE	80701083	\$3.75
KENWOOD	TK-290K	PORTABLE	80701084	\$3.75
KENWOOD	TK-290K	PORTABLE	81100292	\$3.75
KENWOOD	TK-290K	PORTABLE	81100293	\$3.75
KENWOOD	TK-290K	PORTABLE	91200151	\$3.75
KENWOOD	TK-290K	PORTABLE	91200152	\$3.75
KENWOOD	TK-290K	PORTABLE	91200153	\$3.54
KENWOOD	TK-290K	PORTABLE	91200154	\$3.54
KENWOOD	TK-290K	PORTABLE	91200155	\$3.54
KENWOOD	TK-290K	PORTABLE	91200150	\$3.54
KENWOOD	TK-290K	PORTABLE	A8B00072	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102584	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102715	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102717	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102718	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102745	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102747	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102748	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102749	\$3.54
KENWOOD	TK-290K	PORTABLE	A9102750	\$3.54
KENWOOD	TK-290K	PORTABLE	B0200210	\$3.54
KENWOOD	TK-290K	PORTABLE	B0200212	\$3.54
KENWOOD	TK-290K	PORTABLE	B0200213	\$3.54
KENWOOD	TK-290K	PORTABLE	B0200214	\$3.54
KENWOOD	TK-290K	PORTABLE	B0200215	\$3.54
KENWOOD	TK-290K	PORTABLE	B1400191	\$3.54
KENWOOD	TK-290K	PORTABLE	B1400192	\$3.54
KENWOOD	TK-290K	PORTABLE	B1400193	\$3.54
KENWOOD	TK-290K	PORTABLE	B1400195	\$3.54
KENWOOD	TK-290K	PORTABLE	B1C00701	\$3.54
KENWOOD	TK-290K	PORTABLE	B1C00702	\$3.54
KENWOOD	TK-7150K	MOBILE	A9300071	\$3.06
KENWOOD	TK-7150K	MOBILE	A9300072	\$3.06
KENWOOD	TK-7150K	MOBILE	A9300073	\$3.06
KENWOOD	TK-7150K	MOBILE	A9300074	\$3.06
KENWOOD	TK-7350HVK	MOBILE/BASE	B1200982	\$3.06
KENWOOD	TK-7350HVK	MOBILE/BASE	B1200983	\$3.16
KENWOOD	TK-7350HVK	MOBILE/BASE	B1200984	\$3.16
KENWOOD	TK-790BK	MOBILE	00100278	\$6.01
KENWOOD	TK-790BK	MOBILE	00200121	\$6.01

10/24/2012

## Oneida County Sheriff Dept. Radio Inventory

KENWOOD	TK-790BK	MOBILE	00200122	\$6.01
KENWOOD	TK-790BK	MOBILE	00200123	\$6.01
KENWOOD	TK-790BK	MOBILE	200352	\$6.01
KENWOOD	TK-790BK	MOBILE	200355	\$6.01
KENWOOD	TK-790BK	MOBILE	500154	\$6.01
KENWOOD	TK-790BK	MOBILE	500155	\$6.01
KENWOOD	TK-790BK	MOBILE	500157	\$6.01
KENWOOD	TK-790BK	MOBILE	500158	\$6.01
KENWOOD	TK-790BK	MOBILE	A9100259	\$6.01
KENWOOD	TK-790BK	MOBILE	A9100252	\$6.01
KENWOOD	TK-790BK	MOBILE	A9100253	\$6.01
KENWOOD	TK-790BK	MOBILE	A9A00111	\$6.01
KENWOOD	TK-790BK	MOBILE	A9A00112	\$6.01
KENWOOD	TK-790BK	MOBILE	A9A00113	\$6.01
KENWOOD	TK-790BK	MOBILE	A9A00114	\$6.01
KENWOOD	TK-790BK	MOBILE	B0200081	\$6.01
KENWOOD	TK-790BK	MOBILE	B0200084	\$6.01
KENWOOD	TK-790BK	MOBILE	B0200085	\$6.01
KENWOOD	TK-790BK	MOBILE	B0400221	\$6.01
KENWOOD	TK-790BK	MOBILE	B0400222	\$6.01
KENWOOD	TK-790BK	MOBILE	B0400223	\$6.01
KENWOOD	TK-790BK	MOBILE	B0A00014	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00045	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00047	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00048	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00049	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00050	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00085	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00087	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00088	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00089	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00090	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00091	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00092	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00093	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00094	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00095	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00095	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00097	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00098	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00099	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00100	\$6.01
KENWOOD	TK-790BK	MOBILE	B0C00155	\$6.01
KENWOOD	TK-790BK	MOBILE	B1100152	\$6.01



10/24/2012

Oneida County Sheriff Dept. Radio Inventory

KENWOOD	TK-790BK	MOBILE	B1500011	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500012	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500013	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500014	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500015	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500037	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500038	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500039	\$6.01
KENWOOD	TK-790BK	MOBILE	B1500040	\$6.01
KENWOOD	TK-790BK	MOBILE	B2200011	\$6.01
KENWOOD	TK-790BK	MOBILE	B2200012	\$6.01
KENWOOD	TK-790BK	MOBILE	B2200013	\$6.01
KENWOOD	TK-790BK	MOBILE	B2200014	\$6.01
KENWOOD	TK-790BK	MOBILE	B2200015	\$6.01
KENWOOD	TK-790BK	MOBILE	B2300055	\$6.01
KENWOOD	TKR-7510PS	REPEATER	B0B00009	\$6.01
KENWOOD	TKR-7510PS	REPEATER	B0B00003	\$6.01
KENWOOD	DUPLEXER	DUPLEXER	WITH - REPEATER	\$0.00
KENWOOD	DUPLEXER	DUPLEXER	WITH - REPEATER	\$0.00
				\$878.97

## ADDENDUM

THIS ADDENDUM, entered into on this 18th day of April, 2013, 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 Legislators 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):

JPJ Electronic Communications, Inc. Service Facility at 1 West Whitesboro Street, Yorkville, New York, and other fixed equipment sites located with-in Oneida County, New York

- 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.

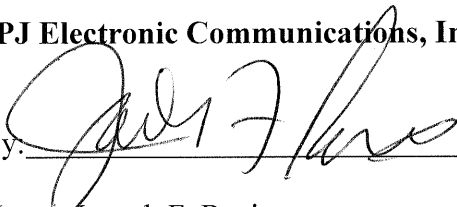
IN WITNESS WHEREOF, the parties hereto have signed this document on the day and year first above written.

**County of Oneida**

**Contractor:**

**JPJ Electronic Communications, Inc.**

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

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

Oneida County Executive

Name: Joseph F. Rositano  
Title: President

Approved as to Form only

\_\_\_\_\_

Oneida County Attorney



Undersheriff Robert Swenszkowski  
Chief Deputy Jonathan G. Owens

Chief Deputy Gabrielle O. Liddy  
Chief Deputy Dean Obernesser

*Sheriff Robert M. Maciol*

May 1, 2013

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

FN 20 13-127



**PUBLIC SAFETY**

**WAYS & MEANS**

Dear County Executive Picente:

The Sheriff's Office will be receiving new vehicles and with those vehicles, the office must purchase and equip them appropriately. The money is available in our budget but needs to be transferred from the supply account to the equipment account at the request of the Budget Director. In order to preserve the vehicle fleet management plan my administration implemented in 2011, along with the 2013 budget constraints, I am respectfully requesting the following 2013 supplemental appropriation:

Increase:	A3110.2512	Automotive Equipment	\$13,600.00
Decrease:	A3110.451	Automotive Supplies	\$13,600.00

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

Sincerely,

Robert M. Maciol, Sheriff

Cc: Tom Keeler, Budget Director

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

Anthony J. Picente, Jr.  
County Executive

Date 5/3/13

**Administrative Office**

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

**Law Enforcement Division**

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

**Correction Division**

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

**Civil Division**

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



Sheriff Robert M. Maciol  
Undersheriff Robert Swenszkowski

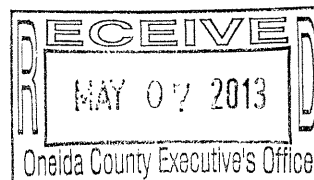
Chief Deputy Gabrielle O. Liddy  
Chief Deputy Jonathan G. Owens

May 3, 2013

FN 20 13-178

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

**PUBLIC SAFETY**



**WAYS & MEANS**

Dear County Executive Picente,

The Commissary Account is offset by revenues from inmates in the Correctional Facility. Per the New York State Commission of Corrections Minimum Standards 7016.1c "profits resulting from Commissary sales shall be deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation."

In 2012, there was a profit of \$104,865.00 which has been rolled over into 2013, as indicated in the attached audit trail for revenue account A1525. Annually, a supplemental appropriation is prepared for the profit to fund programs, equipment, or supplies for the purposes set forth by the Commission. In 2013, the surplus will be used for horticulture programming, educational services and supplies, a life skills program, sewing projects, recreational items, worker pod, library, notary and other services.

The Supplemental Appropriation request is as follows:

A3152.211	Office Equipment	\$ 12,000.00
A3152.212	Computer Hardware	\$ 10,000.00
A3152.271	Recreation Equipment	\$ 15,000.00
A3152.295	Other Equipment	\$ 20,000.00
A3152.411	Office Supplies	\$ 2,000.00
A3152.454	Travel Meetings, Seminars	\$ 1,865.00
A3152.471	Recreational Supplies	\$ 2,000.00
A3152.472	Recreational Activities	\$ 2,000.00
A3152.491	Other Materials and Supplies	\$ 16,000.00
A3152.492	Computer Software & Licenses	\$ 2,000.00
A3152.493	Maintenance, Repair, Service	\$ 7,000.00
A3152.4951	Other Expenses	\$ 15,000.00
<b>Total Expenses:</b>		<b>\$ 104,865.00</b>

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

Anthony J. Picente, Jr.  
County Executive  
Date 5/7/13

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

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6075 Judd Road Oriskany, NY 13424  
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Fax (315) 765-2327

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

Office of the Sheriff



Sheriff Robert M. Maciol  
Undersheriff Robert Swenszkowski

Chief Deputy Gabrielle O. Liddy  
Chief Deputy Jonathan G. Owens

A1525 Revenue Prisoner Commissary \$ 104,865.00

**Total Revenue: \$ 104,865.00**

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Maciol", written over a large, stylized flourish.

Robert M. Maciol,  
Oneida County Sheriff

CC: Tom Keeler, Budget

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**Administrative Office**  
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Voice (315) 798-5862  
Fax (315) 798-6495





# ONEIDA COUNTY EMERGENCY COMMUNICATIONS

Anthony J. Picente., County Executive  
120 Base Rd. Oriskany, NY 13424

Kevin W. Revere, Director  
(315) 765-2526 Fax (315) 765-2529

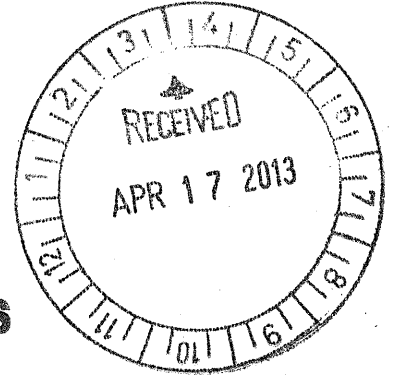
February 21, 2013

FN 20 03-179

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

**PUBLIC SAFETY**

**WAYS & MEANS**



Dear County Executive Picente:

Enclosed please find three (3) copies of the renewal of Oneida County's IamResponding.com Subscription Agreement with Emergency Services Marketing Corporation, Inc. for the term of February 15, 2013 through February 14, 2015.

The subscription will allow Homeland Security money totaling \$72,970 to directly fund the subscription and permit the county to continue using IamResponding.com services.

IamResponding.com provides unlimited access to all responder information of the fifty-eight (58) agencies and county-wide specialty teams identified in Exhibit A of the Subscription Agreement. This information is needed by Oneida County dispatchers, County Fire, EMS Coordinators, and others to reduce response times in emergency situations.

I respectfully request that you sign this contract. On behalf of Oneida County Emergency Communications, I would like to thank you for your continued support.

Sincerely,

Kevin Revere  
Director of Emergency Services

Enclosures

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

Anthony J. Picente, Jr.  
County Executive

Date 4/17/13

A 469

Oneida Co. Department Emergency Services

Competing Proposal \_\_\_\_\_

Only Respondent \_\_\_\_\_

Sole Source RFP X

**Oneida County Board of Legislators**  
**Contract Summary**

**Name of Proposing Organization:** Emergency Services Marketing Corp., Inc.  
IamResponding.com  
P.O. Box 93  
Dewitt, NY 13214-0093

**Title of Activity or Services:** Renewal of subscription agreement for IamResponding.com

**Proposed Dates of Operations:** February 15, 2013 – February 14, 2015

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

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services:**

Fire, Law Enforcement, and EMS Interactive Notification Interface

**2). Program/Service Objectives and Outcomes**

Provide unlimited access to track response and availability of responding emergency services personnel.

**3). Program Design and Staffing Level**

N/A

**Total Funding Requested:** \$72,970

**Oneida County Dept. Funding Recommendation:**

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

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

**Past performance Served:** N/A

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



## SUBSCRIPTION AGREEMENT

This Agreement is entered into by and between **Emergency Services Marketing Corp., Inc.** ("ESMC"), as the duly licensed provider of **IamResponding.com**, and **Oneida County, New York** ("Subscriber"). Pursuant to the Terms and Conditions set forth herein, ESCMC agrees to provide Subscriber with access to **IamResponding.com**, for the term and at the cost set forth herein. Subscriber is solely responsible for obtaining its' own internet connection and hardware.

1. Term. The Term of this subscription shall commence on **February 15, 2013** ("Commencement Date"), and shall terminate **February 14, 2015**, unless extended by an Amendment to this agreement signed by both parties hereto. Subscriber's access to **IamResponding.com** shall not be provided by ESCMC until ESCMC has received this signed Subscription Agreement from Subscriber.
2. Confidentiality. The cost provisions set forth herein constitute proprietary information of ESCMC, are to be treated as confidential by Subscriber, and are to be shared with only such other municipal officials as are deemed by Subscriber to have a specific need to know.
3. Subscription Fees.
  - a. Base Subscription Fee: Subscriber shall pay to ESCMC the total sum of **\$68,170.00**, due on or before the Commencement Date, without invoice.
  - b. Set-up Fee. Subscriber shall pay to ESCMC a one time set up fee of **\$0**, due on or before the Commencement Date, without invoice.
  - c. Telephone Charges. Subscriber shall pay to ESCMC the sum of **\$4,800.00**, due on or before the Commencement Date, without invoice.

The first **100,000 calls per year** that are dialed into **IamResponding.com**'s modified caller identification based system<sup>1</sup> by members of the 36 agencies teams to be identified on the county implementation plan **shall be paid for by Subscriber with the Base Subscription Fee set forth above, at a rate of \$2,400 per year (\$4,800 total)**. Unused call allotments shall not roll over into subsequent years. Each additional telephone call to the system's modified caller identification based system (after the first 100,000 such calls per year) made by members of the agencies and teams identified on the county implementation plan, and each telephone call made to the system's modified caller identification based system by members of any additionally added agencies or teams shall

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<sup>1</sup> PIN Number recognition and text-to-voice functionality are not currently included within the services provided within this Subscription, and, if and when offered, shall be subject to additional telephone charges.

be billed annually at the rate of \$.028 (2.8 cents) per call. These additional per-call costs shall be capped at no more than \$300 per agency, per year.

4. Payment. All payments required pursuant to this Subscription Agreement shall be by official check made payable to Emergency Services Marketing Corp., Inc. (EIN 20-578-7005), and shall be delivered to: P.O. Box 93, Dewitt, New York 13214.
5. Scope of Subscription. The base subscription fee provides subscription services to **Fifty-eight (58)** agencies and county-wide specialty teams, which are as identified on the county implementation plan attached hereto as Exhibit "A." Additional agencies and county-wide specialty teams may be added during the same subscription Term at the following rates:

Each additional agency that is dispatched to MORE than 100 events per year:

3 year term: \$650/year\*\*

Each additional agency that is dispatched to LESS than 100 events per year:

3 year term: \$270/year\*\*

\*\*Plus a one time set up fee of \$35 per agency or team, and telephone call charges as set forth in Section 3(c).

For the purpose of this Subscription Agreement, an "agency" is defined as a single entity with the ability to view all responders of each company and station of that entity on a single sub-site of the IamResponding.com system. Each entity which desires to view responders of its companies or stations on separate sub-sites of the system shall be treated as a separate agency for each sub-site established. For example, a fire department with two stations that desires to have each of its' monitors display every responder to every event on a single sub-site of IamResponding.com constitutes one agency. A fire department with two stations that wants to view the separate responders assigned to each station on two separate sub-sites will be treated as two agencies. Multiple agencies and teams shall not share subscription services.

6. Subscription Services.
  - a. Included Services. Unlimited access to all responder information of the agencies and teams identified on Exhibit "A" by Oneida County dispatchers, County Fire & EMS Coordinators and such others as may be designated by the Subscriber; the establishment of separate, designated sub-sites for each included agency and team; the set-up of a consolidated dispatch center sub-site of IamResponding.com for monitoring by the dispatch center of each of the agencies and teams identified on Exhibit "A" on a single system; all current functions of IamResponding.com; 24x7x365 email technical support to up to three designated points of contact on the county level, and up to two designated points of contact at each agency and team (as also set forth on Exhibit "A"); set up of program options for each agency and team; periodic system upgrades; provisioning of toll-free access numbers for each agency and team.
  - b. Excluded Services. Input or maintenance of individual member profiles (to be performed by individual agencies and/or teams); user-end hardware, software, cabling or monitors; installation, maintenance or trouble-shooting at user sites. If and when outbound text-to-voice functionality is added as a feature of IamResponding.com, the cost of such outbound telephone calls is not included within this Subscription Agreement, and shall be subject to a separate agreement at that time in order to enable that function.

7. [Intentionally deleted].
8. Terms of Use. This Subscription Agreement expressly adopts and incorporates the Terms of Use of IamResponding.com, including all disclaimers of warranties set forth therein. Subscriber agrees to abide by and adhere to all such Terms of Use. The Terms of Use are posted on the IamResponding.com site at [www.iamresponding.com](http://www.iamresponding.com), and may be revised from time to time, without notice, by and in the sole discretion of ESMC. By logging into or utilizing IamResponding.com in any manner, Subscriber consents, and agrees to adhere, to the Terms of Use of IamResponding.com in effect at the time of use.
9. Default. If Subscriber defaults in any respect whatsoever with regard to the terms and conditions of this Subscription Agreement or the Terms of Use of IamResponding.com, ESMC shall have the right, in its sole discretion, to suspend or terminate Subscriber's subscription to IamResponding.com, and to suspend or terminate Subscriber's access to IamResponding.com. Any payments not timely made shall be considered a material default by Subscriber.
10. System Modifications. Subscriber understands that ESMC reserves the right to modify the appearance, content and/or functionality of IamResponding.com at any time, and in its sole discretion. In no event shall any core functionality of IamResponding.com be eliminated.
11. Website Links. Subscriber, and each agency and team identified on Exhibit "A", shall add a link to [www.iamresponding.com](http://www.iamresponding.com) on any website that they maintain for official business.
12. Sales Representatives. Subscriber warrants that its subscription to ERRS was not procured through the efforts of any sales person other than \_\_\_\_\_ (None) \_\_\_\_\_ (insert "none" if no sales person was involved in procuring this subscription).
13. Technical Support. ESMC shall provide Subscriber with 24x7x365 email technical support. Support requests shall be addressed to [support@emergencysmc.com](mailto:support@emergencysmc.com). Subscriber shall designate no more than three (3) County individuals as the County's sole points of contact for support inquiries, and each agency set forth on Exhibit "A" shall identify two (2) individuals as their sole points of contact for support inquiries. ESMC shall exercise reasonable efforts to reply to all support inquiries, but shall only be obligated to reply to support inquiries if they come from one or more of the designated support contacts. Subscriber understands that ESMC will use its best efforts to classify the level of urgency of each support request, that such classifications shall be made in the sole discretion of ESMC, and that the response time for each support request will be dependent upon such classification.
14. Service Interruptions. Subscriber understands that there may be periodic service interruptions to ERRS as the result of events or circumstances beyond the control of ESMC. ESMC has taken, and will continue to exercise, commercially reasonable efforts to mitigate such interruptions, and maintains a fully redundant, fault-tolerant network for the provision of services related to the ERRS.
15. Promotion. Subscriber consents to the utilization by ESMC of the existence of this subscription in promotional materials developed and disseminated by ESMC, including the listing of Subscriber and each agency identified on Exhibit "A" as a subscriber/user of ERRS.
16. Severability. If all or part of any provision of this Subscription Agreement or of the Terms of Use shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such

portion(s) of the provision(s) as are held to be illegal, invalid or unenforceable shall be construed to reflect the parties' original intent, and the remaining portions and provisions shall remain in full force and effect.

17. Counterparts. This Subscription Agreement may be signed in counterparts, each of which, when combined, shall constitute the whole agreement.
18. Entire Agreement. This Subscription Agreement and the Terms of Use constitute the entire agreement between Subscriber and ESMC and govern Subscriber's use of ERRS, superseding any prior agreements between Subscriber and ESMC. In the event of a specific conflict between the terms and conditions of this Subscription Agreement and the Terms of Use of ERRS, the terms and conditions of this Subscription Agreement shall control.
19. Warranty of Authority. Subscriber warrants that the individual signing this Agreement possesses all authority and consents necessary to enter into this Subscription Agreement on behalf of Subscriber.

Printed Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Official Title of Person Signing: \_\_\_\_\_

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

Emergency Services Marketing Corp., Inc.

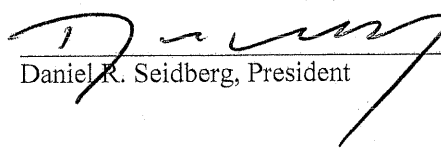
By:  Date: 2/19/13  
Daniel R. Seidberg, President

Exhibit "A"

County Implementation Plan

BOONVILLE AMBULANCE SVC. (NY)
BOONVILLE VOL. FIRE CO. INC. (NY)
BRIDGEWATER FIRE CO. (NY)
CAMDEN FIRE DEPARTMENT (NY)
CASSVILLE FIRE DEPARTMENT (NY)
CENTRAL ONEIDA COUNTY VAC (NY)
CLARK MILLS VFD (NY)
CLAYVILLE FIRE DEPARTMENT (NY)
CLINTON FIRE DEPARTMENT (NY)
DEANSBORO FD (NY)
DEERFIELD FIRE DEPARTMENT (NY)
DURHAMVILLE FIRE DEPARTMENT (NY)
FLORENCE VOL. FIRE CO. (NY)
FLOYD VOLUNTEER FIRE DEPARTMENT (NY)
FORESTPORT FIRE FIGHTERS (NY)
HOLLAND PATENT HOSE COMPANY (NY)
KUYAHOORA VOL. AMB. (NY)
LAKE DELTA VFD (NY)
LEE CENTER FIRE DEPT (NY)
MAYNARD FIRE DEPT (NY)
MCCONNELLSVILLE VFD (NY)
NEW HARTFORD FIRE DEPT (NY)
NEW LONDON FIRE DEPARTMENT (NY)
NEW YORK MILLS FD (NY)
NORTH BAY FIRE DEPARTMENT (NY)
ONEIDA CASTLE FIRE DEPARTMENT (NY)
ONEIDA CTY EMERGENCY SERVICES
ORISKANY FALLS FIRE & EMS (NY)

ORISKANY FIRE DEPT (NY)
OTTER LAKE FD (NY)
PARIS HILL FIRE DEPT (NY)
POLAND VOL. FIRE CO. INC. (NY)
PROSPECT VOLUNTEER AMBULANCE (NY)
PROSPECT VOLUNTEER FIRE CO. (NY)
REMSEN VOL FIRE DEPT (NY)
ROME FIRE DEPARTMENT (NY)
SAUQUOIT VOL FIRE CO. (NY)
SHERRILL-KENWOOD VOL FIRE DEPT (NY)
STANWIX HEIGHTS FIRE DEPARTMENT (NY)
STITTVILLE FIRE DEPARTMENT (NY)
SYLVAN BEACH FD (NY)
TABERG VFC, INC. (NY)
TOWN OF CAMDEN AMBULANCE (NY)
UTICA FIRE DEPARTMENT (NY)
VERNON CENTER FIRE DEPARTMENT (NY)
VERONA FIRE DEPARTMENT (NY)
VFC OF VERNON, INC. (NY)
VFC OF WESTERN (NY)
VIENNA FD INC. (NY)
WATERVILLE AMBULANCE (NY)
WATERVILLE FD (NY)
WEST LEYDEN FD (NY)
WESTMORELAND FD (NY)
WHITESBORO FIRE DEPT (NY)
WILLOWVALE FIRE COMPANY INC (NY)
WOODGATE VFD (NY)
YORKVILLE FD (NY)

*Cleveland FD  
Kil*



## **TERMS OF USE AGREEMENT FOR iamResponding.com**

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, ACCESSING, LOGGING INTO OR USING THE EMERGENCY RESPONDER REPLY SYSTEM.**

**BY LOGGING INTO THE EMERGENCY RESPONDER REPLY SYSTEM OR USING ANY COMPONENT OR SERVICES OF THE EMERGENCY RESPONDER REPLY SYSTEM, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT LOG INTO OR USE ANY COMPONENT OR SERVICES OF THE EMERGENCY RESPONDER REPLY SYSTEM.**

### **INTRODUCTION.**

Through the iamresponding.com site, Emergency Services Marketing Corp., Inc. ("ESMC") makes available a variety of resources and services (collectively the "Services") of iamResponding.com, which is also known as the Emergency Responder Reply System ("ERRS"). These Services are subject to the following terms and conditions ("Terms and Conditions"), which are legal obligations. The Services include any updates, new features, enhancements and the addition of new Web properties. ESMC does not discriminate on the basis of race, ethnicity, national origin, age, gender, religion, sexual orientation or any other protected status.

### **ACCEPTANCE OF TERMS AND CONDITIONS.**

By logging into or using the Services, you agree to be bound by, and to comply with, these Terms and Conditions and any other rules or guidelines which ESMC may implement for any individual Web site or Service. ESMC reserves the right to update these Terms and Conditions at any time without advance notice to you. You may review the most current version of the Terms and Conditions prior to logging into the Services by clicking the hypertext link located at the bottom of our home page ([www.iamresponding.com](http://www.iamresponding.com)), by clicking the hypertext link located on the Subscriber Log-in page accessed from our home page, or by requesting a printed copy from ESMC.

### **CONDITIONS AND RESTRICTIONS ON USE.**

If you fail to comply with the Terms and Conditions, or if you engage in (or allow any third party to engage in) any of the following activities, ESMC may terminate your use of the Services: (a) using the Services for any unlawful purpose; (b) using the Services for any purpose prohibited by the Terms and Conditions; (c) engaging in any conduct that ESMC, in its sole discretion, believes is or may be harmful to another user or to any other party, directly or indirectly; (d) violating any foreign, federal, state or local law or regulation; (e) using the Services in a manner that could impair, disable, overburden or damage any ESMC server, or the network(s) connected to any ESMC server, or

interfere with any other party's use and enjoyment of any Services; (f) attempting to gain unauthorized access to any Services, other accounts, computer systems or networks connected to any ESMC server or to any of the Services, through hacking, password mining or any other means. If you breach this Agreement or any subscription agreement with ESMC pertaining to ERRS, your right to use the Services will terminate immediately and without notice, but all provisions of this and any subscription agreements, except grants of licenses and/or rights of use of the Services, will survive termination and continue in effect. Your obligations under this Agreement and any Subscription Agreements will survive the termination of your subscription and of your authorization to use the Services.

In addition, ESMC may terminate any user's access for any reason or no reason at all in its sole discretion, with or without prior notice.

### **REGISTRATION AND PRIVACY.**

Certain of the Services may require you to register with and/or subscribe to the Services. You will provide us with current, complete and accurate information as prompted by the applicable registration/subscription form(s). You agree to update this data when necessary or requested to keep it current and accurate. You will be solely responsible for maintaining in confidence your master password and master user name. You will be solely responsible for choosing and maintaining in confidence the passwords and user names of your members and/or employees. You are fully responsible for all activities that occur under your master user password, the passwords of your employees, agents and/or members, and your account. ESMC will not be responsible should someone else use your password(s) or account, and you agree to notify ESMC promptly of any unauthorized use of your account or other breach of security.

All registrations and subscriptions become ESMC's exclusive property, and ESMC reserves the right to use all registrations, subscriptions and personally identifiable user information, subject to ESMC's Privacy Policy, which is available from ESMC upon request.

### **DISCLAIMER OF WARRANTY**

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Subscription agreements entered into with ESMC for ERRS and the Services do not confer any title, property rights, interest or ownership to subscribers, and convey only a nonexclusive, nontransferable and temporary authorization to utilize the Services.

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Trademarks shall be used in accordance with accepted trademark practice, including identification of trademark owners' names. Trademarks may only be used to identify printed output produced by ERRS and its Services, and such use of any trademark does not give you any right of ownership in that trademark. "Emergency Responder Reply System", "ERRS", and "iamresponding" are registered and/or common law trademarks of ESMC or its suppliers. Except as expressly stated above, this Agreement does not grant you any intellectual property rights in ERRS or its Services. Notifications of claimed copyright infringement should be sent to ESMC's copyright agent.

### **CONFIDENTIALITY.**

You acknowledge and agree that the Services and documentation constitute and contain valuable proprietary products and trade secrets of ESMC and/or its suppliers,

embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, you agree to treat (and take precautions to ensure that your employees, agents and members treat) the Services and documentation as confidential, and to protect the confidentiality thereof, at all times exercising at least a reasonable degree of care in the protection of such confidential information.

### **USE OF SERVICES.**

The Services are for the use of subscribers of ESMC, of such members and employees of subscribers as are authorized to utilize the Services pursuant to a subscription agreement with ESMC, and of such other individuals and entities as are authorized by ESMC. The products, services, software and information obtained from the Services may not be sold, transferred, licensed, reproduced, displayed, published, distributed, copied, performed or modified by you, or used to create derivative works.

You agree to use the Services only to post, send, receive and view messages and material that are proper and, when applicable, related to the particular Service. As examples of improper use, you agree not to:

- a. Harass, stalk, defame, abuse, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- b. Post, upload or disseminate any obscene, indecent, profane, defamatory or other inappropriate or illegal material.
- c. Use the Services in connection with surveys, contests, raffles, games, "pyramid schemes," chain letters, junk email, spamming or any duplicative or unsolicited messages.
- d. Collect or store personally identifying information about other users for commercial or unlawful purposes.
- e. Make any sexual request on behalf of or to a minor or harm minors in any other way.
- f. Impersonate anyone.
- g. Employ misleading addresses or false information.
- h. Upload, or otherwise make available, files that contain images, photographs, software or other material protected by intellectual property laws, including without limitation copyright or trademark laws (or by rights of privacy or publicity) unless you own or control the rights thereto or have received all necessary approvals.
- i. Use any material or information, including without limitation images or photographs, which are made available through the Services in any manner that infringes anyone's proprietary right.
- j. Upload, post, e-mail or otherwise transmit files that contain so-called viruses, Trojan horses, worms, time bombs, trap doors, corrupted files, or any other similar software or programs that may damage the operation of anyone's computer or property or adversely affect the quality, performance or functionality of the Services.

- k. Advertise or offer to sell or buy any goods or services for any business purpose, unless expressly authorized in advance, in writing, by ESMC.
- l. Inhibit or restrict any other user from using and enjoying the Services.
- m. Delete or falsify any copyright information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- n. Download any file posted by another user of a Service that you know, or reasonably should know, may not be legally reproduced, displayed, performed, or distributed in such manner.
- o. Violate any code of conduct or other guidelines which may apply to any particular Service.
- p. Collect information about others outside of your organization, including e-mail addresses.
- q. Violate any applicable laws or regulations, including without limitation regulations promulgated by the U.S. Securities and Exchange Commission, and rules of any national or regional securities exchange.
- r. Use, download or otherwise copy, or provide (whether or not for a fee) to anyone any directory of users of the Services or other user or usage information.
- s. Decompile, disassemble, modify, translate, adapt, reverse engineer, create derivative works from or sublicense any software employed in connection with Services.

ESMC is not required to monitor the Services or the use of the Services. However, ESMC reserves the right to review and remove materials posted to the Services in its sole discretion.

In its sole discretion, ESMC may disclose any information it deems necessary or appropriate to satisfy any applicable law, regulation, legal process or governmental request, or refuse to post, remove or edit any materials, in whole or in part.

ESMC has a zero tolerance policy towards inappropriate activity by anyone who gains access to ESMC's infrastructure, equipment, computers or servers. If, in ESMC's sole discretion, Subscribers, their agents, independent contractors or assigns (valid or invalid) or any third party gaining access through a Subscriber's account name and password are found to have engaged in any inappropriate activity or prohibited transaction, ESMC reserves the right to suspend and/or close Subscriber's account, to share this information (together with Subscriber's identity) to appropriate governmental agencies, and to pursue all available legal remedies. Prior to connecting to ESMC's network, Subscribers represent and warrant that they have taken all commercially reasonable efforts in accordance with customary industry practice to protect their equipment, servers and computers against computer viruses, worms, Trojan horses, and other destructive hardware. Subscribers further agree on an ongoing basis to use all commercially reasonable efforts in accordance with customary industry practice to protect their equipment, servers and computers against computer viruses, worms, Trojan horses, and other destructive hardware.

### **SERVICES NOT A SUBSTITUTE.**

The Services of the ERRS are provided as a supplement to existing dispatch and response systems, and are not intended as either a dispatch system for emergency events or situations, or as a substitute for either existing emergency communication systems or reasonable judgments made by emergency services providers.

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You may not (and you may not allow or assist any third party to) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques, protocols or algorithms of ERRS, its Services or its underlying software by any means whatsoever, directly or indirectly, or disclose any of the foregoing, except to the extent you may be expressly permitted to decompile under applicable law in the European Union, if it is essential to do so in order to achieve operability of the Services with another software program, and you have first requested ESMC to provide the information necessary to achieve such operability and ESMC has not made such information available. ESMC has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any information supplied by ESMC or obtained by you, as permitted hereunder, may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software or services which are substantially similar to the expression of the software of ERRS. Requests for information from users in the European Union with respect to the above should be directed to the ESMC Customer Support Department.

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By Posting a Submission you warrant and represent that you own or otherwise control all of the rights to your Submission, including without limitation all rights necessary for you to provide, post, upload, input or submit the Submissions.

No compensation will be paid with respect to the use of your Submission, as provided herein. ESMC is under no obligation to post or use any Submission you may provide, and ESMC may remove any Submission at any time in its sole discretion.

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#### **UNSOLICITED IDEA SUBMISSION POLICY.**

ESMC does not accept or consider unsolicited ideas, materials or work which are submitted with any expectation of fees, royalties, property interest, ownership, rights, title or interest of any manner, or of any form of compensation whatsoever, including without limitation ideas for new promotions, new products, new or enhanced services, or technologies. To avoid potential misunderstandings or disputes when ESMC's products or marketing strategies might seem similar to ideas, materials or work submitted to ESMC, please do not convey or send your unsolicited ideas, materials or work to ESMC or to anyone in any manner affiliated with ESMC if you have any expectation of receiving anything of any nature in return or exchange. If, despite our request, you still convey or send them, please understand that your ideas, materials or work will not be treated as confidential or proprietary, and we will have no obligations to you with respect to such ideas, materials or work, or their disposition.



### **LINKS TO THIRD PARTY SITES.**

Third party site links will let you leave ESMC's site. ESMC is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by ESMC of the site. The linked sites are not under ESMC's control, and ESMC is not responsible for the content of any linked site or any link contained in a linked site, or any changes or updates to such sites. ESMC is not responsible for webcasting or any other form of transmission received from any linked site.

### **TRADEMARKS.**

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### **INDEMNITY AND RELEASE.**

By accessing or using the Services, you agree to indemnify, defend and hold harmless ESMC and its suppliers and distributors, including without limitation their successors and assigns, and their affiliates, owners, officers, directors and employees to the fullest extent permitted by law, and to hold them harmless from and against any and all claims, demands, expenses or causes of action whatsoever, including reasonable attorneys' fees, arising from your use of the Services or from any person's use of any account or password you maintain, regardless of whether such use is authorized by you. Furthermore, by using the Services, you agree to release ESMC and its suppliers and distributors, their successors and assigns, and their affiliates, owners, officers, directors and employees from any and all claims, demands, debts, obligations, damages, costs and expenses of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, that you may have against them arising out of or in any way related to your use of the Services.

**YOU HEREBY AGREE TO WAIVE ALL LAWS WHICH MAY LIMIT THE EFFICACY OF SUCH RELEASES.**

### **MISCELLANEOUS.**

(a) The failure of ESMC at any time to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same or any other term hereof. These Terms and Conditions may be amended only by ESMC. In the event of a

breach or threatened breach of these Terms and Conditions, ESMC shall have all applicable equitable as well as legal remedies.

(b) ESMC may elect to provide you with customer support and/or upgrades, enhancements, or modifications to the Services (collectively, "Support"), in its sole discretion, and may terminate such Support at any time without notice to you. ESMC may change, enhance, eliminate, suspend, or discontinue any aspect of the Services at any time, including the availability of any Service feature, database, or content. ESMC may also impose limits on certain features and services or restrict your access to parts or all of the Service or the ESMC web site without notice or liability.

(c) ESMC reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You agree that ESMC shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services. ESMC may also impose limits on certain features and services or restrict your access to parts or all of the Services or the ESMC web site.

#### **LIMITATION OF LIABILITY.**

**YOU ACKNOWLEDGE AND AGREE THAT THE CONSIDERATION WHICH ESMC IS CHARGING FOR SUBSCRIPTIONS AUTHORIZING THE USE OF THE SERVICES DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY ESMC OF THE RISK OF YOUR CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH YOUR USE OF THE SERVICES. ACCORDINGLY, YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ESMC OR ITS SUPPLIERS OR DISTRIBUTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, TO ANY SUBSCRIPTION AGREEMENT OR TO THE USE OF OR INABILITY TO USE THE SERVICES OR THE PROVISION OF OR FAILURE TO PROVIDE THE SERVICES, EVEN IF ESMC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY (CONTRACT, WARRANTY, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. YOU FURTHER ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH WITHIN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THE SUBSCRIPTION AUTHORIZING YOU TO ACCESS AND USE THE SERVICES, AND THAT WERE ESMC TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.**

Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to you. In such states and jurisdictions, the liability of ESMC, its suppliers and distributors shall be limited to the maximum extent permitted by law.

**IN ANY CASE, THE ENTIRE, COLLECTIVE LIABILITY OF ESMC, ITS SUPPLIERS AND DISTRIBUTORS, AND YOUR EXCLUSIVE REMEDY, UNDER ANY PROVISION OF THESE TERMS AND CONDITIONS, OR OF THE TERMS AND CONDITIONS OF ANY SUBSCRIPTION AGREEMENT, SHALL BE, AT ESMC'S SOLE OPTION, EITHER (a) RETURN OF THE SUBSCRIPTION PRICE PAID FOR ANY REMAINING PORTION OF THE TERM OF THE SUBSCRIPTION OR (b) U.S. \$250.00.**

### **OTHER RESTRICTIONS**

You may not, and you will not allow any third party to, loan, rent, lease, sublicense, distribute, sell or otherwise transfer all or any portion of the Services to third parties except as expressly authorized in writing by ESMC. You may not copy any portion, component or software of the Services, except as expressly authorized in writing by ESMC, and any copies that you are permitted to make pursuant to such written authorization must contain the same copyright, patent and other intellectual property markings that appear on or in the Services and this Agreement. You may not modify, adapt or translate the Services. You may not, directly or indirectly, rent, lease, distribute, sell or create derivative works of the Services. You may not, directly or indirectly, obtain or attempt to obtain unauthorized access to the Services. You may not, directly or indirectly, incorporate the Services, protocols, code or software, or any portion thereof, into any other service, software, hardware or other technology manufactured or distributed by for you. You may not, directly or indirectly, encumber or suffer to exist any lien or security interest on the Services. You will comply with applicable laws, and ESMC's instructions regarding the use of the Services. You agree to notify your employees, members and agents who may have access to the Services of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE ACCURACY AND ADEQUACY OF THE SERVICES FOR YOUR INTENDED USE AND YOU WILL INDEMNIFY AND HOLD HARMLESS ESMC AND ITS SUPPLIERS FROM ANY THIRD PARTY SUIT TO THE EXTENT BASED UPON THE ACCURACY AND ADEQUACY OF THE SERVICES IN YOUR USE.

### **INJUNCTIVE RELIEF**

You acknowledge that the unauthorized use, transfer or disclosure of the Services, the software which comprises the Services and documentation or copies thereof will (i) substantially diminish the value to ESMC and its suppliers of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render inadequate any remedy at law of ESMC and/or its suppliers for such unauthorized use, disclosure or

transfer inadequate; and (iii) cause irreparable injury in a short period of time. If you breach any of your obligations with respect to the use or confidentiality of the Services or documentation, ESMC and its suppliers shall be entitled to equitable relief to protect their interests therein, including, but not limited to, preliminary and permanent injunctive relief.

#### **EQUIPMENT REQUIRED AND OPTIONAL.**

In order to use the Services, you must obtain access to the World Wide Web, either directly or through devices that access web-based content, and pay to providers of such access any service fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the World Wide Web.

Any required or optional equipment that you use to use or access the Services, whether required or optional, is subject to the terms, conditions, warranties and disclaimers provided by the manufacturer of the equipment. Please refer to the materials you received when you purchased the equipment to understand your rights and obligations, including what warranties and disclaimers apply to you.

#### **LOCAL, LONG DISTANCE AND TOLL FREE TELEPHONE NUMBERS.**

Any and all local, long distance and toll free telephone numbers that ESMC provides or assigns to subscribers are the sole and exclusive property of ESMC or its business affiliates and subscribers shall have no rights whatsoever in or with respect to such telephone numbers. ESMC reserves the right to change and re-assign such telephone numbers at any time.

#### **DISPATCH DATA**

If you import dispatch data from your dispatch center to ERRS, and if your members choose to have that information relayed to them via email and/or text message, it is understood by you that: this functionality is dependent upon the technology capabilities of your dispatch center; that this specific functionality will not work with all dispatch center systems; and that no guarantees or warranties are made concerning this functionality. It is further understood by you that ESMC can not control the timing, speed or reliability of the delivery of the dispatch information to your members once the information has been transmitted by ESMC to the members' internet service providers and/or cellular telephone providers. Therefore, it is specifically understood that this specific functionality is NOT to be relied upon under any circumstances as a primary means of notification for emergency events, and should only be utilized as a non-emergent, secondary means of notification. Certain cellular providers limit the number of characters permitted per text message, and therefore it is also understood that certain transmitted text messages may omit or delete information if the message exceeds the character length of the members' cellular provider.

To the greatest extent permitted by law, in consideration of the provision of this service, you release ESMC from any and all claims and liabilities of any nature whatsoever associated with any transmission of dispatch information.

You shall not under any circumstances cause dispatch information to be transmitted, re-transmitted, or forwarded, whether directly from your lamResponding system, manually or automatically, to any servers, server networks, or mobile applications ("Apps") other than those exclusively controlled and maintained by ESMC, excepting only Internet Service Providers (ISP's) and telephone network carriers necessary to the minimal extent possible to permit the direct relay of dispatch information from lamResponding.com to your personal/work email inbox(s) and personal/work mobile device(s). These limited and minimal exceptions (ISP's and telephone network carriers) are further limited to only those which simply pass through the dispatch information, without opening, manipulating, utilizing, converting, applying or modifying the information in any manner whatsoever.

### **FORCE MAJEURE**

ESMC shall not be liable for any default or delay in the performance of any of its obligations to Subscribers if such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, significant weather events, or other such occurrences; labor disputes, strikes or lockouts; wars (declared or undeclared), rebellions or revolutions; riots or civil disorder; unavoidable casualties; interruptions of transportation or communications facilities or delays in transit or communication; supply shortages or the failure of any party to perform any commitment relative to the production or delivery of any equipment or material required to perform the obligations; embargoes; actions, inactions, rulings, regulations, decisions or requirements, whether valid, invalid, formal or informal, of any government, tribunal or governmental agency; or any other cause, whether similar or dissimilar to those enumerated herein, beyond ESMC's reasonable control.

### **NOTICES**

All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day after being sent by overnight courier, charges prepaid, with a confirming fax; and addressed as set forth in your Subscription Agreement or to such other address as the party to receive the notice or request so designates by written notice to the other. ESMC may also provide Notices to you by email addressed to the email address that you provide as your primary contact email address in your Subscription Agreement, and such Notice is deemed given at the time sent by email.

### **NONASSIGNABILITY and NON-SHARING**

You shall not assign or otherwise license your Subscription or Subscription Agreement, or any rights that you may have thereunder, without the prior written consent of ESMC. You shall not share the Services with any other non-subscribing entity.

### **NO THIRD PARTIES**

By subscribing to and/or utilizing ERRS and/or the Services, you agree and acknowledge that there are no known or intended third party beneficiaries of your subscription and/or use of ERRS and the Services. You further agree and acknowledge that there are no contractual agreements or relationships of any nature whatsoever, express or implied, between you and any party other than ESMC concerning or pertaining any manner whatsoever to the ERRS and/or the Services.

### **GOVERNING LAW, JURISDICTION AND VENUE.**

The validity, interpretation, construction and performance of this Agreement and of your Subscription Agreement shall be governed by the laws of the State of New York without giving any effect or regard to its conflict of law provisions. The New York state courts in and for Onondaga County, New York (or, if there is exclusive federal jurisdiction, the United States District Court for the Northern District of New York) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement and/or your Subscription Agreement, and you hereby consent to the personal and subject matter jurisdiction of such courts and waive any objection as to venue in such jurisdiction.

### **SURVIVAL**

This Agreement shall be binding upon the parties, their successors and permitted assigns. You may not assign any rights to the use or access of ERRS or its Services without the express prior written consent of ESMC.

### **SEVERABILITY**

If all or part of any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion(s) of the provision(s) as are held to be illegal, invalid or unenforceable will be construed to reflect the parties' original intent, and the remaining portions and provisions shall remain in full force and effect.

### **ENTIRE AGREEMENT.**

This Agreement and your Subscriber Agreement constitute the entire agreement between you and ESMC and govern your use of the Services, superseding any prior agreements between you and ESMC with respect to the Services. In the event of a specific conflict between the terms and conditions of this Agreement and those in your Subscription Agreement, the terms and conditions of your Subscriber Agreement shall control.

## **HEADINGS.**

The section headings in this Agreement are for convenience only, do not import any terms or conditions, and shall not be utilized in any interpretation of the terms or conditions of this Agreement.

## **STATUTE OF LIMITATIONS**

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services, to this Agreement, or to your Subscription Agreement must be filed within one (1) year of the accrual of such claim or cause of action or it shall be forever barred. As a condition precedent to the commencement of any litigation against ESMC, its suppliers or distributors, you must provide written notice to ESMC of the existence and specific basis of your claims and allegations within sixty (60) days of the accrual of your claim, and must submit your claim to private, non-binding mediation to be held in Onondaga County, New York. You may not in any event commence litigation against ESMC, its suppliers or distributors until after a determination and/or statement of findings has been issued by a mediator.

## **COPYRIGHT NOTICE.**

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Any rights not expressly granted herein are reserved. Send your questions to [dseidberg@emergencysmc.com](mailto:dseidberg@emergencysmc.com)

Last modified: January 28, 2013.

Section(s) modified: Dispatch Data; Copyright Notice

Last previous modification: November 18, 2010

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**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 Legislators 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).

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

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

- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e),(f).

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

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- d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F. for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:
  - 1. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
  - 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

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

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
  1. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  2. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:
  1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
  2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
  3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
  4. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of, the County agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
  5. Make available protected health information in accordance with 45 CFR § 164.524;

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

**5. Non-Assignment Clause.**

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

**6. 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: \_\_\_\_\_

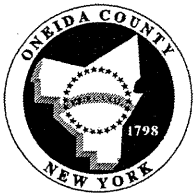
Oneida County Executive

Name:

Approved as to Form only

\_\_\_\_\_

Oneida County Attorney



**ONEIDA COUNTY DEPARTMENT OF  
WATER QUALITY & WATER POLLUTION CONTROL**

51 Leland Ave, PO Box 442, Utica, NY 13503-0442  
(315) 798-5656 wpc@ocgov.net FAX 724-9812

Anthony J. Picente, Jr.  
County Executive

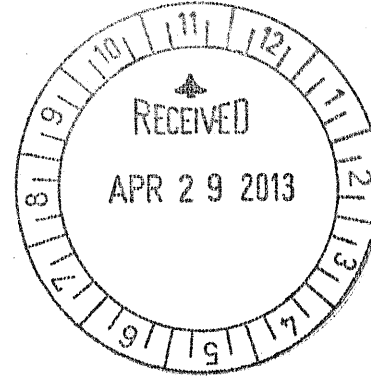
Steven P. Devan, P.E.  
Commissioner

April 25, 2013

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

FN 20 13-180

**PUBLIC WORKS**



Re: Sewer Adjustments  
1508 Genesee St.  
Gasnar Corporation (current owner)  
Eaton Street Partners, LLC (former owner)

**WAYS & MEANS**

Dear County Executive Picente:

The Department of Water Quality and Water Pollution Control has received a request from the above current and former owners of 1508 Genesee St. for sewer adjustments. As the adjustments requested are over \$5,000, as per section D.5 of the Oneida County Sewer District Rate Schedule (rate schedule), they must be approved by the Oneida County Board of Legislators.

As the attached memo from Sean Deery indicates, after a change in ownership of the property, the sewer adjustments that were ongoing through the Mohawk Valley Water Authority were discontinued for some unknown reason. The error was discovered by the current owner of the property when the property changed hands again. Once the error was detected, the former and current owners of the property requested the adjustments that were due to them. The refunds can be issued for up to six (6) years as indicated in section D.4 of the schedule. As indicated in the memo, Gasnar Corporation is requesting a refund of \$5047.47 and Eaton Street Partners LLC is requesting a refund of \$18,943.94.

I would appreciate consideration of these adjustments by you and the Board of Legislators at your earliest possible convenience. I am available to meet with you or the Board at your convenience to discuss this request and explain these items in more detail.

Thank you for your consideration in this matter.

Sincerely,

**THE ONEIDA COUNTY DEPARTMENT OF  
WATER QUALITY AND WATER POLLUTION CONTROL**

Steven P. Devan, P.E.  
Commissioner

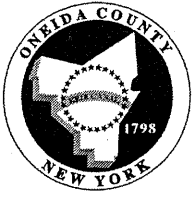
Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

Anthony J. Picente, Jr.  
County Executive

Date 4/26/13

Cc: Sean Deery, WQ&WPC

Attachments: Memo from Sean Deery-1508 Genesee St  
2013 Oneida County Sewer District rate Schedule



**ONEIDA COUNTY DEPARTMENT OF  
WATER QUALITY & WATER POLLUTION CONTROL**

51 Leland Ave, PO Box 442, Utica, NY 13503-0442  
(315) 798-5656                      wpc@ocgov.net                      FAX 724-9812

Anthony J. Picente, Jr.  
County Executive

Steven P. Devan, P.E.  
Commissioner

**MEMORANDUM**

Date:                      March 20, 2013

TO:                        Steven P. Devan, P.E., Commissioner WQPC

FROM:                    Sean J. Deery, Finance Administrative Officer WQPC

SUBJECT:                Refund in excess of \$5,000 – Gasnar Corporation/Eaton Street Partners  
MVWA account references: 50D – 13 and 50D – 14

Mr. Byron Elias of Foresite Realty Advisors, Inc. has contacted WQPC on behalf of Gasnar Corporation (current owners) and Eaton Street Partners, LLC (former owners) requesting refund of sewer charges for past use of water for the cooling tower at 1508 Genesee Street, Utica.

WQPC inspected the cooling towers at 1508 Genesee Street, Utica in February 1997 at the request of Cosmo Saraceno, the owner of the building at that time. They were requesting to receive credit for sewer charges on the water that was used to feed the cooling towers. Rather than having WQPC issue a periodic credit to the customer against their total consumption, a separate meter was connected, and separate account established at the Upper Mohawk Valley Regional Water Board (now Mohawk Valley Water Authority) to bill the owner for water charges only on the cooling tower feed. This meter read, which was a sub-meter of their main account 50D – 13, was subtracted from the main account and their bills manually adjusted so that sewer was only charged to water consumption net of the cooling tower feed.

The property was sold in July 2001 to Eaton Street Partners, LLC, and then to Gasnar Corporation in August of 2011. Both subsequent owners of the property were unaware of the arrangement the former owner made with the UMVRWB (MVWA) and at some point the billing adjustments were discontinued. This not only resulted in the property being double charged for the water being fed to the cooling tower, it meant that all consumption on the main account was being subject to Oneida County and local (Utica) sewer charges.

Mr. Elias requested refund on behalf of the current and former owners of the building for County Sewer charges on the amount determined to have been fed to the building's cooling tower. The Oneida County Sewer District Rate Schedule allows for refund to customers who have been incorrectly billed for Sewer District wastewater treatment services, for a period not to exceed six years, which we have based on the initial identification of the issue with the MVWA in November 2012. The attached schedule shows a refund due to Gasnar Corporation of \$ 5,047.47 and to Eaton Street Partners, LLC of \$ 18,943.94.

As per the Oneida County Sewer District Rate Schedule, all requests for refund or adjustment in excess of \$5,000 must be approved by the Oneida County Board of Legislators. The refund of the outstanding charges on this account is warranted, as the water never reached the County sewer system. Therefore, please request the Board to authorize refund of County sewer charges in the amount of **\$ 5,047.47 and \$ 18,943.94**, to Gasnar Corporation and Eaton Street Partners, LLC, respectively.

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## ONEIDA COUNTY SEWER DISTRICT RATE SCHEDULE EFFECTIVE JANUARY 1, 2013

**This rate schedule will apply to all bills issued after the effective date.  
It will remain in effect until modified by the Oneida County Board of Legislators**

### A. RESIDENTIAL CUSTOMER FEES

#### 1. Metered Consumption

Customers will be charged a wastewater treatment fee based on metered water usage. The rate charged will be \$3.76 per 1000 gallons of water consumed. The customer will receive a bill for these services through contract billing services provided by the Mohawk Valley Water Authority, the Sauquoit Water District or the Clayville Water District. The Sewer District wastewater treatment fee can be calculated using the following equation.

$$\text{Billable Amount} = \frac{(\text{cubic feet of water consumed}) * (7.481 \text{ gallons/cubic foot}) * (\$3.76)}{(1000 \text{ gallons})}$$

#### 2. Unmetered Consumption

Customers who do not have water meters will have a usage calculated based on an estimated water consumption rate of 50 gallons per person per day. The maximum charge per household will be based on 200 gallons per day. The rate charged will be \$3.76 per 1000 gallons of water consumed. The customer will receive a bill directly from the Sewer District for these services. The Sewer District wastewater treatment fee can be calculated using the following equation.

$$\text{Billable Amount} = \frac{(\text{days in billing period}) * (50 \text{ gallons/ day}) * (\text{number of people}) * (\$3.76)}{(1000 \text{ gallons})}$$

Customers covered under this section of the rate schedule will be required to complete a form certifying as to the number of persons occupying the property serviced by the account. Customers who do not submit the required certification form will be charged the maximum household rate of 200 gallons per day. Customers who intentionally misrepresent the number of occupants per household can be charged with a Class A misdemeanor pursuant to Section 210.45 of the Penal Law. Furthermore, restitution will be required as per Section D-3 of this rate schedule.

#### 3. Sauquoit Creek Basin Surcharge

In addition to the charges listed in sections 1 and 2, customers whose discharge is tributary to the Sauquoit Creek Pumping Station will be assessed an additional surcharge to pay for capital expenditures and system repairs associated with the NYSDEC Consent Order. Like regular residential fees, the surcharge is based on metered or unmetered water consumption as listed in the formulas below. The rate charged will be \$1.05 per 1000 gallons of water consumed. The customer will receive a bill for these services through contract billing services provided by the Mohawk Valley Water Authority, the Sauquoit Water District, and the Clayville Water District or directly from the Oneida County Sewer District.

$$\text{Billable Amount} = \frac{(\text{cubic feet of water consumed}) * (7.481 \text{ gallons/cubic foot}) * (\$1.05)}{(1000 \text{ gallons})}$$

$$\text{Billable Amount} = \frac{(\text{days in billing period}) * (50 \text{ gallons/ day}) * (\text{number of people}) * (\$1.05)}{(1000 \text{ gallons})}$$





## **B. INDUSTRIAL CUSTOMER FEES**

### **1. Basic Rate**

Industrial customers will be charged a fee based on metered water consumption and be subject to the same rates as residential customers. In addition to these fees, industrial customers who require a permit under Oneida County Sewer Use Rules and Regulations will be charged an annual permit fee of \$660 to cover monitoring and administrative costs. Additional or modified charges may apply as detailed in subsequent sections of this schedule.

### **2. High Strength Wastewater**

Industrial customers who discharge high strength wastewater, as defined by the Sewer District, will be subject to fees in addition to those calculated using the basic rate. A surcharge will apply to discharges with total suspended solids (TSS) exceeding 290 mg/l and/or Biochemical Oxygen Demand (BOD) exceeding 330 mg/l. This surcharge will be \$0.02 per pound of TSS and/or BOD that exceed the limits as stated in this section. If insufficient BOD data exists to accurately determine the surcharge, Chemical Oxygen Demand (COD) can be substituted for BOD. In this case, the surcharge will be \$0.02 per pound of COD that exceeds 350 mg/l.

### **3. Federal Categorical Pretreatment Standards**

Federal Categorical Pretreatment Standards have additional monitoring and administrative cost associated with them. Accordingly, an annual permit fee of \$1,100 will be charged to industrial customers who are subject to these standards.

### **4. Additional Sampling Fees**

A fee of \$200 per sample may be charged if more than four (4) twenty-four hour composite samples are needed on an annual basis to characterize the discharge of an industrial customer.

### **5. Groundwater Remediation Projects**

Groundwater clean up and site remediation projects approved by the Sewer District for discharge directly to the sewer system will be charged the basic rate, as indicated in Section B-1, for wastewater generated. An annual permit fee of \$100 will be assessed to cover monitoring and administrative fees. The customer will be required to provide accurate discharge data on a semi-annual basis for billing purposes.



## **C. FEES FOR WASTEWATER HAULED DIRECTLY TO THE TREATMENT PLANT**

### **1. Basic Rate**

Wastewater haulers who discharge directly to the wastewater treatment plant will be charged based on the actual amount of wastewater contained in each load. This fee will be \$0.08 per gallon of wastewater delivered. In addition, an annual permit fee of \$100 will be charged to cover monitoring and administrative costs. Additional or modified charges may apply as detailed in subsequent sections of this schedule.

### **2. Domestic Wastewater**

Haulers of septic, cesspool and portable toilet wastewater, containing only household type wastewater, will be subject to all charges as detailed in Section C-1 of this schedule.

### **3. Non-Domestic Wastewater**

Non-domestic wastewater, as approved by the Sewer District on a case-by-case basis, will be subject to all charges as detailed in Section C-1 of this schedule. In addition, the cost of contract laboratory services, plus 10%, will be billed to the permit holder for analytical analysis required by the Sewer District to accurately characterize the wastewater.

### **4. Municipal or Private Sewage Treatment Systems**

Wastewater from municipal and private sewage treatment systems, as approved by the Sewer District on a case-by-case basis, will be subject to the charges as detailed in Section C-1 of this schedule.

### **5. Low Solids Wastewater and Leachate**

Low solids wastewater, as approved by the Sewer District on a case-by-case basis, will be charged \$0.04 per gallon based on the actual amount of wastewater delivered. In addition, the cost of contract laboratory services, plus 10%, will be billed to the permit holder for analytical analysis required by the Sewer District to accurately characterize the wastewater.

### **6. Landfill Leachate**

Landfill Leachate, as approved by the Sewer District on a case-by-case basis, will be charged \$0.02 per gallon based on the actual amount of wastewater delivered. In addition, the cost of contract laboratory services, plus 10%, will be billed to the permit holder for analytical analysis required by the Sewer District to accurately characterize the wastewater.



## **D. OTHER CHARGES AND ADJUSTMENTS**

### **1. Late Charges**

A late charge of 10% will be charged to all accounts that are not paid by the date they are due. This fee will be assessed at the start of every billing cycle and only imposed on newly accrued late balances from the previous billing cycle.

### **2. Delinquent Charges**

All accounts that are overdue after October 31<sup>st</sup> and have a balance greater than or equal to \$50 will be declared delinquent and added to the tax rolls of the appropriate municipality. Once the delinquent accounts are transmitted to the Oneida County Department of Finance for processing, this department will be responsible for the collection activities associated with these accounts. Once declared delinquent, an additional charge of 10% will be assessed to the account. Delinquent charges are in addition to any other charges, including late charges.

Delinquent charges will be equally divided between the Oneida County Sewer District and the Oneida County Department of Finance as compensation for the cost of processing the delinquency. If the account actually is relieved on the tax rolls, the delinquent charge will rise to 12% with the Oneida County Sewer District receiving 5% and the Oneida County Finance Department receiving 7% as compensation for the cost of processing the delinquency.

### **3. Uncompensated Use of Sewer District Services**

Sewer customers who have been found utilizing Sewer District wastewater treatment services without paying for them will be assessed fees for these services. The fee will be based on actual meter readings or a consumption rate of 200 gallons per day and the user fees in effect during the time the services were being utilized. Charges will be calculated based on the amount of time the service was being utilized but in no case shall it exceed 6 years.

It is the responsibility of the sewer customer to provide the Sewer District adequate information so that the length of time service was rendered can be established. The Sewer District may, at its own discretion, conduct an investigation to establish the length of time service was rendered and bill the customer accordingly.

### **4. Refunds**

Customers who have been incorrectly billed for Sewer District wastewater treatment services may be entitled to a refund. The customer must petition the Sewer District in writing to have a refund considered. The refund will be based on the fees in effect during the time services were being utilized and will be calculated based on actual billing records. In no case shall the refund period exceed 6 years.

It is the responsibility of the customer to provide the Sewer District with adequate information to determine the amount of the refund. The Sewer District may, at its own discretion, conduct an investigation to establish the length of time service was incorrectly billed and base the refund to the customer accordingly.



Refunds for charges occurring in the current year will be processed as a credit to the customer's account. If the refunds encompass more than one year, or an active account no longer exists, the customer will receive reimbursement directly from the Sewer District, once the appropriate documents have been filed and processed by the County. If the refund is associated with a property that has a County tax lien, the refund will not be processed until this tax lien is satisfied.

The Commissioner of Water Quality and Water Pollution Control, upon thorough review of the documentation, may approve refunds up to \$1,000 per account. The Oneida County Board of Legislators must approve refunds over this amount.

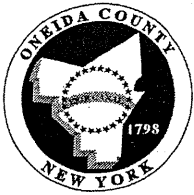
### **5. Adjustments**

Customers may request an adjustment to an account for abnormal water consumption that was not discharged to the sewer system. Adjustments will be considered only if water consumption records indicate an abnormal pattern of water use and if physical evidence exists to support the adjustment claim. The customer must petition the Sewer District in writing within 180 days of the occurrence of the event causing abnormal water consumption to have an adjustment considered.

Customers may request adjustments to an account for water consumed in industrial or manufacturing processes. The customer must petition the Sewer District in writing to have such an adjustment considered. Supporting documentation must accompany the petition. The Sewer District may require additional engineering analysis to support a petition. The cost of this analysis is the responsibility of the petitioner.

The Sewer District may, at its own discretion, conduct an investigation, including a physical inspection of the property, to establish the legitimacy of an adjustment claim. Normal water consuming activities such as routine swimming pool maintenance, car washing and lawn or garden watering are not grounds for an adjustment.

The Commissioner of Water Quality and Water Pollution Control, upon thorough review of the documentation, may approve adjustments up to \$5,000 per account. The Oneida County Board of Legislators must approve adjustments over this amount.



**ONEIDA COUNTY DEPARTMENT OF  
WATER QUALITY & WATER POLLUTION CONTROL**

51 Leland Ave, PO Box 442, Utica, NY 13503-0442  
(315) 798-5656 wpc@ocgov.net FAX 724-9812

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

**Steven P. Devan, P.E.**  
Commissioner

April 22, 2013

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

FN 20 13-181

**PUBLIC WORKS**

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

**WAYS & MEANS**

*Anthony J. Picente, Jr.*  
County Executive

Re: Work Order #31  
Sewage Sludge Incineration Source Testing  
GHD Consulting Services, Inc.

Date 5/2/13

Dear County Executive Picente:

On March 29, 2013 the Master Agreement to provide engineering services for compliance with the consent order issued by the New York State Department of Environmental Conservation (NYSDEC) and for resolving permit issues affecting the Oneida County Water Pollution Control Plant between Oneida County and Shumaker Consulting Engineering and Land Surveying, PC was assigned to GHD Consulting Services, Inc. The Master Agreement calls for the submission of work orders with associated pricing for specific tasks that are needed as the project develops.

The United States Environmental Protection Agency (USEPA) has promulgated new rules regarding the incineration of sewage sludge. By March of 2016, the current incineration process needs to be brought up to these new standards or an alternative method of sludge processing needs to be in place.

Under existing Work Order #12, Amendment 2, GHD Consulting Services, Inc. (GHD) conducted an evaluation of sludge processing alternatives for the Oneida County Water Pollution Control Plant. This evaluation was done as part of the larger plant expansion effort being conducted to comply with the NYSDEC consent order.

After evaluating several alternatives and past emissions data from the existing incinerators, the recommended alternative was to keep incinerating sludge with the existing units and construct a sludge stabilization system for times when the incinerators are off line. Consequently, compliance with the new rules regarding the incineration of sewage sludge must be incorporated into the plant expansion and consent order compliance effort.

In order to meet the new incineration regulations and to verify previous stack testing results, GHD has proposed to do stack testing of the two (2) operational fluidized bed incinerators at the Oneida County Water Pollution Control Plant. This testing is necessary because all the parameters contained in the new regulations were not tested for previously. The data from this stack testing will also be used in the Title V air emissions permit application, due March of 2014, which is another requirement of the new air regulations.

The Honorable Anthony J. Picente, Jr.

April 22, 2013

Page 2 of 2



GHD has proposed work order #31 in the amount of \$122,700 to fund performing the stack testing necessary to comply with the new regulations and the new air permitting associated with it. Their proposal includes oversight of the project, preparation of the stack testing protocol and getting its approval from NYSDEC and USEPA, performing the actual stack testing, producing the final stack testing report, perform informational stack testing as needed, preparing a Title V air permit application and any environmental compliance assistance that is need for this entire process. Department staff have reviewed this work order and found it to be acceptable. Funding for this work order is provided by capital project HG-482.

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I would appreciate consideration of this work order by you and the Board of Legislators at your earliest possible convenience. I am available to meet with you or the Board at your convenience to discuss this request and explain the work order in more detail.

Thank you for your consideration in this matter.

Sincerely,

**THE ONEIDA COUNTY DEPARTMENT OF  
WATER QUALITY AND WATER POLLUTION CONTROL**

Steven P. Devan, P.E.  
Commissioner

Attachments: Contract Summary Sheet  
Six (6) copies of Work Order #31

Oneida Co. Department: WQ&WPC

Competing Proposal   X    
Only Respondent         
Sole Source RFP       

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name of Proposing Organization:** Oneida County Sewer District

**Title of Activity or Service:** Work Order #31  
GHD Consulting Services, Inc.  
Sewage Sludge Incineration Emission Testing

**Proposed Dates of Operation:** This work is planned for FY2013

**Client Population/Number to be Served:** Oneida County Sewer District/  
approximately 110,000 people.

**Summary Statements**

**1) Narrative Description of Proposed Services:** This work order covers the performing the stack testing necessary to comply with the new NYSDEC and USEPA air regulations and the new air permitting associated with them.

**2) Program/Service Objectives and Outcomes:** Produce a stack testing report to show compliance with new NYSDEC and USEPA air regulations. Produce a title V permit application required by the new air regulations. Provide solids handling information for the Oneida County Water Pollution Control Plant expansion.

**3) Program Design and Staffing:** GHD Consulting Services, Inc. and O'Brien and Gere Engineering, Inc. will provide the services with over site from WQ&WPC

**Total Funding Requested:** \$122,700      **Account #:** HG482

**Oneida County Dept. Funding Recommendation:** Funding for this work order will be tracked with capital projects HG482

**Proposed Funding Sources (Federal \$/ State \$/County \$):** Funding for this project is through capital project HG482 from funds borrowed from the Environmental Facilities Corporation.

**Cost Per Client Served:** \$1.12

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** This work is required to comply with new NYSDEC and USEPA air regulations.



April 2, 2013

Mr. Steven Devan, P.E., Commissioner  
Oneida County Department of Water Quality  
& Pollution Control  
P.O. Box 442  
Utica, NY 13503-0442

**Re: SPDES Permit Compliance and CSO/SSO Abatement Project  
Work Order 31 - Sewage Sludge Incinerator Source Emission Testing**

**CWSRF No. C6-6070-08-06**

Dear Mr. Devan:

On behalf of the Project Engineering Team, we are pleased to provide for your review and consideration our proposed Work Order 31- Sewage Sludge Incinerator Source Emission Testing. The services to be performed are in support of the future upgrades to the solids handling and incineration facilities at the Water Pollution Control Plant.

Work will be performed under the Terms and Conditions of the Master Agreement for Consulting Services dated July 16, 2007, between Shumaker Consulting Engineering & Land Surveying, P.C. and Oneida County, and assigned to GHD Consulting Services Inc. dated March 29, 2013.

The cost of this work will be financed through the Clean Water State Revolve Fund (CWSRF Project No. C6-6070-08-06) as administered by the New York State Environmental Facilities Corporation.

Should you have any questions or need additional information please do not hesitate to contact me at (315) 404-5451.

Very truly yours,

**O'BRIEN & GERE ENGINEERS, INC.**

A handwritten signature in black ink that reads 'Karl E. Schrantz'.

Karl E. Schrantz, PE  
Program Manager

Enclosure

cc: John LaGorga, PE, GHD





## WORK ORDER 31

### WATER POLLUTION CONTROL PLANT UPGRADE AND EXPANSION SEWAGE SLUDGE INCINERATOR SOURCE EMISSION TESTING

CWSRF Project No. C6-6070-08-06

#### I. PROJECT UNDERSTANDING

A detailed engineering evaluation of the Water Pollution Control Plant (WPCP) and the Sauquoit Creek Pump Station (SCPS) was submitted by Oneida County to the New York State Department of Environmental Conservation (NYSDEC) on August 27, 2012. This was done in response to the requirements of the Consent Order (No. R620060823-67) between NYSDEC and Oneida County due to sanitary sewer overflows (SSO) at the SCPS. The evaluation expanded upon the preliminary capacity assessment of the WPCP that was performed under Work Order No. 5 in 2007. The timeline included with the evaluation identified upgrades to the solids handling facilities as an early phase/critical path element of work to be completed. The WPCP evaluation was approved by the NYSDEC in November 2012.

The purpose of this Work Order (Work Order No. 31) is to conduct source emission testing on two fluidized bed combustor sewage sludge incinerators at the WPCP. These two incineration processes are subject to the emission limits identified in 40 CFR Part 60, Subpart M – *Emission Guidelines and Compliance Times for Existing Sewage Sludge Incinerators*. This work will be led by engineering team member O'Brien & Gere, Inc. (O'Brien & Gere) and is in support of the design and regulatory efforts for the upgrades to the WPCP's solids handling and incineration facilities.

#### II. SCOPE OF SERVICES

##### A. Project Management

This task allows for the routine management, administration, and coordination of the efforts associated with this Work Order. Included in this task is the appropriate coordination with Oneida County and engineering team members, management of the project, staffing and resource allocation, monitoring of budget and schedule, cost control, and administrative assistance to the Commissioner on an as needed basis. Karl Schrantz, P.E. from O'Brien & Gere will be responsible for project administration. David Ostaszewski from O'Brien & Gere, will be responsible for overall technical/engineering coordination. Upon completion of the final report O'Brien & Gere will meet with Oneida County to present the findings of the results.

##### B. Task 2 – Emissions Testing

Per Table 2 of Subpart M source emission testing will be conducted on the exhaust stack serving each incinerator to evaluate emissions of the following pollutants:

- particulate matter (PM)
- hydrogen chloride (HCl)
- carbon monoxide (CO)
- dioxins/furans (D/F)
- oxides of nitrogen (NO<sub>x</sub>)
- sulfur dioxide (SO<sub>2</sub>)
- multiple metals (including cadmium, lead and mercury)

In addition to the emissions testing of the incinerator exhaust stacks, the engineering team will evaluate fugitive emissions from the ash handling system. A summary of the entire test program is provided in Table 1.

<b>Table 1 Summary of Test Program</b>			
<b>Pollutant</b>	<b>No. of Test Runs<sup>a</sup></b>	<b>Test Duration (Minutes)</b>	<b>Sampling Method</b>
PM	6	60	UESPA 5
HCl	6	60	USEPA 26A
CO	6	60	USEPA 10
D/F	6	180	USEPA 23
NO <sub>x</sub>	6	60	USEPA 7E
SO <sub>2</sub>	6	60	USEPA 6C
Multiple Metals	6	120	USEPA 29
Fugitive Emissions	6	60	USEPA 22

<sup>a</sup>Three test runs will be conducted on each incinerator exhaust

In conjunction with each test run and at each test location exhaust gas velocity will be evaluated in accordance with USEPA Methods 1 and 2. Exhaust gas oxygen (O<sub>2</sub>) and carbon dioxide (CO<sub>2</sub>) levels will be evaluated in accordance with USEPA Method 3A (instrumental procedures). Exhaust gas moisture content will be evaluated in accordance with USEPA Method 4 procedures. These data will be used to derive pollutant mass emission rates from measured concentrations.

**C. TASK 3 - SEWAGE SLUDGE AND WATER SCRUBBER SAMPLING**

The engineering team will assist Oneida County personnel with the collection of sewage sludge samples during each test run for each incinerator. The sludge samples will be submitted to an outside laboratory by the engineering team and analyzed for the following:

- » ultimate and proximate analysis
- » percent volatile content
- » sulfur content
- » percent solids
- » metals
- » low and high heating value
- » dioxins/furans

Two samples (one per incinerator) will be collected for ultimate/proximate analysis and percent volatiles and dioxin/furans. Three samples per incinerator will be collected for metals analysis and percent solids. Five sludge samples per incinerator will also be collected for mercury speciation.

Additionally, the engineering team will assist Oneida County personnel with the collection of water samples from the scrubber influent and effluent. The water samples will be analyzed to evaluate mercury and chlorides content, alkalinity and pH. Two water samples (one influent and one effluent) will be collected per incinerator.

The engineering team will provide Oneida County with the proper containers for the sewage sludge samples and scrubber water samples. We will be responsible for chain of custody and transporting the samples to the laboratory.

**D. TASK 4 - SOURCE EMISSION TEST PROTOCOL**

Prior to the field sampling, the engineering team will submit a source emission test protocol plan to Oneida County for review and comment. At a minimum, the protocol will include a summary of the scope of work, process and pollution control descriptions, process operating conditions, sampling methods to be used, QA/QC procedures, data quality objectives and final reporting format. Upon receipt of comments, we will provide Oneida County with bound copies and an electronic copy of the final source emission test protocol for submittal to New York State Department of Environmental Conservation (NYSDEC) and the U.S. Environmental Protection Agency (EPA). Coordination with regulatory agency comments is included in our efforts..

**E. TASK 5 - REPORTS**

Results of the CO, NO<sub>x</sub>, SO<sub>2</sub> and fugitive emissions will be made available on-site as the testing progresses. Approximately two weeks following completion of the field work PM, HCl and multiple metals emissions will be made available. D/F test results will be made available approximately four weeks following completion of the field work. Two weeks thereafter, a draft report will be submitted to OCSD for review and comment. The report will contain a summary of the scope of work, test methods, process description, process operating data, equipment calibration data, field data and calculations, and test results. Following incorporation of comments, bound copies of the final report along with an electronic copy (PDF format) will be submitted to Oneida County. The final test report will be completed in time to meet the 60 day submission deadline provided in Subpart MMMM.

**F. TASK 6 - INFORMATIONAL EMISSIONS TESTING**

Additional emissions testing will be conducted following completion of the Subpart MMMM testing. The data gathered during this effort will be for informational purposes only. The test team will conduct emissions testing from each incinerator to evaluate emissions of PM, HCl, CO, SO<sub>2</sub> and Hg. A total of three 60 minute test runs will be conducted on each incinerator exhaust for this effort. All sampling methods will be the same as listed previously in Table 1, with the exception of Hg. Hg emissions for the informational testing will be conducted in accordance with USEPA 30B. A brief letter report summarizing the emission test results will be the only deliverable provided for this task. Sludge and/or water sampling is not included as part of this task.

**G. TASK 7 – TITLE V AIR PERMIT APPLICATION PREPARATION**

The engineering team will prepare a Title V Permit application for the WPCP. The basis of this application will be the existing permit. In addition, we have assumed that no new sources will need to be added to the permit as part of this task. The package is expected to include:

- Completed application forms (including Methods Used to Determine Compliance section). We have assumed that NYSDEC will provide the permit “renewal forms” based on the information currently in their “system”.
- A description of the facility’s processes, emission sources and products
- A process flow diagram summarizing each emission source, control device and emission point at the facility, including stack parameters
- Applicable regulatory requirements
- Site location map
- P.E. certification

The engineering team will prepare a draft permit application package for review and comment by WPCP. Upon receipt of one set of consolidated, written comments from WPCP, we will finalize the permit application package and send the final package to WPCP for signature. WPCP will then be responsible for submitting the application to the NYSDEC.

**H. TASK 8 – ENVIRONMENTAL COMPLIANCE ASSISTANCE (AS NEEDED BASIS)**

The engineering team will be available to provide miscellaneous environmental air compliance assistance relative to the WPCP. This assistance will be in the form of written communication, telephone communication, and on-site meetings as requested by Oneida County. In addition, this task will cover required regulatory notifications and coordination with NYSDEC and/or EPA regarding regulatory compliance, as necessary.

For the purposes of this Work Order we have assumed that an updated air emissions inventory and an air dispersion modeling analysis will not be required. However, should these efforts be required by NYSDEC, we would suggest budgeting approximately \$3,500 for the air emissions inventory and approximately \$11,000 for the air dispersion modeling. We have included these dollar amounts in the budget for this Work Order as an allowance to be expended only upon authorization by the County in the event that the inventory and/or modeling become a requirement by the permitting agency.

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**I. FACILITY REQUIREMENTS**

The facility will be responsible for the following:

- » two 110- volt 20-amp circuits within 100 feet of the test locations
- » 480V, 30-amp connection for the mobile laboratory that will be provided by engineering team member O’Brien & Gere, Inc.
- » monitoring and recording of required process operating data
- » written process description for test report

- » cleaned and loosened sample test ports
- » access to and into the test ports (e.g., scaffolding and/or a man-lift, as required)

### III. ASSUMPTIONS

- A. *Field Delays* - Oneida County will be responsible for incurred costs resulting from field crews delays or lost time (greater than four hours per test program) due to force majeure events or causes beyond the engineering team's control including, but not limited to: severe weather (lightning, heavy rain, high winds, etc.), cyclonic flow, process upsets or failure, electrical power interruptions, unprepared site (see Item 2, below) or the inability to maintain the desired process conditions. Additional costs incurred may include labor, extra travel and living expenses and equipment usages. The engineering team will be responsible for incurred costs resulting from delays and lost time to the extent caused by the engineering team; however, the engineering team is not liable for any ancillary costs incurred by Oneida County (such as fuel costs, overtime, etc) resulting from such delays.
- B. *Site Access and Preparation* - Where required, Oneida County will be responsible for and will provide man-lifts or scaffolding, loosened and cleaned test ports, and 110/220/480V power as specified for each location. Working platforms, such as scaffolds, man-lifts and catwalks must comply with OSHA's fall protection standards. The engineering team will supply its own fall protection equipment (safety harnesses, lanyards, safety climbs, etc.), but the facility is responsible for ensuring that its working surfaces are designed to applicable codes and in acceptable condition. The engineering team can identify, under a separate scope of work, measures that can be used to attain compliance.
- C. *Data Comparison and Evaluation* - the engineering team will assess data quality with respect to the test method's quality assurance procedures and criteria. In some cases, the engineering team will investigate correlations between test data and process conditions in an attempt to identify the cause of suspect data. However, costs associated with extensive research and evaluation of results to investigate discrepancies with process conditions or comparing results with other similar processes are not included unless specifically described in the scope of work.
- D. *Process Data Reduction and Recording* - Oneida County's plant personnel shall be responsible for recording process operating data that are required to document test conditions during all test periods and this data shall be provided to the engineering team for inclusion in the test report. Process data should be in a format that does not require further reduction or reformatting. Reduction or reformatting of process data can be provided at additional costs.

### IV. SCHEDULE

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Our team will complete the work outlined above in approximately 6 months from written authorization to proceed. The field work will consist of a single equipment mobilization consisting of one day for equipment set-up followed two 12 hour test days (one to meet Subpart M MMM requirements and one for informational testing) for each incinerator for a total of five (5) days on-site.

### V. COMPENSATION

- A. Oneida County will be billed for actual labor hours charged at the billing rates contained in Attachment A, plus direct project expenses (e.g., identifiable reproduction costs, shipping

charges, etc.). The Compensation for the Scope of Services outlined in Section II is estimated in Table 1.

- B. Payments for the work will be due monthly on the basis of statements submitted by GHD Consulting Services Inc. for the work performed during the period.
- C. Additional services beyond the Scope of Services will be considered extra work and will necessitate additional compensation. Said additional compensation and associated scope of services will require prior approval by Oneida County.

**VI. STANDARD TERMS AND CONDITIONS**

The services described above will be completed as Work Order No. 31 under the Terms and Conditions of the Master Agreement for Consulting Services dated July 16, 2007, between Shumaker Consulting Engineering & Land Surveying, P.C. and Oneida County and assigned to GHD Consulting Services Inc. dated March 29, 2013.

**VII. NEW YORK CLEAN WATER STATE REVOLVING FUND CONTRACTING REQUIREMENTS**

GHD Consulting Services Inc. will comply with the applicable provisions of "Required Terms for Project Contracts and Subcontracts" as defined in the NY State Revolving Fund Bid Packet for Non-construction Contracts and Service Providers (effective date October 1, 2012), as prepared by the New York State Environmental Facilities Corporation. Refer to Attachment B.

This work order is duly executed between Consultant and Client. Upon execution of this Work Order, Consultant is authorized to proceed with the work.

**Consultant**

**Client**

**GHD CONSULTING SERVICES INC.**

**COUNTY OF ONEIDA**

By: Howard B. LaFever, P.E.

By: Anthony J. Picente, Jr.

Title: Principal

Title: County Executive

Signature: Howard B. LaFever

Signature: \_\_\_\_\_

Date: 5/1/13

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



**ATTACHMENT A  
RATE SCHEDULE**

**1.0 O'BRIEN & GERE ENGINEERS, INC.**

**1.1 Hourly Rates**

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2013:

<b>Labor Category</b>	<b>Hourly Rate</b>
Senior Officer	\$210.00
Senior Managing Engineer	\$180.00
Project Associate	\$140.00
Senior Project Engineer/Scientist	\$115.00
Project Engineer/Scientist	\$90.00
Senior Technician	\$75.00
Technician	\$55.00
Intern	\$40.00
Administrative Assistant	\$65.00

**1.2 Non-salary expenses and outside services attributable to the Project**

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through December 31, 2013:

- 1.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 1.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 1.2.3 The actual cost of outside services and subcontractors;
- 1.2.4 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence, not to exceed \$0.56/mile;
- 1.2.5 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 1.2.6 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 1.2.7 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 1.2.8 The actual cost of premiums paid on overtime worked.



## 2.0 GHD CONSULTING SERVICES, INC.

### 2.1 Hourly Rates

CLIENT shall pay Compensation for labor based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through completion of this Work Order:

<b>Labor Category</b>	<b>Hourly Rate</b>
Vice President/Technical Advisor	\$221.00
Associate	\$171.00
Senior Project Manager	\$154.00
Senior Engineer	\$148.00
Project Manager	\$139.00
Project Engineer	\$112.00
Engineer or Scientist	\$98.00
Architect	\$107.00
Managing Designer	\$134.00
Senior Designer	\$108.00
Designer	\$96.00
Senior Drafter	\$79.00
Drafter	\$68.00
Technician	\$64.00
Construction Project Representative	\$87.00
Field Technician	\$55.00
Secretarial/Word Processing	\$69.00

### 2.2 Non-salary expenses and outside services attributable to the Project

CLIENT shall pay Compensation for expenses based on CONSULTANT's rate schedule below. The Rate Schedule provided below shall be in effect through completion of this Work Order:

- 2.2.1 Living and traveling expenses of employees when away from the home office on business connected with services at rates established by the U.S. General Services Administration;
- 2.2.2 The identifiable costs of reproduction, printing, and binding and postage and shipping applicable to the Project;
- 2.2.3 The actual cost of outside services and subcontractors;
- 2.2.4 Cadd Workstation at no cost
- 2.2.5 Telecommunication charges including long distance telephone, facsimile, and cell phone charges at \$1.15/hour
- 2.2.6 Mileage calculated at the federal reimbursement rate established by the U.S. General Services Administration for privately owned vehicles in effect on the date of the occurrence, not to exceed \$0.56/mile;
- 2.2.7 Actual receipted cost of field equipment rental supplied by a vendor for use on the Project;
- 2.2.8 The actual cost of permits and fees required for the project and paid by CONSULTANT;
- 2.2.9 The actual cost for additional insurance required by the Owner in excess of CONSULTANT's normal coverage's or limits;
- 2.2.10 The actual cost of premiums paid on overtime worked.

# CONTRACT LANGUAGE

## Required Terms for Project Contracts and Subcontracts

This Bid Packet is to be inserted into all service provider (non-construction) contracts and subcontracts to satisfy MWBE requirements.

Check EFC's website ([www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe)) for updates.

**REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS**

In accordance with the terms and conditions set forth in Section 5.1 of the Project Finance Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project including but not limited to those relating to construction, engineering, architectural, legal and fiscal services, as required by federal and State laws, regulations, and executive orders applicable to this Project:

**DEFINED TERMS:**

The term "Bid Packets" means the New York State Revolving Fund (SRF) Bid Packet for Construction Contracts and Bid Packet for Non-Construction Contracts and Service Providers, available at [www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe).

The term "contractor", as used in this contract or subcontract, means, and applies to, all Service Providers, consultants and service providers as hereinafter defined, unless specifically referred to otherwise.

The term "subcontractor", as used in this contract or subcontract, means, and applies to, any individual or business enterprise that has an agreement with a contractor.

The term "EEO policy statement" means a statement of the contractor and subcontractor setting forth at least the following:

- (i) A statement that the contractor will provide for and promote equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law, 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 and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor's solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be provided with equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
- (iii) An agreement to 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 or harass on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

The term "EFC" means the New York State Environmental Facilities Corporation.

The term "EPA" means the United States Environmental Protection Agency.

The term "ESD" means the Empire State Development Corporation - Division of Minority and Women's

Business Development.

The term "Recipient" means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due hereunder are being paid in whole or in part.

The term "Service Providers" means professional services, such as legal, engineering, financial advisory or other professional services, supplies, commodities, equipment, materials, and travel.

The term "State" means the State of New York.

**INTERPRETATION:**

This contract is subject to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and shall be considered a State Contract as defined therein. If any of the terms herein conflict with Article 15-A or the Regulations, such law and regulations shall supersede these requirements.

**REPRESENTATIONS AND ACKNOWLEDGMENTS OF CONTRACTOR & SUBCONTRACTOR:**

The contractor acknowledges that funds for the payment of amounts due under this contract are being provided in whole or in part subject to the terms and conditions of a grant agreement or a project finance agreement with EFC.

The contractor represents that it has submitted an EEO policy statement, an EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (Service Providers only), **prior to the execution of this contract.**

**Suspension/Debarment** - The contractor is not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither the contractor nor any of its subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

**EQUAL EMPLOYMENT OPPORTUNITY (EEO), AFFIRMATIVE ACTION, MWBE AND OTHER COVENANTS:**

Contractor and subcontractor shall comply with all federal and State laws, regulations, and executive orders applicable to this Project, and shall provide such documentation, including periodic reports, as may be requested from time to time and as set forth in guidance documentation available at [www.efc.ny.gov/mwbe](http://www.efc.ny.gov/mwbe), including but not limited to the Bid Packets.

With respect to this contract, the contractor and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. 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.

**MWBE**

**MWBE Goals** - The contractor agrees to pursue MWBE goals in effect at the time of execution of this contract.

<b>10/1/2012 – Present</b>	<b>MWBE Combined Goal*</b>
All counties	20%

\*May be any combination of MBE and/or WBE participation

Contractors shall solicit participation of MWBE contractors (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals. The contractor must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

The contractor agrees that for purposes of providing meaningful participation by MWBEs on the contract and achieving the goals, contractor will reference the directory of New York State Certified MWBEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Subcontractors who in turn subcontract work shall also comply with MWBE requirements for that contract.

**MWBE Utilization Plan** (MWBE Utilization Plan requirements apply to contractors and are submitted prior to execution of a contract.) – Each contractor shall prepare and submit to the Recipient for approval an MWBE Utilization Plan, and any revision or amendment thereto, that provides information describing MBEs and WBEs to be utilized at various times during the performance of this contract. The MWBE Utilization Plan shall identify the contractor's proposed MBE and WBE utilization for this contract and the MWBE participation goals for this contract as established by EFC. The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied for certification from ESD.

In the event that contractor's approved MWBE Utilization Plan does not propose achievement of the MWBE participation goals for this contract, contractor shall complete a waiver request as hereinafter referenced.

**Submission** – Within 30 days of execution of this contract, contractor shall submit to the Recipient copies of all signed subcontracts, agreements, and/or purchase orders referred to in the MWBE Utilization Plan.

**Compliance** – Contractor agrees to adhere to its approved MWBE Utilization Plan for the participation of MWBEs on this contract pursuant to their respective MWBE goals.

**Waivers** – If contractor's application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals, prior to execution of a contract, the contractor shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the Recipient. Contractor is entitled to receive a written notice of acceptance or denial within 20 days of receipt. Upon receipt of a notice of deficiency from Recipient, Contractor shall respond to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

Contractor shall comply with the requirements set forth in the Bid Packets regarding waivers.

**Required Reports - MWBE Monthly Report** – Contractor agrees to submit a report to the Recipient by the 3<sup>rd</sup> business day following each end of month over the term of this contract documenting the progress made towards achievement of the MWBE goals of this contract.

**EEO**

**EEO Workforce Staffing Plan** – All Service Provider (non-construction) contractors and subcontractors shall submit an acceptable EEO Workforce Staffing Plan setting forth the anticipated work force to be utilized on such contract or, where required, information on the service provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Recipient. The EEO Workforce Staffing Plan is submitted prior to execution of a contract.

**Required Reports - EEO Workforce Utilization Reports – Applies to Service Provider (Non-Construction) Contracts and Subcontracts**

During the term of this contract, the contractor and subcontractor shall update and provide notice to the Recipient of any changes to the previously submitted Staffing Plan in the form of an EEO Workforce Utilization Report. Contractor shall submit this information on a quarterly basis during the term of this 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 EEO Workforce Utilization Report must be submitted to report this information. In the event a Contractor and Subcontractor's workforce does not change within the Quarterly period, the Contractor shall notify the Recipient in writing.

**Required Reports - EEO Workforce Utilization Reports – Applies to Construction Contracts and Subcontracts**

During the term of this contract, the contractor and subcontractor shall submit to the Recipient EEO Workforce Utilization Reports. Contractor and subcontractor shall submit this information on a monthly basis to report the actual labor hours utilized in the performance of this contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information.

All EEO Workforce Utilization Reports submitted by the contractor and subcontractor shall reflect a separation of the workforce utilized in the performance of this contract from contractor or subcontractor's total workforce. Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided relates to the actual workforce utilized on this contract. If contractor or subcontractor fails to separate the workforce to be utilized on this contract from the total workforce as determined by Recipient contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is contractor or subcontractor's total workforce during the subject time frame, not limited to work specifically under this contract.

**Disadvantaged Business Enterprises** - The contractor and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor and subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor and subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. Contractors and subcontractors shall comply with the requirements set forth in the Bid Packets regarding Disadvantaged Business Enterprises.

**REMEDIES:**

Upon a determination by the Recipient of contractor's non-responsiveness, non-responsibility or breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, Recipient may withhold funds under this contract or take such other actions, impose liquidated damages or commence enforcement proceedings as set forth herein or as otherwise allowed by law or in equity.

If contractor or subcontractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth in clauses (i), (ii), (iii) and (iv) of the definition thereof and within the timeframe required therefor, Recipient may declare this contract to be null and void.

Contractor and subcontractor agree that a failure to submit and/or adhere to its EEO policy statement, EEO

## Attachment B

Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (contractors only), and any other required periodic reports, shall constitute a material breach of the terms of this contract, entitling Recipient to any remedy provided herein, including but not limited to, a finding of contractor non-responsiveness.

**Liquidated or Other Damages** - If it has been determined by the Recipient or NYSEFC that the contractor is not in compliance with the requirements herein or refuses to comply with such requirements, or if contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

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

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# Oneida County Department of Public Works

ANTHONY J. PICENTE JR.  
County Executive

DENNIS S. DAVIS  
Commissioner

6000 Airport Road  
Oriskany, New York 13424  
Phone: (315) 793-6219 Fax: (315) 768-6299

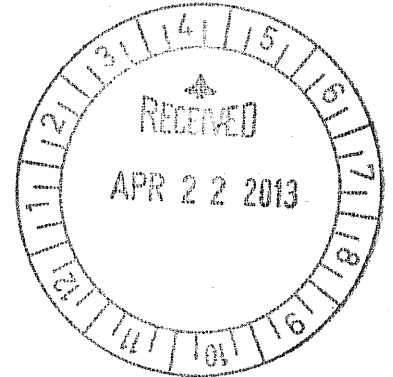
DIVISIONS:  
Buildings & Grounds  
Engineering  
Highways, Bridges & Structures  
Reforestation

FN 20 13 - 187

April 18, 2013

**PUBLIC WORKS**

**WAYS & MEANS**



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

Dear County Executive Picente,

Attached, please find a sample copy of a Ditching Agreement that Oneida County has with various municipalities to Ditch County roads within the County ROW. I have also included a chart with the breakdown of hourly rate, payments/and or trade for payment for those municipalities interested in participating with the Agreements.

Under the proposed Ditching Agreement, the municipalities will not exceed \$315/hour, (based on type of equipment used) for a total of 40 hours – not to exceed \$12,600. Ditching area is to be designated by the County.

If you concur with this request, please forward packet to the Public Works Ways and Means Committee for approval with presentation to the full Board at their earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Dennis S. Davis".

Dennis S. Davis  
Commissioner

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

A handwritten signature in black ink, appearing to be "Anthony J. Picente Jr.". Below the signature is the printed name "Anthony J. Picente, Jr." and "County Executive".

Date 4/22/13

DSD/ck  
Enclosure



Oneida Co. Department of Public Works  
Division of Highways, Bridges  
& Structures

**Competing Proposal:** NA  
**Only Respondent:** NA  
**Sole Source RFP:** NA

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name of Proposing Organizations:** Various Municipalities in Oneida County.

**Title of Activity or Service:** Roadside Ditching Agreements with Towns for 2013 Construction Season (May 15, 2013 – November 1, 2013).

**Client Population/Number to be Served:** Oneida County Residents and those who travel Oneida County Roads.

**Summary Statements:**

- 1) **Narrative Description of Proposed Services:** Towns to perform ditching operations on Oneida County Roads and right-of-ways per Agreements.
- 2) **Program/Service Objectives & Outcomes:**
- 3) **Program Design and Staffing Level:**

**Total Funding Requested:** \$193,400.00

**Proposed Funding Source:** Oneida County Expense Account # D5110.495 - \$193,400.00

**Cost Per Client Served:**

**Past Performance Data:**

**Oneida County Department Staff Comments:** This program is an effort to utilize existing resources to accomplish a common goal. The language in the Agreements has been updated by the County Attorney, Municipalities will ditch 40 hours (County will designate the areas to be ditched). Rates will be \$315, \$300, \$290, \$275, \$270, or \$260 per hour depending on type of equipment used.

## ROADSIDE DITCHING AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of Oneida, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter referred to as "County" and the Town of Sample, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter called "Town".

WHEREAS, the County proposes the Town perform roadside ditching on the improved County road system located within the geographical boundaries of Town for an agreed-upon price and pursuant to agreed-upon terms and conditions, and

WHEREAS, the Town Board of the Town has adopted a resolution authorizing the Town to enter into this Agreement and thereby accepting the proposal of the County, now, therefore

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, County and Town agree as follows:

1. The term of this Agreement shall be from May 1, 2013 to December 1, 2013.
2. The Town will furnish machinery and labor to perform roadside ditching on the improved County road system located within the geographical boundaries of Town (hereinafter the "Roads").
  - a) The Town will keep the Right of Way portions of the Roads ditched in accordance with the rules and regulations as set forth by the County, said rules and regulations made a part hereof.
  - b) The County will designate the areas to be ditched.
3. The Town agrees to expend up to 40 hours to ditch the Roads.
4. The County agrees to reimburse the Town for its labor and equipment at the following rates:

a. Gradall, 2- single axle trucks, flag-person and operators	\$275 per hour.
b. Gradall, 1- tandem, 1-single axle trucks, flag-person and operators	\$300 per hour.
c. Gradall, 2- tandem axle trucks, flag-person and operators	\$315 per hour.
d. Gradall, 2- tandem axle trucks and operators	\$290 per hour.
e. Gradall, 2- single axle trucks and operators	\$270 per hour.
f. Backhoe, 2-single axle trucks and operators	\$260 per hour
5. The County reserves the right to withhold payment under this Agreement and to correct any conditions in any way which do not meet requirements and deduct the cost of this work from the amounts due under this Agreement.
6. The Town further shall save the County harmless from all claims for labor or materials used in the Town's performance under this Agreement.
7. The Town shall secure and maintain safe work sites, equipment and conditions in accordance with all requirements of state and federal law.

8. The Town shall secure all permits required to perform its duties under this Agreement and will comply with all applicable federal, state, county and municipal laws, rules, ordinances and regulations.
9. The Town agrees that it shall defend, indemnify and hold harmless the County from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising from property damage, personal injuries or death to persons arising from or out of the work of the Town and its agents, servants or employees, and from any loss or damage arising from the acts or failure to act or any default or negligence by the Town or failure on the part of the Town to comply with any of the covenants, terms or conditions of this agreement. The Town shall not be required to defend and indemnify the County against claims alleging negligent acts of commission or omission attributable solely to the County, including claims alleging negligent design or signing of the Roads.
10. The Town agrees that it will, at its own expense, at all times during the term of this Agreement, procure and maintain in force policies of insurance, written by one or more insurance carriers licensed to do business in the State of New York, and having offices within the State of New York, which will insure against liability for the services to be performed under the agreement. The Town agrees to have the County named as additional insured on a primary basis to said policies, and to provide the County with certificates from said insurance company or companies showing the County as additional insured prior to the execution of this Agreement, and to provide that such coverage shall not be terminated without prior written notice to the County at least fifteen (15) days prior to said termination. Specific Insurance minimum requirements shall be in accordance with the schedule attached hereto as Exhibit "1".
11. The Town agrees that it will, at its own expense, at all times during the terms of this Agreement, procure and maintain in force a policy of insurance, written by one or more insurance carriers licensed to do business in the State of New York, and having offices within the State of New York, which will insure against claims under the Worker's Compensation Act.
12. The Town covenants and agrees that its officers, agents, directors, employees or members, in accordance with the status of the Town as an independent entity, will conduct themselves consistent with such status; that they shall neither hold themselves out as, nor claim to be, officers or employees of the County, nor shall they make any claim, demand or application to, or for, any right or privilege applicable to any officer or employee of the County, including but not limited to Worker's Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
13. No provision of this Agreement shall be deemed to have been waived by either party, unless such waiver shall be set forth in a written instrument executed by such party. Any waiver by any of the parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.
14. No assignment by any of the parties to this Agreement of any rights, including rights to monies due or to become due under this Agreement or delegation of any duties under this Agreement, shall be binding upon the parties until their written consent has been obtained.
15. If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the parties agree that the Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the parties agree that all other provisions shall remain valid and enforceable.

16. Oral statements and understandings are not valid or binding, and neither this Agreement nor any other shall be changed or modified except by a writing signed by all parties.
17. In performing under this Agreement, all applicable governmental laws, regulations, orders, ordinances and other rules of duly constituted authority will be followed and complied with in all respects by all parties.
18. This agreement shall be construed and enforced in accordance with the laws of the State of New York.
19. This Agreement contains the binding agreement between the parties and supersedes all other agreements and representations, written or oral, on the subject matter of this Agreement.
20. All exhibits to which reference is made are deemed incorporated in this Agreement, whether or not actually attached.
21. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

COUNTY OF ONEIDA

TOWN OF SAMPLE

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

Dennis S Davis, Commissioner  
Oneida County DPW

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

Supervisor

COUNTY OF ONEIDA

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

Anthony J. Picente Jr.  
Oneida County Executive

Highway Supt.

APPROVED AS TO FORM

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

Oneida County Attorney

<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY)
PRODUCER Insurance Agent; Name and Address	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Contractor; Name and Address	INSURERS AFFORDING COVERAGE	
	INSURER A:	NAIC #
	INSURER B:	
	INSURER C:	
	INSURER D:	
INSURER E:		

**COVERAGES**  
 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				Provide Limits As Required by New York Stae Law
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Oneida County added as a named insured to General, Auto, and Excess Liability policies on a primary basis.

<b>CERTIFICATE HOLDER</b> County of Oneida & Department of Public Works c/o Commissioner of Finance 800 Park Ave., Utica, NY 13501	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---	--

## 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 Legislators 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.

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).

- 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



**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

**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.

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/Town/City

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

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

Oneida County Executive

Name:

Approved as to Form only

\_\_\_\_\_

Oneida County Attorney

2013 Roadside Ditching Agreement

TOWN	Contract	Est. Hours	Rate	Agreement	Est. Cost	Sent	Received
ANNSVILLE	No	0	0.00	Payment			
AUGUSTA	Not called	40	315.00	Payment	\$ 12,600.00		
AVA	Yes	40	315.00	Payment	\$ 12,600.00		
BOONVILLE	No	0	0.00				
BRIDGEWATER	Yes	40	260.00	Payment	\$ 10,400.00		
CAMDEN	No	0	0.00	Payment	\$ -		
DEERFIELD	Not called	0	0.00				
FLORENCE	No	0	0.00				
FLOYD	No	0	0.00	Payment	\$ -		
FORESTPORT	No	0	0.00				
KIRKLAND	Yes	40	315.00	Payment	\$ 12,600.00		
LEE	Yes	40	315.00	Payment	\$ 11,600.00		
MARCY	Yes	40	315.00	Payment	\$ 12,600.00		
MARSHALL	Yes	40	315.00	Payment	\$ 12,600.00		
NEW HARTFORD	Yes	40	315.00	Payment	\$ 12,600.00		
PARIS	Yes	40	260.00	Payment	\$ 10,400.00		
REMSEN	No	0	0.00				
ROME	Yes	40	315.00	Payment	\$ 12,600.00		
SANGERFIELD	Yes	40	315.00	Payment	\$ 12,600.00		
STEUBEN	Yes	40	315.00	Payment	\$ 11,600.00		
TRENTON	No	0	0.00				
VERNON	Yes	40	270.00	Payment	\$ 10,800.00		
VERONA	Yes	40	315.00	Payment	\$ 12,600.00		
VIENNA	Yes	40	315.00	Payment	\$ 12,600.00		
WESTERN	Sh. Ser	40	0.00	Use Co. Gradall			
WESTMORELAND	Yes	40	315.00	Payment	\$ 12,600.00	Most hours to be used	towards striping
WHITESTOWN	Not called	0	0.00				
<b>TOTAL</b>		<b>680</b>			<b>\$ 193,400.00</b>		
<b>WEEKS</b>		<b>17</b>					

2013 Roadside Ditching Agreement

TOWN	Contract	Est. Hours	Rate	Agreement	Est. Cost	Sent	Received
ANNSVILLE	No	0	0.00	Payment			
AUGUSTA	Not called	40	315.00	Payment	\$ 12,600.00		
AVA	Yes	40	315.00	Payment	\$ 12,600.00		
BOONVILLE	No	0	0.00				
BRIDGEWATER	Yes	40	260.00	Payment	\$ 10,400.00		
CAMDEN	No	0	0.00	Payment	\$ -		
DEERFIELD	Not called	0	0.00				
FLORENCE	No	0	0.00				
FLOYD	No	0	0.00	Payment	\$ -		
FORESTPORT	No	0	0.00				
KIRKLAND	Yes	40	315.00	Payment	\$ 12,600.00		
LEE	Yes	40	315.00	Payment	\$ 11,600.00		
MARCY	Yes	40	315.00	Payment	\$ 12,600.00		
MARSHALL	Yes	40	315.00	Payment	\$ 12,600.00		
NEW HARTFORD	Yes	40	315.00	Payment	\$ 12,600.00		
PARIS	Yes	40	260.00	Payment	\$ 10,400.00		
REMSEN	No	0	0.00				
ROME	Yes	40	315.00	Payment	\$ 12,600.00		
SANGERFIELD	Yes	40	315.00	Payment	\$ 12,600.00		
STEBEN	Yes	40	315.00	Payment	\$ 11,600.00		
TRENTON	No	0	0.00				
VERNON	Yes	40	270.00	Payment	\$ 10,800.00		
VERONA	Yes	40	315.00	Payment	\$ 12,600.00		
VIENNA	Yes	40	315.00	Payment	\$ 12,600.00		
WESTERN	Sh. Ser	40	0.00	Use Co. Gradall			
WESTMORELAND	Yes	40	315.00	Payment	\$ 12,600.00	Most hours to be used	towards striping
WHITESTOWN	Not called	0	0.00				
<b>TOTAL</b>		<b>680</b>			<b>\$ 193,400.00</b>		
<b>WEEKS</b>		<b>17</b>					

# Oneida County Department of Public Works

ANTHONY J. PICENTE JR  
County Executive

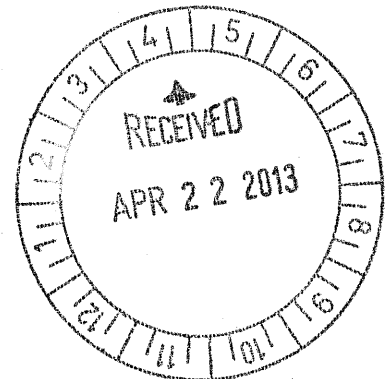
DENNIS S DAVIS  
Commissioner

6000 Airport Road  
Oriskany, New York 13424  
Phone:(315) 793-6221 Fax: (315) 768-6299

DIVISIONS:  
Buildings & Grounds  
Engineering  
Highways, Bridges & Structures  
Reforestation

April 18, 2013

FN 20 13-183



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

**PUBLIC WORKS**

**WAYS & MEANS**

Dear County Executive Picente:

This is a request to consider agreements between the County of Oneida and the involved towns and villages in Oneida County for road striping for the 2013 season.

Attached is a copy of the typical agreements. The language in most of the agreements is the same with the exception of those who utilize sharing of services, i.e. we will stripe certain roads, and in turn, that municipality will mow, sweep or ditch County roads. The County purchases the materials and is reimbursed by the Towns.

I respectfully request that the Public Works and Ways and Means Committees consider this agreement, with presentation to the Board of Legislators at their next regular scheduled meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dennis S. Davis'.

Dennis S. Davis  
Commissioner  
Department of Public Works

cc: County Attorney  
Highways, Bridges & Structures

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

A handwritten signature in black ink, appearing to read 'Anthony J. Picente, Jr.'.  
Anthony J. Picente, Jr.  
County Executive

Date 4/22/13

## Oneida County Board of Legislators Contract Summary

Name of Proposing Organization: Various towns and villages  
Title of Activity or Service: Pavement Marking Agreements  
Client Population/Number to be Served: N/A

**Summary Statements:**

1) Narrative Description of Proposed Services: 2013 road striping agreements. Certain municipalities may either mow, sweep or ditch County roads, and in turn, we will stripe certain roads. Other municipalities reimburse for materials, labor and equipment monetarily. Charges are directly related to miles striped.

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

3) Program Design and Staffing Level: N/A

Total Funding Requested: Revenue

Oneida County Department Funding Recommendation: Account # D5110

Proposed Funding Source: Federal \_\_\_\_\_ State \_\_\_\_\_ County X

Cost Per Client Served: N/A

Past Performance Data: N/A

Oneida County Department Staff Comments

# Oneida County Department of Public Works

ANTHONY J PICENTE JR  
County Executive

DENNIS S. DAVIS  
Commissioner

6000 Airport Road  
Oriskany, New York 13424  
Phone:(315) 793-6221 Fax: (315) 768-6299

DIVISIONS:  
Buildings & Grounds  
Engineering  
Highways, Bridges & Structures  
Reforestation

April 18, 2013

RE: 2013 TOWN/VILLAGE PAVEMENT MARKING AGREEMENTS HAVE BEEN SENT TO THE FOLLOWING TOWNS & VILLAGES WITH SPECIFIED STIPULATIONS:

Town of Annsville	Reimburse for labor, machinery & materials
Town of Deerfield	Reimburse for labor, machinery & materials
Town of Kirkland	Town has a credit of \$18,217.50 for mowing county roads in 2011 & 2012 and did not have town roads striped. Credit will cover 32.7 centerline miles. Should the Town want to add more striping, the Town would have to ditch county roads @ \$315 per hour to cover everything or just labor & expenses.
Town of Marcy	Reimburse for materials and ditch 24 hrs. on County Roads to cover labor & expenses for 25 centerline miles.
Town of New Hartford	Reimburse for materials. Sweep 20.48 County miles and ditch 23 hours @ \$315 per hour to cover labor & expenses for 42 centerline miles. Any change to miles being striped will adjust ditching.
Town of Paris	Reimburse for materials. The Town agrees to sweep 27.33 County roads, approximately 60 hours and ditch 7 hours to cover labor and equipment on 40 centerline miles. Any change to miles being striped will adjust ditching.
Town of Remsen	Reimburse for labor, machinery & materials
Town of Sangerfield	Reimburse for labor, machinery & materials
Town of Verona	Reimburse for labor, machinery & materials
Town of Westmoreland	Mow 36.28 miles of County roads. This will cover striping of 24.4 centerline miles. Any additional miles striped, the Town will deduct hours to be paid under the 2013 Roadside Ditching Agreement.



Village of Holland Patent	Reimburse for labor, machinery & materials
Village of New York Mills	Reimburse for labor, machinery & materials
Village of Remsen	Reimburse for labor, machinery & materials
Village of Sylvan Beach	Reimburse for labor, machinery & materials
Village of Whitesboro	Reimburse for labor, machinery & materials
Village of Yorkville	Reimburse for labor, machinery & materials

## ONEIDA COUNTY – TOWN/VILLAGE PAVEMENT MARKING AGREEMENT 2013

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of Oneida, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter referred to as “County” and the Village of Sample, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter called “Town”.

WHEREAS, the County proposes to perform striping on the improved Town road system located within the geographical boundaries of Town for an agreed-upon price and pursuant to agreed-upon terms and conditions, and

WHEREAS, the Town Board of the Town has adopted a resolution authorizing the Town to enter into this Agreement and thereby accepting the proposal of the County, now, therefore

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, County and Town agree as follows:

1. The term of this Agreement shall be from May 1, 2013, to November 1, 2013.
2. The County will furnish machinery. Materials and labor to perform striping on the improved Town road system located within the geographical boundaries of Town (hereinafter the “Roads”).
  - a) The Town will supply all supervision necessary to allow County to perform striping on the Roads.
3. The Town agrees to reimburse the County for all labor, machinery and materials used by the County to perform striping on the Roads.
4. The County agrees that it shall defend, indemnify and hold harmless the Town from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising from property damage, personal injuries or death to persons arising from or out of the work of the County and its agents, servants or employees, and from any loss or damage arising from the acts or failure to act or any default or negligence by the County or failure on the part of the County to comply with any of the covenants, terms or conditions of this agreement. The County shall not be required to defend and indemnify the Town against claims alleging negligent acts of commission or omission attributable to the Town, including claims alleging negligent design or signing of the Roads.
5. No provision of this Agreement shall be deemed to have been waived by either party, unless such waiver shall be set forth in a written instrument executed by such party. Any waiver by any of the parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.
6. No assignment by any of the parties to this Agreement of any rights, including rights to monies due or to become due under this Agreement or delegation of any duties under this Agreement, shall be binding upon the parties until their written consent has been obtained.

7. If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the parties agree that the Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the parties agree that all other provisions shall remain valid and enforceable.
8. Oral statements and understandings are not valid or binding, and neither this Agreement nor any other shall be changed or modified except by a writing signed by all parties.
9. In performing under this Agreement, all applicable governmental laws, regulations, orders, ordinances and other rules of duly constituted authority will be followed and complied with in all respects by all parties.
10. This agreement shall be construed and enforced in accordance with the laws of the State of New York.
11. This Agreement contains the binding agreement between the parties and supersedes all other agreements and representations, written or oral, on the subject matter of this Agreement.
12. All exhibits to which reference is made are deemed incorporated in this Agreement, whether or not actually attached.
13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

COUNTY OF ONEIDA

VILLAGE OF \_\_\_\_\_

By: \_\_\_\_\_  
 Dennis S Davis, Commissioner  
 Oneida County DPW

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

COUNTY OF ONEIDA

By: \_\_\_\_\_  
 Highway Supt.

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

APPROVED AS TO FORM

By: \_\_\_\_\_  
 Oneida County Attorney

**ONEIDA COUNTY – TOWN/VILLAGE PAVEMENT MARKING AGREEMENT 2013**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the County of Oneida, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter referred to as “County” and the Town of Sample, a municipal corporation organized and existing pursuant to the laws of the State of New York, hereinafter called “Town”.

WHEREAS, the County proposes to perform striping on the improved Town road system located within the geographical boundaries of Town for an agreed-upon price and pursuant to agreed-upon terms and conditions, and

WHEREAS, the Town Board of the Town has adopted a resolution authorizing the Town to enter into this Agreement and thereby accepting the proposal of the County, now, therefore

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, County and Town agree as follows:

1. The term of this Agreement shall be from \_\_\_\_\_, to \_\_\_\_\_.
2. The County will furnish machinery. Materials and labor to perform striping on the improved Town road system located within the geographical boundaries of Town (hereinafter the “Roads”).
  - a) The Town will supply all supervision necessary to allow County to perform striping on the Roads.
3. The Town agrees to reimburse the County for all labor, machinery and materials used by the County to perform striping on the Roads.
4. The County agrees that it shall defend, indemnify and hold harmless the Town from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising from property damage, personal injuries or death to persons arising from or out of the work of the County and its agents, servants or employees, and from any loss or damage arising from the acts or failure to act or any default or negligence by the County or failure on the part of the County to comply with any of the covenants, terms or conditions of this agreement. The County shall not be required to defend and indemnify the Town against claims alleging negligent acts of commission or omission attributable to the Town, including claims alleging negligent design or signing of the Roads.
5. No provision of this Agreement shall be deemed to have been waived by either party, unless such waiver shall be set forth in a written instrument executed by such party. Any waiver by any of the parties to any of the provisions of this Agreement shall not imply preceding or subsequent waiver of that or any other provision, unless explicitly stated otherwise.
6. No assignment by any of the parties to this Agreement of any rights, including rights to monies due or to become due under this Agreement or delegation of any duties under this Agreement, shall be binding upon the parties until their written consent has been obtained.

7. If any provision of this Agreement or any part thereof is or becomes void or unenforceable by force or operation of law, the parties agree that the Agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Further, the parties agree that all other provisions shall remain valid and enforceable.
8. Oral statements and understandings are not valid or binding, and neither this Agreement nor any other shall be changed or modified except by a writing signed by all parties.
9. In performing under this Agreement, all applicable governmental laws, regulations, orders, ordinances and other rules of duly constituted authority will be followed and complied with in all respects by all parties.
10. This agreement shall be construed and enforced in accordance with the laws of the State of New York.
11. This Agreement contains the binding agreement between the parties and supersedes all other agreements and representations, written or oral, on the subject matter of this Agreement.
12. All exhibits to which reference is made are deemed incorporated in this Agreement, whether or not actually attached.
13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

COUNTY OF ONEIDA

TOWN OF sample

By: \_\_\_\_\_  
Dennis S Davis, Commissioner  
Oneida County DPW

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

COUNTY OF ONEIDA

By: \_\_\_\_\_  
Highway Supt.

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

APPROVED AS TO FORM

By: \_\_\_\_\_  
Oneida County Attorney

## 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 Legislators 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.

- 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).

- 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



## **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

**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.

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



ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

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

May 2, 2013

FN 20 13 - 184

**PUBLIC WORKS**

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

**WAYS & MEANS**

Honorable Members:

In order to fund the improvements needed to the Oriskany Salt Storage Barn it is necessary to amend the capital project.

I therefore request your Board approval for an amendment to **Capital Project H-473 – Comprehensive Building Improvements, PASE IV:**

	<u>CURRENT</u>	<u>CHANGE</u>	<u>PROPOSED</u>
Bonding .....	\$1,300,000.	\$ 0.	\$1,300,000.
Direct Appropriation .....	\$ 0.	\$ +230,000.	\$ 230,000.
TOTAL:.....	\$1,300,000.	\$ + 230,000.	\$1,530,000.

Respectfully submitted,

Anthony J. Picente, Jr.  
County Executive



CC: County Attorney  
Comptroller  
Budget Director  
Comm DPW



ONEIDA COUNTY  
OFFICE OF THE COUNTY EXECUTIVE

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

May 2, 2013

FN 20 13 - 185

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

**PUBLIC WORKS**

Dear Board Members:

**WAYS & MEANS**

The Commissioner of Department of Public Works hired a consultant to inspect the Oriskany Salt Storage Barn as per New York State Building Code. The consultant's preliminary report has identified some serious problems which have to be addressed before the next plowing season begins.

The repairs can begin as soon as the funding is transferred from the General Fund Reserve to the Capital Project H-473 Comprehensive Building Improvements Phase 4. These repairs were not anticipated in the original budget and not budgeted for. Therefore; it is necessary to do a transfer.

I therefore request your Board's approval to increase the following 2013 budget item with the following 2013 supplemental appropriation:

TO:

AA# A9950.9 – Transfer to Capital - H -473..... \$ 230, 000.00

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

RA# 889-889-19 - Fund Balance – Pay-As-You-Go ..... \$ 230,000.00

Respectfully submitted,

Anthony J. Picente, Jr.  
County Executive

CC: County Attorney  
Comptroller  
Commissioner of DPW  
Budget Director

