



CORTLAND COUNTY

REQUEST FOR PROPOSALS

FOR

LEASE OF MAIN HANGAR MH-1 AND PROVISION OF AN AVIATION FLIGHT SCHOOL AT CORTLAND COUNTY AIRPORT – CHASE FIELD

Proposals may be sent to the following addresses:

Overnight Package Shipping Address:

Cortland County Highway Department
4267 Traction Drive
Cortland, New York 13045

Regular Mailing Address:

Cortland County Highway Department
60 Central Avenue
Cortland, New York 13045

Proposals may be hand-delivered to the following addresses:

Cortland County Highway Department
4267 Traction Drive
Cortland, New York 13045

Request for Proposals

Written Proposals for Lease of Main Hangar MH-1 to Provide an Aviation Flight School at Cortland County Airport – Chase Field, will be received by the Airport Advisory Board of the Cortland County Legislature, c/o Cortland County Highway Department, Cortland, New York 13045 **on or before October 31, 2016 at 2:00 p.m.**

The Request for Proposals and scope are available for download from the Cortland County website on or after **October 10, 2016** at the following website address:

<http://www.cortland-co.org/Highway/index.htm>

under the link entitled:

“Lease of Main Hangar MH-1 to Provide an Aviation Flight School”.

It is the responsibility of the Proposer to check the Website for addenda. The final date for posting addenda to the Website will be 5 working days prior to the proposal due date.

Questions regarding the agreement documents for this Request for Proposals may be directed to Philip T. Krey, P.E., Superintendent of Highways/Airport Manager at (607) 753-9377.

The County of Cortland, a tax exempt municipality, reserves the right to reject any and all proposals submitted. The County of Cortland reserves the right to make awards based on the initial proposals received under this solicitation.

This proposal solicitation and any awards shall be in conformance with Section 352 of the General Municipal Law of the State of New York.

This proposal solicitation and any awards shall be in conformance with the Master Agreement Grant Assurances made by the County to the United States of America through agreement with the FAA.

Subsequent to the award by the County Legislature, the successful firm will be required to execute a Cortland County Lease Agreement, an example of which is included within this RFP. The agreement will commence on the day of execution and expire at the end of the period stated in agreement.

The successful firm shall comply with all provisions set forth in Appendix 1: Cortland County Standard Contract Provisions. All items required by the “Checklist of documents to be returned with contract” section of Appendix 1 shall be submitted with the proposal.

Proposal Scope

The County of Cortland desires to Lease the entire MH-1 hangar building to an individual, or a company, who has a successful record and current capabilities of legally providing for an FAA approved Pilot Instruction (Flight Training) business, with said Flight Training business operations to be based at Cortland County Airport - Chase Field, Cortland, New York, meeting the minimum requirements as follows:

1. Proposer shall list at least five (5) years experience in providing Pilot Instruction (Flight Training) for FAA certificates and ratings including Private Pilot, Sport Pilot, Instrument, CFI, Complex Aircraft, and Multi-Engine. Such Training shall have included classroom instruction (ground school), and recurrent training for above certificates. The proposer shall be required to provide a list of former and current clients who have successfully attained FAA certificates and ratings utilizing the proposer's business for their flight training in preparing for said certificates and ratings. The proposer shall also submit a list of Certified Flight Instructor(s) currently employed or proposed to be employed and utilized for Flight Training for the purpose of fulfilling the above requirements, including addresses and telephone numbers where said CFI's can be contacted;
2. Proposer shall provide owned and/or leased aircraft to be made available for use in Flight Training. Said aircraft must be proposed to be based at Cortland County Airport. Said aircraft shall also be proposed to be available as rental aircraft for pilots wishing to rent aircraft for personal use. Said aircraft shall have current FAA approved annual inspections if so required, and a plan showing how aircraft maintenance issues are/will be addressed in a prompt and businesslike manner in order to provide for continuous Flight Training and Rental availability.
3. Provide for purchase of at least 90% of the 100LL Aviation Fuel utilized in the proposer's Flight training Aircraft from the County using its fueling facility located at Cortland County Airport.
4. Provide the above mentioned services and lease of said hangar for a term of at least five (5) years, starting on the date the lease agreement is fully executed.
5. Provide listing of Proposer's Hangar Lease Rental payment schedule to the County for amounts proposed to be paid to the County on a monthly basis over the course of the five (5) year agreement term as payment for proposer's use of the leased premises to provide said required services.
6. Provide rental space inside the aircraft storage area of said MH-1 Hangar for existing aircraft owners based at Cortland County Airport and/or transient aircraft owners.
7. Provide for a normal business hours schedule in local time, Monday through Friday, of every week of every year of the lease agreement term, except during Federal Holidays.
8. Provide an acceptable Pilot Lounge, Computer for flight planning purposes, web-based scheduling of Flight Instruction and rental of aircraft.

9. Provide Pilot Supplies including FAA Charts and Directories, Flight Training Supplies and Manuals, Pilot Equipment/Accessories, Engine Oil

Requirements of Proposer if Approved for Award

The following is a list of the County's requirements of the Proposer if selected and awarded the lease of said hangar for provision of said services:

- ◆ Execute the County's proposed Hangar Lease Agreement, and deliver executed lease document to the County for its execution. Said Agreement shall be for a minimum of a five (5) -year term, with a mutual extension clause for an additional five (5) - year term requiring a negotiated rental payment schedule with amounts mutually agreed to be paid by the Proposer to the County during said additional 5-year term. Said Lease Agreement includes additional requirements of both the County and Proposer (as Lessee). Said Lease Agreement can be found elsewhere in this Request for Proposals.
- ◆ Submit payment to the County in the amount of the agreed upon first month's rent amount as proposed, prior to the first month of occupation of the building as agreed to under proposed Lease Agreement.
- ◆ Submit certificates of insurance to the County, and receive approval by the County for general liability and hangarkeepers insurance as specified in the Lease Agreement. Said Lease Agreement can be found elsewhere in this Request for Proposals.
- ◆ Submit list of owned and/or leased aircraft proposed to be based at Cortland County Airport and available for use in Flight Training as well as for rental purposes. Said aircraft shall have current FAA approved annual inspections if so required.
- ◆ Submit a written plan showing how aircraft maintenance issues are / will be addressed in a prompt and businesslike manner in order to provide for continuous Flight Training aircraft and Rental aircraft availability.

Scoring of Proposals and Selection for Award

- ◆ The Airport Advisory Board will score the written proposals and rank the proposals as follows:

Items 1-7 will be scored on the basis of Item 1 being highest priority to Item 7 being lowest priority for this group of items.

Items 8 and 9 will be given equal priority.

- ◆ Preference may be given to individuals or companies who currently base their business operations at Cortland County Airport.

- ◆ Preference may be given to individuals or companies who currently utilize aircraft maintenance businesses currently operating at Cortland County Airport.
- ◆ At the discretion of the Airport Advisory Board, proposers may be requested to, and be required to provide additional information including but not limited to financial information and references.
- ◆ Proposers must be available to meet with the Airport Advisory Board for the purpose of an interview, if so requested to do so by the Airport Advisory Board.

Sample Lease Agreement
HANGAR AND FIXED BASE OPERATION
COMMERCIAL AVIATION GROUND LEASE
MAIN HANGAR 1 (MH-1)

THIS LEASE AGREEMENT, made this _____ day of September, 2010 by and between the COUNTY OF CORTLAND, a municipal Corporation of the State of New York, hereinafter referred to as the "Lessor", with principal offices for the transaction of business located at 60 Central Avenue, Cortland, New York and _____ hereinafter referred to as the "Lessee":

WITNESSETH:

WHEREAS, the Lessor is the owner of the Cortland County Airport - Chase Field located in the County of Cortland, State of New York, hereinafter referred to as the "Airport" and is the owner of lands hereinafter described which are shown on a Master Plan of Cortland County Airport-Chase Field, Cortland, New York dated December, 2005, adopted by the County of Cortland by Resolution of the Cortland County Legislature thereof adopted December 8, 2005, and approved by the Federal Aviation Administration July 31, 2006; and

WHEREAS, the Lessor deems it advantageous to demise and lease to the Lessee all of Hangar Building MH-1 per attached Exhibit 1, at Cortland County Airport, hereinafter referred to as the "Building", together with certain privileges, rights, uses and interests therein, as hereinafter set out; and

WHEREAS, the Lessee is a corporation primarily engaged in aircraft services, aviation retail sales, commercial aviation and general activities of a fixed base operation; and

WHEREAS, the Lessee proposes to lease from the Lessor the MH-1 building, per Exhibit 1 attached, all as herein set forth, which the Lessor deems advantageous to itself and to the efficient operation of the Airport; and

WHEREAS, the Lessee hereby agrees to abide by all Field Regulations of the Lessor at the Cortland County Airport Chase Field, attached herewith and referred to as Exhibit 2; and

WHEREAS, this Agreement has heretofore been duly authorized by Resolution No. _____ of the County Legislature of the County of Cortland dated the ____ day of _____, _____.

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

**ARTICLE I
PREMISES AND PRIVILEGES**

DESCRIPTION OF THE PREMISES DEMISED. The Lessor, in consideration of the covenants and agreements set forth herein to be kept and performed by the Lessee, does hereby and by these presents demise and lease unto the Lessee upon the considerations hereinafter set forth all of which the Lessee accepts, the Building referred to by the Lessor as MH-1. The location of the leased premises being set forth in Exhibit 1 and are stipulated and agreed between the parties to be correct and by reference made a part thereof, together with the general use of all public airport facilities in common with other authorized Airport users and improvements of a public nature which are now or may hereafter be connected with or appurtenant to said Airport except as hereinafter provided, to be used by the Lessee and/or its sub-Lessee for commercial hangar and fixed and related operations as herein defined. For the purpose of this lease, public airport facilities shall include all necessary landing area appurtenances including but not limited to approach areas, runways, taxiways, aprons, roadways, sidewalks, navigational and aviation aids, lighting facilities, adequate terminal facilities, or other public things appurtenant to said Airport. No sublease shall, however, be made by the Lessee without prior approval of the County of Cortland, acting through the committee of the Cortland County Legislature charged with the supervision of the Airport. No sublease will be approved for any business or activity other than aeronautical activities, as determined by the Cortland County Legislature..

It is mutually agreed that the right to use said public airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the Laws of the United States of America and the State of New York, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.

B. PRIVILEGES, USES, RIGHTS AND INTERESTS. In addition to the general privileges, uses, rights, and interests attaching to the demised premises hereinbefore described and without limiting the generality thereof, the following particular privileges, uses, rights and interests are demised to the Lessee and/or its tenants and sublessees, to wit:

- 1) The loading and unloading of aircraft in any lawful commercial aviation activities;
- 2) The maintenance, storing and servicing of aircraft, which shall include overhauling, rebuilding, repairing, inspection and licensing of same, and the purchase and sale of parts, equipment, and accessories therefore;
- 3) The right to maintain a business of buying and selling aircraft, parts, and accessories therefore, and aviation equipment of all descriptions, either at retail or wholesale or as a dealer;
- 4) The training on the Airport of personnel in the employ of the Lessee and/or its tenants and sublessees and members of the public generally as students, or otherwise, in any part, science, craft or skill pertaining directly or indirectly to aircraft;
- 5) The use in common with other authorized users of said Airport facilities and navigational aids and facilities relating thereto for purposes of commercial and non-commercial landings, take-off, and taxiing of aircraft;
- 6) The unrestricted use of and a right of ingress to and egress from the demised premises without charge therefore, for Lessee's and customers' aircraft over the right of ways

hereinbefore described, except the considerations set forth herein.

- 7) Lessee is hereby granted sole use of three (3) tie-down space to be located directly south of MH-1 and adjacent to security fence automobile gate for Lessee's use in tying down aircraft only. Said Tie-Down shall not be rented or sub-leased by Lessee to others.

C. **DEFINITION OF HANGAR AND FIXED BASE OPERATIONS.** Hangar operations are hereby defined as the housing in hangars, shops or related office space of any activity related to the business of storing, repairing, leasing, purchasing, or otherwise acquiring, selling, exchanging, disposing of, dealing in, or distributions aircraft of every class and description, engines, motors, aircraft instruments, devices, supplies and accessories; the servicing of aircraft, aerial survey, photograph mapping and the sales of said work and services; the operation of aerial taxi and sight-seeing services, and aerial advertising; the operation of school of flying, navigation, mechanics, photograph, aircraft design, theory and construction, aeronautical and allied research; the operation of the business of non-scheduled and charter transportation of passengers; the maintenance of offices and operation or the undertaking of any phase of aviation commercial activity for profit related to or in any way contributing to air transportation or aerial navigation.

Fixed base operations are hereby defined as a person, firm, partnership or corporation engaging in the sales, renting, leasing, and operating of aircraft for profit, including as related phases the custom repair, overhauling, and modification of aircraft and activities set forth in Article I, Paragraph B, sub-sections (1), (2), and (3) including the selling of aircraft and the conduct of any single, one-time scheduled type of flight operations for commercial purposes.

ARTICLE II OBLIGATIONS OF LESSOR

- A. Lessor warrants to the Lessee peaceful possession and quiet enjoyment of the leased premises during the term hereof upon performance of Lessee's covenants herein.
- B. Lessor covenants that it has entered into Sponsor's Agreement with the United States Government as consideration of various governmental grants pursuant to the Federal Airport Act (U.S. Code Annotated, Title 49, Chapter 14), and that it, or its successors and assigns will continue to operate and maintain the Airport and its public Airport facilities, as defined in Article I, Paragraph 1, of this Agreement as a public Airport consistent with and pursuant to the Sponsor's Assurances given by the Lessor to the United States Government under the Federal Airport Act. Thereafter, the Lessor may, but shall not be obligated to maintain the Airport under the terms of this lease.
- C. The Lessee hereby acknowledges that it has been afforded the opportunity to inspect the premises, which is subject of this lease, and he further acknowledges that the same are in sound operating condition and it accepts the same in this present condition (subject to completion of concrete floor replacement in the hangar which Lessor is currently undertaking). The Lessee assumes responsibility for the non-structural maintenance, upkeep and cosmetic repairs necessary to keep the premises in a safe and serviceable condition and that Lessee shall be responsible to keep the premises in a clean and neat condition. Lessee further assumes responsibility for painting and non-structural repair of any damages to the areas covered by this lease caused by Lessee, its agents or invitees, including the interior of the building. Structural

repairs or repairs or replacement of the HVAC, plumbing or electrical systems, and repairs to or replacement of the roof of the building, including leaks, shall be the sole responsibility of the Lessor. The maintenance of the hangar doors shall be the responsibility of the Lessor. The Lessor shall cause said doors to be operable at the commencement of this Lease. The Lessee shall, however, be responsible for the cost of all necessary repairs of property that is damaged by the Lessee, its agents or invitees.

ARTICLE III USE AND OCCUPANCY

- A. The use and occupancy of said premises by the Lessee shall be without cost or expense to the Lessor except as stated in Paragraph C of Article II above. Lessee shall pay for all utility services such as electric, water, sewer, gas, communications, cable or satellite TV and any other utility charge of any like and kind whatsoever related to the leased premises during the period of occupancy of the premises covered under this lease.
- B. Lessee agrees, at its own expense, to cause the Building to be maintained in a presentable condition consistent with good business practices and equal in appearance and character to other similar improvements on said Airport as provided in Paragraph "C" below.
- C. Lessee agrees to, at its own expense, cause to be removed from the leased premises all wastes, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except Lessee may deposit the same temporarily in a bin or container on the demised premises in connection with collection or removal, as approved by the Airport Manager. Used aircraft parts not held for resale and other property no longer necessary for Lessee's business shall be promptly removed from the Airport property in order to maintain a clear, uncluttered premises. Lessee further agrees, at its own expense, to remove all toxic, hazardous or other similarly environmentally controlled wastes used as part of Lessee's business operations in conformance with all laws and regulations pertaining to collection, storage and disposal of said wastes. Lessor represents that it has no knowledge of any toxics, hazardous or other similar environmental controlled substances on or about the demised premises.
- D. Lessee hereby agrees that as a condition of this Lease, Lessee shall provide services specifically enumerated as follows:
 - 1. Sub-Rental of Aircraft storage area
 - 2. Flight training and ground school Business

Lessee shall furnish such services in a good, prompt, and efficient manner at the airport, and further, Lessee shall furnish said services on a fair, equal, and non-discriminatory basis to all users thereof and to charge fair, reasonable, and non-discriminatory prices for each unit of sale of said services, provided that the lessee or its sub-tenants and sub-lessees will be allowed to make lawful, reasonable price reductions to volume purchasers.

- E. Lessee shall maintain adequate service to the public constantly throughout the term of this lease. In connection therewith, he shall publish his hours of operation as to when services are available to the public. The hours of operation and other public service features consistent with public need are

to be determined by the Lessee subject to the Approval of the committee of the Cortland County Legislature charged with the supervision of the Airport. Lessee shall also publish a telephone number available for the public to call during the hours the facility is closed.

F. Any service to aircraft performed by the Lessee during the term of this lease shall be performed by persons authorized by all state and federal regulations to perform aircraft maintenance and repair and said repairs shall be performed in accordance with all federal, State and local codes, rules and regulations.

G. The County of Cortland currently sells aviation fuels and the lessee or its sub-tenants or sub-lessees shall not sell the following specific types of aviation fuel in competition with the County for the term of this lease so long as the County sells said fuels:

1. 100LL Aviation Gasoline

H. Lessee will not suffer or permit to be maintained upon the outside of the Building any billboards or advertising signs except that the Lessee may maintain neatly painted signs, such signs, however, as to their size, construction, location, context, color and general appearance shall meet all relevant municipal codes and be approved in advance by the committee of the Cortland County Legislature charged with supervision of the Airport. The County agrees to remove any signs relating to prior Lessee.

I. Lessee and its tenants, employees, agents and servants will obey such reasonable rules and regulations, including but not limited to all Airfield Regulations, as may from time to time be promulgated by Lessor and the Airport Manager, or his authorized agents in charge of the Airport, to insure the safe and orderly conduct of operations and traffic to, from or upon the demised premises, and Lessee and its tenants will obey such rules and regulations as may from time to time be promulgated by the United States or any department or agency thereof and by the State of New York for like purposes.

1. The Lessee or its sub-tenants and sub-Lessees agree to conduct its business in a proper and first-class manner at all times and comply with all of the airport Minimum Standards as may from time to time be promulgated by Lessor and the Airport Manager, or its authorized agents in charge of the Airport.

J. Lessor shall be responsible for all taxes, fees and assessments for the subject premises.

K. Lessee agrees that all construction and improvements, including plans, proposals, materials and designs shall be subject to the written approval of the Airport Manager, and the committee of the Cortland County Legislature charged with supervision of the Airport. The Lessee shall not commence the construction of any improvements on the demised premises without the prior, written approval of the Airport Manager and the committee of the Cortland County Legislature charged with the supervision of the Airport. Lessee agrees to comply with the provisions of General Municipal Law, Section 103a and 103b and State Finance Law, Section 139b as enacted by Chapter 605 of the Laws of 1959, effective July 1, 1959.

L. The Lessee agrees to be responsible for the movement of Lessee's or or Lessee's guest aircraft from the hangar area, through the hangar to the tarmac. Lessee assumes full responsibility to pay

any repair costs for any damages incurred to aircraft in said movement by Lessee.

**ARTICLE IV
TERM OF LEASE**

- A. The term of this lease shall be a period of _____ years commencing on the _____ day of _____, _____.
- B. In the event that any governmental agency by order or otherwise require the use of the Cortland County Airport-Chase Field, and for any or all of the properties connected therewith or used incidental thereto, including the demised premises, by reason of way of governmental project or emergency, the Lessor shall be released and relieved from any or all responsibility to the Lessee for the performance of this Agreement during the term of such governmental possession or occupancy and this lease and all of the terms and conditions hereof shall be suspended during said period.
- C. That upon the termination of such governmental possession and occupancy, this lease may at the option of the Lessee, be extended and continued for a period equal to the period of governmental possession and occupancy, under the same terms and conditions of this lease. Nothing herein contained shall be construed to restrict Lessee's right to compensation or claim against said governmental agency by reason of the taking, use and occupancy of the demised premises in accordance with the provisions of this paragraph.

**ARTICLE V
RENTALS**

- A. For the portion of the Building shown in Exhibit 1, the total rental shall be per the following schedule:
- B. Rent shall be due on the 1st day of each and every month thereafter for the term of this lease.
- C. Lessee and Lessee's customers using the demised premises shall have the right to use the automobile parking lot at the Airport, as designated by the Airport Manager, while using the Airport. In the event that parking for more than 2 days is required for Lessee's or it's customer's vehicles, Lessee shall arrange with the Airport Manager for location of parking such vehicles.

**ARTICLE VI
TERMINATION OF LEASE, CANCELLATION, ASSIGNMENT AND TRANSFER**

- A. This lease and all the provisions thereof shall be subject and subordinate to all the terms and conditions of the instruments and documents now or hereafter in effect between the Lessor and the United States of America, execution of which has been or may be required as a condition precedent to a grant of Federal Funds, and the expenditure thereof for the development of the Airport and this lease shall be given only such effect as will not be in conflict or be inconsistent with such terms and conditions.

It is hereby agreed that the Lessor may terminate this agreement by giving the Lessee sixty (60) days written notice of termination thereof by reason of any failure on the part of the Lessee to perform, comply with, keep or observe any of the terms, covenants and conditions of this agreement including payment of rentals herein provided. It is further agreed that in the event of the financial failure of the Lessee resulting in an assignment for the benefit of creditors, voluntary or involuntary bankruptcy proceeding or any other proceedings for the attached or dissolution of the business of the Lessee, this agreement shall in that event, at the sole and exclusive option of the Lessor, terminate and become null and void in hands of assignee, trustee, receiver or other representative of creditors of the Lessee. It is further agreed that the Lessee may terminate this agreement by giving the Lessor thirty (30) days written notice of termination thereof by reason of any failure on the part of the Lessor to perform, comply with, keep or observe any of the terms, covenants and conditions of this agreement. Prior to any termination by either Lessor or Lessee under the provisions of Article VI, Paragraph B, either party shall give fifteen (15) days written notice to correct such violation or breach prior to the sixty (60) days termination provisions.

ARTICLE VII STANDARD PROVISIONS

INDEMNIFICATION/HOLD HARMLESS

The LESSEE shall indemnify, defend and hold the COUNTY, its Departments, and its officers, employees, contractors, representatives and agents harmless from and against any and all claims, fines, demands, losses, damages and expenses, including attorney's fees, relating to or arising out of any negligent or intentional acts and/or omissions of the LESSEE or any of its directors, officers, employees, contractors, representatives, or agents.

The LESSOR shall indemnify, defend and hold the LESSEE, its officers, employees, contractors, representatives and agents harmless from and against any and all claims, fines, demands, losses, damages and expenses, including attorney's fees, relating to or arising out of any negligent or intentional acts or omissions of the LESSOR or any of its directors, officers employees, contractors, representatives, or agents.

B. INDEPENDENT CONTRACTOR

The Lessee, including all its officers, employees and agents agrees that their relationship to the County, and any of its departments or units, is that of an independent Contractor, and said Lessee covenants and agrees that they will not conduct themselves as, nor hold themselves out as, nor claim to be an officer or employee of the County by reason hereof, and that they will not claim, demand or make application to or for any right or privilege applicable to an officer or employee of the County, including, but not limited to Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage, medical and dental benefits, or retirement membership or credit.

C. INSURANCE REQUIREMENTS.

Lessee shall procure and maintain insurance satisfactory to County covering all locations and facilities operated or maintained by the Lessee in the following minimum coverage and amounts:

- 1) Comprehensive General Liability, including personal injury coverage of \$1,000,000 per occurrence - \$2,000,000 in the aggregate; property damage in the amount of \$500,000 per occurrence and \$1,000,000 in the aggregate.
- 2) Automobile coverage, with a combined single limit of \$1,000,000, if necessary.
- 3) Statutory Workers' Compensation and Disability coverage.
- 4) Professional Liability Insurance in the amount of \$1,000,000, where applicable.
- 5) Unemployment Insurance Benefits as required by Statute.
- 6) Hangar Keepers Insurance in the amount of \$100,000.00

The Lessee shall submit, at the time of execution of this Lease, certificates of insurance properly executed by an authorized representative of his insurance underwriter, evidencing such insurance policies to be in full force and effect, naming the County and its officers, employees, agents and representatives as additional insured.

Notice of termination of any such policies must be provided to the County at least thirty (30) days in advance. Lessee shall, on or before this 30-day period, provide the County with a prospective Certificate of Insurance with the above coverage and limits for the balance of the term of this Lease.

All insurance coverage required to be purchased and maintained by the Lessee under this Lease shall be primary for the defense and indemnification on any action or claim asserted against the County and/or the Lessee for work performed under this Lease, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

D. VENUES AND DISPUTES

The exclusive means of disposing of any dispute arising under a contract with Cortland County, which is not disposed of by Lease, shall be decided in a New York State Court of competent jurisdiction located within Cortland County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the Lessee must proceed diligently with contract performance. The claim must be in writing for sum certain; any money requested must be fully supported by all cost and pricing information.

E. APPLICABLE LAW

This Lease shall be governed according to the laws of the State of New York.

F. REMEDIES

The remedies specified herein shall be cumulative and in addition to any other remedies

available at law or in equity. Waiver of a breach of any provision of this Lease shall not constitute a waiver of any other or future breach of the same provision or any other provision of the entire Lease. Any dispute arising under this Lease which is not disposed of by Lease shall be decided by a New York State court of competent jurisdiction. Venue for such litigation shall be Cortland County, New York. Pending final resolution of a dispute, Lessee must proceed diligently with Lease performance.

G. NOTICE

All notices of any nature referred to in this Lease shall be in writing and sent by registered or certified mail postage pre-paid, to the respective addressed set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the Lessee:

To the Lessor (County):

Chairman of the Legislature
County of Cortland
60 Central Avenue
Cortland, NY 13045

H. SEVERABILITY

In the event any provision hereof shall be held for any reason to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this contract, which provisions shall continue in full force and effect.

I. ASSIGNMENT

Neither party may assign or sub-contract this contract or any portion thereof, without prior written consent from the other party hereto.

J. EXECUTORY CLAUSE

County shall have no liability under this contract to the Lessee or to anyone else beyond funds appropriated and available for this contract.

K. RECORDS RETENTION AND AUDIT

The Lessee agrees to retain all books, records and other documents relevant to this Contract for six (6) years after expiration or termination of this contract or six (6) years after final payment, whichever is later, unless otherwise directed, in writing. State Auditors and any persons duly authorized by the County shall have full access to and the right to examine any of said materials during said period. The following shall also apply (See NYS Education

Disposition Schedule CO-2).

L. COMPLIANCE WITH NYS CONTRACT PROVISIONS

The Lessee shall be bound by any and all terms and requirements imposed by the State on the County provided for in and in furtherance of the provision of services specified within this Contract. These terms and conditions are incorporated and attached to this contract as Schedule "A".

M. MECHANIC'S LIENS

The Lessee agrees that in the event any mechanic's lien is filed against Lessee or Lessor for materials furnished or for services performed for Lessee on or in connection with the leased premises or any action is brought in connection therewith against Lessee, Lessor, or both, and such mechanic's lien is not promptly discharged by Lessee by payment, Lessee shall forthwith obtain a discharge of such lien by making an offer to pay and paying into Court sufficient monies to obtain a discharge thereof in accordance with the provisions of Section 55 and other pertinent provisions of the Lien Law, and the Lessee will obtain such charge of lien at its own expense.

**ARTICLE VIII
EXCLUSIONS AND RESERVATIONS**

A. CONCESSIONS EXCLUDED.

It is specifically agreed and stipulated that the following concessions and establishment thereof are excluded from this contract and lease, to wit:

- 1) Food Sales
- 2) Advertising Concessions
- 3) Parking Lot Concessions

B. RESERVATIONS

- 1) The Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions.
- 2) The Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit without prior consent of Lessee and regardless of the desires or view of the Lessee, and without interference or hindrance from the Lessee.

**ARTICLE IX
LOSS AND CASUALTIES**

- A. The Parties hereto agree that in the event of any partial or total loss, the Lessor shall have the right to repair or rebuild the structure or the Lessor may elect not to repair or rebuild. If the Lessor decides not to repair or rebuild, this lease shall end and the parties shall exchange releases and neither party shall be further obligated to the other. If the Lessor elects to repair or rebuild the structure, the insurance proceeds received by the County from the Insurance carrier shall be used to repair, rebuild and/or replace the leased structure it being understood that in such event, a new lease must be negotiated between the parties if the proceeds do not cover the replacement cost of the structure. In the event that the parties are unable to negotiate a new lease within 90 days following the loss, this agreement shall be deemed terminated and the Lessee shall not be entitled to any of the insurance proceeds. Furthermore, in the event the Lessee wishes to terminate the lease due to partial or total loss, then and in that event, Lessee waives the right to any insurance proceeds received by the County for a total or partial loss. Lessee shall give notice of termination within thirty (30) days of the occurrence of the loss.

**ARTICLE X
MISCELLANEOUS**

- A. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this agreement.
- B. The standards of operation as pertains to the service afforded the public and the appearance of the premises shall be at least equal to the highest quality of service rendered by similar type Lessees at other Airports in the United States. At all times the general public shall be given the highest consideration in matters affecting the operation and use of these premises.

- C. Any questions or complaints regarding the standards of service or appearance of the premises or other standards of operation or public safety, which shall be reported to the Airport Manager, shall be subject to Airport Manager's review. Lessor may take such action as it deems appropriate in the particular circumstances. Continued violation of this clause shall be suitable grounds for the termination of this agreement as provided for herein.

- D. This lease shall apply to and bind the successors and assigns of each of the parties hereto, and the Lessee shall not assign this lease, nor sublet said premises or any part thereof without first obtaining the written consent thereto of the County Legislature.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this

_____ day of _____, 20__.

For the Lessor: County of Cortland

SIGNED: _____

By: _____, **Chairman**
Cortland County Legislature

For the Lessee: _____
(Print Name of Lessee)

SIGNED: _____

By: _____
(Print Name and Title)

ACKNOWLEDGMENT OF COUNTY

**State of New York} ss
County of Cortland} ss**

On thisday of, 2010 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, as Chairman of the Cortland County Legislature, Cortland, New York, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and that said _____ duly acknowledged to me that she executed the same pursuant to the power and authority vested in her by the Cortland County Legislature, and that by her signature on the instrument he executed the instrument pursuant to the authority vested in her.

.....
Notary Public

ACKNOWLEDGMENT OF LESSEE IF CORPORATION

*State of }ss
County of }ss*

On thisday of, 2010, before me, the undersigned, a Notary Public in and for said State personally came and appeared, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, who, being by me duly sworn, did depose and say that he / she resides at

.....
and that he / she is the

of _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he / she signed his / her name thereto by like order.

.....
Notary Public

- END OF AGREEMENT -

APPENDIX 1:
CORTLAND COUNTY STANDARD
CONTRACT PROVISIONS

Checklist of documents to be returned with contract:

- _____ Exhibit A: Acknowledgement and Agreement to Comply with Standard Clauses for New York State Contracts
- _____ Exhibit B: Drug Free Workplace
- _____ Exhibit C: Non-Collusive Bidding Certification Required by Section 139-D of the State Finance Law
- _____ Exhibit D: Conflict of Interest Disclosure
- _____ Exhibit E: Privacy and Security HIPAA Compliance (only if applicable)
- _____ W9
- _____ Proof of Insurance (as required by RFP)
- _____ Copy of NYS Certificate of Authority to do Business in New York State
- _____ Copy of active NYS MWBE Certification – if applicable
- _____ Proof that signatory is at least a 50% owner and has the authority to act on behalf of the business
- _____ Copy of signed contract

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 20____, by and between the **COUNTY OF CORTLAND**, New York, (the “COUNTY”), a municipal corporation organized and existing under the laws of the State of New York with offices at 60 Central Avenue, Cortland, New York 13045, and _____, (the “CONTRACTOR”), with offices located at _____.

WITNESSETH, that the COUNTY and the CONTRACTOR, for the consideration hereafter named, agree as follows:

ARTICLE 1. WORK TO BE DONE AND CONSIDERATION THEREFORE

The CONTRACTOR shall furnish

(Describe the work to be done; if a proposal for the work exists, attach same as an exhibit and cite said exhibit herein.)

ARTICLE 2. TERM

The CONTRACTOR agrees to perform the services and/or supply goods beginning _____, 20____ and ending _____, 20____.

ARTICLE 3. ACCEPTANCE AND FINAL PAYMENT

Upon receipt of written notice that the Contract has been fully performed and the COUNTY agrees that the Contract has been fully performed, the COUNTY shall pay the CONTRACTOR per invoice for the project and/or maintenance and support work as evidenced by an itemized voucher properly filed with the COUNTY from the CONTRACTOR \$ _____ within its normal payment period.

ARTICLE 4. CONTRACTOR’S INSURANCE

The CONTRACTOR shall not commence work under this Contract until he/she/it has obtained all insurance required under this paragraph, at the CONTRACTOR’S own expense, and the COUNTY has approved such insurance. The COUNTY requires the following insurance coverage and amounts:

- (A) Comprehensive General Liability, including personal injury coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and property damage coverage in the amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- (B) Automobile coverage with a combined single limit of \$1,000,000.00.

- (C) Statutory Worker's Compensation Disability Coverage, and Unemployment Insurance.
- (D) Professional Liability Insurance in the amount of \$1,000,000.00, if commercially available for the CONTRACTOR'S profession.

Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the COUNTY and who have been fully informed as to the nature of the services to be performed. Except for Worker's Compensation and professional liability, the COUNTY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including without limitation, the liability to pay premiums) shall be the sole obligations of the CONTRACTOR and not those of the COUNTY. The CONTRACTOR irrevocably waives all claims against the COUNTY for all losses, damages, claims or expenses resulting from risks commercially insurable under the insurance described in this paragraph. The provision of insurance by the CONTRACTOR shall not in any way limit the CONTRACTOR'S liability under this agreement.

The CONTRACTOR shall submit at the time of the execution of this agreement, certificates of insurance properly executed by an authorized representative of its insurance underwriter, evidencing such insurance policies to be in full force and effect, naming the COUNTY which shall assume to include its officers, employees, agents and representatives as additional insured. The certificates of insurance shall name specifically "Cortland County, 60 Central Avenue, Cortland, New York 13045" as an additional insured. In addition, the CONTRACTOR must provide an endorsement to the policy showing that the COUNTY is actually insured together with a copy of the policy declarations page.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the COUNTY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without 30 days prior written notice to the COUNTY, directed to the contracting department and the office of the County Attorney and to the office of the Chair of the Legislature, and the COUNTY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to the CONTRACTOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claim made" basis, and all such "claims made" policies shall provide that:

- (A) Policy retroactive dates coincide with or precede the CONTRACTOR'S start of the performance of the services (including subsequent policies purchased as renewals or replacements);
- (B) The CONTRACTOR will maintain similar insurance for at least 6 years following final acceptance of the services;
- (C) If the insurance is terminated for any reason, the CONTRACTOR agrees to purchase an unlimited extended reporting provision to report claims arising from the services performed for the County;
- (D) Immediate notice shall be given to the COUNTY through the contracting department and the office of the County Attorney and to the office of the Chair of the Legislature of circumstances or incidents that might give rise to future claims with respect to the services performed under this agreement;
- (E) Notice of termination of any such policies must be provided to the COUNTY at least ten (10) days in advance of such Notice of termination. CONTRACTOR shall, on or before this 10-day period, provide the COUNTY with a prospective Certificate of Insurance with the above coverage and limits for the balance of the term of this agreement; and
- (F) The CONTRACTOR shall obtain replacement insurance within ten (10) days in the absence of which CONTRACTOR shall be in breach of this Agreement.

All insurance coverage required to be purchased and maintained by the CONTRACTOR under this agreement shall be primarily for the defense and indemnification on any action or claim asserted against the COUNTY and/or the CONTRACTOR for work performed under this agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

Any accident shall be reported to the COUNTY as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the COUNTY as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 5. REPRESENTATIONS OF CONTRACTOR

The CONTRACTOR represents and warrants:

- (A) That he/she/it is financially solvent and that he/she/it is licensed, to the extent required by law, and/or is experienced in and competent to perform the services as described in Article 1 above,
- (B) That he/she/it is financially solvent and that he/she/it is licensed, to the extent required by law, and/or is experienced in and competent to perform the services as described in Article 1 above,

- (C) That he/she/it has not been convicted of a crime under the laws of the United States or of any state,
- (D) That he/she/it has not been disqualified from performing any contract funded by the United States or the State of New York and that there is no proceeding pending or threatened against the Contractor by either government,
- (E) That no officer or employee of the County has an interest in this agreement, which would disqualify the CONTRACTOR from performing this agreement and receiving payment therefor,
- (F) That he/she/it's facilities, if used in the performance of this agreement, are accessible to the handicapped or will be made accessible to the handicapped in accordance with applicable regulations,
- (G) That he/she/it is familiar with all Federal, State, municipal and departmental laws, ordinances and regulation which may in any way affect the work or those employed therein.
- (H) That he/she/it shall comply with all standard New York State contract requirements as set forth in Exhibits A-D and Appendix A; attached and annexed hereto.

ARTICLE 6. PERMITS AND REGULATIONS

The CONTRACTOR shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 7. APPROPRIATIONS

If this agreement is funded by a grant or contract between the COUNTY and the State or Federal government or is otherwise subject to legislative appropriation, the COUNTY shall not be liable beyond the funds authorized by such legislation or provided by the COUNTY, State or Federal governments.

In the event that such funding shall be terminated or reduced, this agreement shall end on the effective date of notice of termination.

The COUNTY shall remain liable for all charges and expenses incurred prior to the date of termination.

If funding is reduced below the level authorized by the COUNTY and the parties do not desire to terminate this agreement, funding shall be deemed to have been reduced to the amount authorized by the State or Federal government as set forth in notice given by the COUNTY to the CONTRACTOR.

ARTICLE 8. COUNTY'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

The COUNTY shall have the right to stop work or terminate the Contract if:

- (A) The CONTRACTOR is adjudged bankrupt or makes an assignment for the benefit of creditors;
or
- (B) A receiver or liquidator is appointed for the CONTRACTOR or for any of his/her/it's property and is not dismissed within twenty (20) days after such appointment or the proceedings in connection therewith are not stayed on appeal within said twenty (20) days; or
- (C) The CONTRACTOR refuses or fails to prosecute the work or any part thereof with due diligence; or
- (D) The CONTRACTOR fails to make prompt payment to persons supplying labor for the work; or
- (E) The CONTRACTOR fails or refuses to comply with all applicable laws, regulations or ordinances applicable to the performance of this agreement; or
- (F) The determination that any representation or certification made under this agreement is untrue;
or
- (G) The CONTRACTOR violates any provision of the Contract;
- (H) In any event, the COUNTY, without prejudice to any other rights or remedy it may have, may by seven (7) days notice to the CONTRACTOR, terminate this contract pursuant to the grounds stated herein. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work is complete. If the unpaid balance of the compensation to be paid to the CONTRACTOR hereunder exceeds the expense of completing the work, such excess shall be paid to the CONTRACTOR. If such expense exceeds such unpaid balance, the CONTRACTOR shall be liable to the COUNTY for such excess.
- (I) COUNTY may terminate this contract upon thirty (30) days written notice to the CONTRACTOR if deemed in the best interest of the COUNTY.
- (J) COUNTY may terminate if the contract is not funded.

Upon termination of this agreement, the CONTRACTOR shall comply with all County close-out procedures, including but not limited to:

- (A) Accounting for and refunding to the COUNTY within 30 days, any unexpended funds which have been paid to the CONTRACTOR pursuant to this agreement;
- (B) Not incur any further obligations pursuant to this agreement after the termination date;
- (C) Submit to the COUNTY, within 30 days of termination, a full report of receipts and expenditures of funds, program activities, and obstacles, if any, attendant to CONTRACTOR'S performance of this agreement; and

- (D) Furnishing within 30 days an inventory to the COUNTY of all equipment, appurtenances and property purchased by the CONTRACTOR through or provided under this agreement, and carrying out any COUNTY directive concerning the disposition thereof.

If the COUNTY terminates this agreement for cause, the COUNTY may procure, upon such terms and in such manner as it deems appropriate, services similar to those so terminated, and any services so procured by the COUNTY to complete the services herein will be charged to the CONTRACTOR and/or set off against any sums due the CONTRACTOR.

If the CONTRACTOR defaults, the COUNTY may at its option:

- (E) Terminate this agreement;
- (F) Recover counsel fees and all costs incurred to enforce this agreement;
- (G) Obtain replacement goods or services and hold the CONTRACTOR responsible for the replacement costs or expenses;
- (H) Pursue such other remedies as may be available under law or this agreement;
- (I) These remedies are cumulative.

Notwithstanding any other provisions of this agreement, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of the CONTRACTOR'S breach of the agreement or failure to perform in accordance with applicable professional standards, and the COUNTY may withhold payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due to the COUNTY from the CONTRACTOR is determined. The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this agreement.

ARTICLE 9. INDEMNIFICATION / HOLD HARMLESS

The CONTRACTOR shall indemnify, defend and hold the COUNTY, its Departments, and its officers, employees, contractors, representatives and agents harmless from and against any and all claims, fines, demands, losses, damages and expenses, including attorney's fees, relating to or arising out of any negligent or intentional acts and/or omissions of the CONTRACTOR or any of its directors, officers, employees, *sub*contractors, representatives, or agents.

ARTICLE 10. MONITORING OF PERFORMANCE

The COUNTY shall have the right during the term of this agreement and for the period limited by the applicable statute of limitations to ensure that the services to be provided by the Contractor have been provided as agreed. The CONTRACTOR hereby consents to the examination of the CONTRACTOR'S records and agrees to provide to or permit the COUNTY to obtain copies of any documents relating to the performance of this agreement. The CONTRACTOR shall maintain all records required by this paragraph for seven (7) years after the date this agreement is terminated or ends.

ARTICLE 11. INDEPENDENT CONTRACTOR

The CONTRACTOR, including all its officers, employees and agents agrees that their relationship to the COUNTY and any of its Departments or units, is that of an independent contractor, and said CONTRACTOR covenants and agrees that they will not conduct themselves as, nor hold themselves out as, nor claim to be an officer or employee of the COUNTY by reason hereof and that they will not claim, demand or make an application to or for any right or privilege applicable to an officer or employee of the COUNTY, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage, medical and/or dental benefits, or retirement membership or credit. As an independent contractor, the CONTRACTOR shall be solely responsible for determining the means and methods of performing the services and shall have complete charge and responsibility for the CONTRACTOR'S personnel engaged in the performance of the services. However, if any personnel of the CONTRACTOR act in a manner that is detrimental to the COUNTY, the COUNTY may require the CONTRACTOR to remove or replace such personnel with respect to the performance of services under this agreement.

ARTICLE 12. ASSIGNMENT

Neither party may assign or sub-contract this contract or any portion thereof, without prior written consent of the other party hereto.

ARTICLE 13. REQUIRED PROVISIONS OF LAW

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to have been inserted herein. If any such provision is not inserted, through mistake or otherwise, then upon the application of either party, this Contract shall be physically amended to make such insertion.

ARTICLE 14. VENUES AND DISPUTES

The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within Cortland County, New York. There shall be no

ARTICLE 18. WAIVER

No waiver of any breach of any condition of this Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 19. MODIFICATION

This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

ARTICLE 20. EXECUTORY CLAUSE

The COUNTY shall have no liability under this Agreement to the CONTRACTOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 21. RECORDS RETENTION AND 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. Additionally, the CONTRACTOR shall:

- (A) 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;
- (B) 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;
- (C) Maintain the revenues and expenditures in connection with this agreement so they are separately identifiable;
- (D) Fully document each expenditure or claim for payment. Expenditure or claims for payment which are not fully documented may be disallowed;
- (E) Agree 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;
- (F) Maintain all records required by this paragraph for seven (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 the 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.

In addition to the foregoing, if this agreement is financed by Medicare reimbursements, then until the expiration of four (4) years after the furnishing of the services provided under this agreement, the CONTRACTOR will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this agree and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If the CONTRACTOR carries out the duties of the agreement through a subcontractor worth \$10,000.00 or more over a 12-month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.

ARTICLE 22. APPLICABLE LAW

This Agreement is governed by the laws of the State of New York. All disputes relating to this agreement shall be heard in a court of competent jurisdiction having venue in Cortland County.

ARTICLE 23. PRIVACY AND SECURITY (HIPAA)

(APPLICABLE TO ALL CONTRACTS FOR GOODS AND SERVICES WHICH RELATE TO MEDICAL RECORD-KEEPING)

The purpose of this clause is to set forth the requirements for privacy and security of protected health information ("PHI") mandated by 45 CFR Part 164 as they apply to the services provided by CONTRACTOR on behalf of COUNTY. Terms and conditions required relative to this agreement are incorporated and attached to this agreement as "Exhibit _____".

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate (2 copies) each of which shall be deemed an original on the date written.

COUNTY OF CORTLAND

DATE: _____

BY: _____
Donnell Boyden, Chair
Cortland County Legislature

Acknowledgement

STATE OF NEW YORK)
COUNTY OF CORTLAND) ss.:

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared **Donnell Boyden**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

CONTRACTOR
(name of company)

DATE: _____

BY: _____

(NAME OF SIGNATORY)

(CORP. OFFICER/POSITION)

Acknowledgement

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**EXHIBIT A – ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS (APPENDIX A)**

I hereby acknowledge that I have read, understand and agree to comply with the terms as outlined in Appendix A – Standard Clauses for New York State Contracts. Failure to comply may result in immediate termination of this agreement with potential legal recourse by the County.

Signed: _____

Date: _____

Title: _____

EXHIBIT B – DRUG FREE WORKPLACE

Whenever two or more Bids which are equal with respect to price, quality and service are received by the State or by any political subdivisions for the procurement of commodities or contractual services, a Bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing the Bids will be followed if none of the tied vendors have a drug free workplace process. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under Bid a copy of the statement specified in Subsection (1).
- 4) In the statement specified in Subsection (1), notify that employees, that, as a condition of working of the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employee of any conviction of, or plea of guilty or nolo contendere to, any violation of any controlled substance law in the United States or any state or Cortland County, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program, if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies with the above requirements.

Print Name: _____ Date: _____

Signature: _____ Title: _____

**EXHIBIT C - NON COLLUSIVE BIDDING CERTIFICATE REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

Section 139D, Statement of Non-Collusion in bids to the State:

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as its own organization, under penalty of perjury, that to the best of his/her knowledge, and belief:

- 1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any other 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 knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting completion.

A Bid shall not be considered for award nor shall any award be made where 1, 2, 3 above have not been complied with; provided however, that if in any case, the bidder(s) cannot make the foregoing certification, the bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefore:

(Affix addendum to this page if space is required for statement.)

Subscribed to me under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20____ as the act and deed of said corporation of partnership or sole proprietor.

If Bidders are a Partnership, complete the Following:

Names of Partners or Principals	Legal Residence
_____	_____
_____	_____
_____	_____
_____	_____

If Bidders are a corporation, complete the following:

Name	Legal Residence
_____	_____
President	_____
_____	_____
Secretary	_____
_____	_____
Treasurer	_____

President

Secretary

Treasurer

Identifying Data:

Potential Contractor: _____

Address: _____

Telephone #: _____ Title: _____

E-Mail Address: _____

If applicable, Responsible Corporate Officer

Name: _____ Title: _____

Signature: _____

Joint or combined bids by companies or firms must be certified by each participant.

Legal name of person or firm

Legal name of person or firm

Name

Name

Title

Title

Address

Address

EXHIBIT D - CONFLICT OF INTEREST DISCLOSURE

Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the nominator(s)' other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed.

This Conflict of Interest Form should indicate whether the nominator(s) has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the contract. The nominator(s) should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by. Individuals with a conflict of interest should refrain from contracting with the County.

Date: _____

Name: _____

Position: _____

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

_____ I have no conflict of interest to report.

_____ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own):

- 1. _____
- 2. _____
- 3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____

Company: _____

Date: _____

EXHIBIT E

PRIVACY AND SECURITY (HIPAA)

The purpose of this clause is to set forth the requirements for privacy and security of protected health information (“PHI”) mandated by 45 CFR Part 164 as they apply to the services provided by CONTRACTOR on behalf of COUNTY.

- (A) CONTRACTOR understands the importance of the privacy of a patient’s PHI, and agrees to protect that right to the extent necessary under this Agreement and under current federal, state, and local regulations and laws. All PHI will be handled in a private and/or confidential manner. For purposes of this Agreement, PHI is any data or other information as defined by the Department of Health and Human Services in the Code of Federal Regulations, 45 CFR §164.501.
- (B) Further, CONTRACTOR understands that County’s patients are intended third-party beneficiaries of this Agreement, and have all the rights and privileges of any third-party beneficiary under current law.
- (C) Uses and disclosures of PHI that are permitted are those necessary in order for CONTRACTOR to:
 - 1. Properly manage and administer its functions.
 - 2. Meet its legal responsibilities.
 - 3. Provide data aggregation services relating to the health care operations of the COUNTY.
 - 4. Make those disclosures required by law such as in situations of abuse, neglect, or domestic violence. The uses and disclosures permitted are limited to the PHI necessary to meet the requirements of the law that compels the use or disclosure.
 - 5. Make disclosures in response to a judicial or administrative proceeding through a lawful process such as a subpoena or discovery request.
- (D) The uses and disclosures of PHI that are required are those disclosures necessary:
 - 1. For patients to review their PHI.
 - 2. To provide an accounting of disclosures in accordance with 45 CFR §164.528.
 - 3. To allow the Secretary of Health and Human Services to determine County’s compliance with 45 CFR §164.504.
- (E) CONTRACTOR shall make the following assurances to COUNTY:
 - 1. CONTRACTOR agrees that it shall not use or disclose any patient’s PHI for any purpose not expressly stated in this Agreement. Further, CONTRACTOR shall not use or disclose PHI in any manner or context prohibited by the Health Insurance Portability and Accountability Act

of 1996 (“HIPAA”) and subsequent federal, state, and local regulations. If CONTRACTOR does use or disclose PHI for a purpose not expressly stated in this Agreement, it shall immediately cease the unauthorized use or disclosure, and shall notify COUNTY in writing of such use or disclosure. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect known to it of a use or disclosure of PHI not allowed under this Agreement.

2. CONTRACTOR further agrees that any sub-contractors or other persons or entities not directly employed by CONTRACTOR who use or disclose PHI obtained from COUNTY, shall abide by terms of this clause of this Agreement. Any sub-contractor or other person or entity not directly employed by CONTRACTOR that has used or disclosed PHI without proper authorization (as defined in HIPAA and subsequent federal, state, and local regulations) shall be considered to have acted as an agent of CONTRACTOR, and have violated the terms of this Agreement. COUNTY may consider this use or disclosure a material breach of this Agreement.
3. By signing this Agreement, CONTRACTOR is assuring COUNTY it has met the minimum safeguards necessary to protect unauthorized use or disclosure of PHI to any person or entity not party to this Agreement. Such safeguards shall include the security safeguards outlined by the 1996 Health Insurance Portability and Accountability Act and subsequent federal regulation, including: physical access to PHI, technical access to PHI, and administrative policies and procedures addressing security of PHI.
4. Provider shall report to COUNTY any instance or circumstance in which PHI has been used or disclosed by an unauthorized person or entity, including accidental disclosure by CONTRACTOR. CONTRACTOR shall notify COUNTY in writing of any steps or procedural changes made to address the unauthorized use or disclosure.
5. Should COUNTY find PHI used or disclosed to CONTRACTOR to be inaccurate or incomplete, CONTRACTOR shall incorporate any amendments or corrections to the PHI at COUNTY’s request.
6. CONTRACTOR will make PHI available to the individual who is the subject of the PHI for amendment. Such requests by the individual for their PHI from CONTRACTOR will be made through County. CONTRACTOR will incorporate any amendments to PHI that have been made by COUNTY by virtue of the individual’s request for amendment.
7. CONTRACTOR will provide a timely accounting to the individual or to COUNTY, if requested by either, of the disclosures of an individual’s PHI.

8. Should CONTRACTOR make any material alterations to the PHI while the PHI is in its possession, CONTRACTOR shall notify COUNTY of such alterations so that COUNTY may inform the patient who is the subject of the PHI.
 9. At the termination of this Agreement, CONTRACTOR shall return or destroy to the satisfaction of COUNTY any PHI held or maintained by CONTRACTOR and retain no copies of such information. If COUNTY and CONTRACTOR mutually agree that returning or destroying the PHI is not feasible or permitted under law, the PHI will remain protected after this agreement ends for as long as CONTRACTOR maintains the information. Further uses or disclosures of the PHI will be limited to those purposes that make the return or destruction infeasible.
- (F) If COUNTY determines CONTRACTOR has violated any of the above assurances, covenants or terms, the CONTRACTOR has committed a material breach of this Agreement. COUNTY may then provide CONTRACTOR with an opportunity to cure the breach or may terminate this Agreement and may report the violations to the Department of Health and Human Services (“HHS”) or other federal or state entity for possible prosecution or sanctions.
- (G) Both parties to this agreement agree that they will protect the integrity and confidentiality of any PHI being shared electronically.
- (H) CONTRACTOR hereby gives COUNTY and the Department of Health and Human Services (or an agent acting on behalf of HHS) the express right to inspect any and all internal practices, books, and records relating to the use or disclosure of PHI by CONTRACTOR. If HHS suspects an unauthorized use or disclosure of PHI by CONTRACTOR, HHS is authorized to pursue an investigation into CONTRACTOR’s activities for the purposes of determining whether an unauthorized use or disclosure of PHI has taken place.
- (I) CONTRACTOR may have policies and procedures relating to privacy and security in place prior to the commencement of this Agreement. If, after reasonable investigation, COUNTY concludes CONTRACTOR’s policies and procedures to be “adequate” protection of a patient’s privacy rights relating to PHI, CONTRACTOR may elect to continue to use its own policies and procedures. The term “adequate” in this clause means CONTRACTOR’s policies and procedures meet the minimum privacy and security standards as set forth in COUNTY’s privacy and security policies and procedures.
- (J) COUNTY, through the appropriate Department will:
1. provide CONTRACTOR with its Privacy Notice;

2. provide CONTRACTOR with any changes in, or revocation of, permission by a patient to use or disclose PHI, if such changes affect CONTRACTOR's permitted or required uses or disclosures; and
 3. notify CONTRACTOR of any restriction to the use or disclosure of PHI to which the COUNTY has agreed.
- (K.) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information (ePHI) that it creates, receives, maintains, or transmits on behalf of Cortland County.
- (L.) Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriate safeguards to protect this information.
- (M.) Report to Security Officer of Cortland County any security incidents of which it becomes aware. (A security incident is defined as the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.)

APPENDIX A

**STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing

genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used

for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning

equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

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

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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