

**INTERMUNICIPAL AGREEMENT BETWEEN**

**MONROE COUNTY**

**AND**

**TOWN OF MENDON**

**FOR THE PROVISION OF SNOW REMOVAL AND  
ICE CONTROL SERVICES**

**October 2023**

## TABLE OF CONTENTS

	<u>Page</u>
I. Term of Agreement .....	3
II. Scope of Work .....	4
III. Services to be Provided .....	4
IV. Level of Service .....	5
V. Payment .....	6
VI. Adjustments to Rates.....	6
VII. Method of Payment .....	8
VIII. Notices .....	8
IX. Standard Clauses.....	8
Appendix A.....	10
Attachment 1.....	17
Exhibit "A" Snow and Ice Rate Adjustment	
Exhibit "B" Salary Increase Calculation	
Exhibit "C" Fringe Benefit Rate Calculation	
Exhibit "D" Equipment Rate Calculation	
Exhibit "E" Seasonal Adjustment Calculation	

Intermunicipal Agreement for Snow Removal and Ice Control Services

THE AGREEMENT, this 1<sup>st</sup> day of October 2023, by and between the **COUNTY OF MONROE**, a municipal corporation having its office and place of business in the County Office Building, 39 West Main Street, Rochester, New York, 14614, hereinafter referred to as the “**County**,” and the **TOWN OF MENDON**, a municipal corporation within the County of Monroe, having its office and place of business at 16 West Main Street, Honeoye Falls, New York 14472 hereinafter referred to as the “**Town**.”

**WITNESSETH**

**WHEREAS**, the County owns, operates, and maintains a highway system in the towns and villages of the County; and

**WHEREAS**, the County Superintendent of Highways has general charge and supervision of the work of constructing, improving, repairing and maintaining all County roads; and

**WHEREAS**, County funds may be expended for the control and removal of snow and ice from County roads; and

**WHEREAS**, pursuant to the Monroe County Charter Section C6-19 B. (6) the County Director of Transportation may contract with the Town for delivery of County highway services; and

**WHEREAS**, the County desires to enter into an agreement with the Town for snow removal and for salting and treating County roads for the purpose of removing the danger of ice and snow; and

**WHEREAS**, the Town has appropriate snow and ice removal equipment and sufficient snow and ice control personnel to contract with the County for snow and ice control services; and

**WHEREAS**, the Town Board has authorized the Agreement by Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2023.

**NOW THEREFORE**, in consideration of the mutual covenants, agreements, and consideration hereinafter set forth and pursuant to Sections 118-b, 135-a and 142-d of the New York State Highway Law, the parties hereto mutually agree that the Town will provide snow and ice control services on the County highway system and that the County will reimburse the Town for the provision of these services under a lump sum reimbursement contract.

**I. TERM OF THE AGREEMENT:**

The term of this Agreement shall be for a period of five (5) years beginning October 1, 2023 and expiring on September 30, 2028. The parties agree that there shall be an annual adjustment to the rates as set forth below.

## II. SCOPE OF WORK:

This Agreement shall include all activities necessary to control snow and ice, together with all necessary labor, equipment and materials. These activities shall be defined in the Operational Plan. The activities shall be grouped into two categories; Standard Activities which will be routinely performed for all towns, and Special Activities which may or may not be performed by each town.

### A. The Standard Activities shall include:

1. Supervision;
2. Supervisory patrolling;
3. Radio watch/ Dispatch
4. Preparedness for snow and ice control, including markers;
5. Plowing of snow from the roadways and shoulders, and/or the application of anti-icing or de-icing materials
6. Treatment of slippery spots, including 'black ice', and bridges;
7. Routine benching using plow trucks;

### B. The Special Activities shall include:

1. Snow fence material (fence and posts), installation, maintenance, dismantling and storage;
2. Sweeping of roadways with curb and gutter to remove accumulated winter abrasives and debris;

## III. SERVICES TO BE PROVIDED:

- A. The Town shall provide the basic service elements as outlined in this Agreement and as outlined in the New York State Department of Transportation "Highway Maintenance Guidelines Chapter 5 - for Snow and Ice Control - latest revision". The Guidelines will be further updated/revised from time to time through the life of this Agreement; subject to the following modifications or clarifications;

### 1. Section 5.3200 Snow Control Goals

Replace the table in subsection 5.3201 and 5.3202 with the following; *The Town shall provide for the middle half width to be bare 4 to 8 hours after the event, and the full pavement bare 12 to 24 hours after the event.*

### 2. Section 5.4405 Guidelines for the use of Salt

Paragraph F. Spreading speed. Delete the third paragraph and replace with the following;

*Depending on the road and traffic conditions, speeds should be in the range of 15 MPH to 30 MPH.*

### 3. Section 5.4406 Guidelines for the use of Abrasives.

Replace paragraph E. Spreading speed with the following;

*The spreading speed should be in the range of about 15 to 30 MPH, depending on traffic and highway surface conditions.*

### 4. Section 5.8300 Methodology for Passive Snow Control

Section 5.8301 General Add the following: *Snow fence - The installation, maintenance and storage is considered a special activity and will be paid each year as a lump sum allowance to each Town based on a 3 year average of snow fence installed in each respective town multiplied by the most recent NYSDOT published unit price. No measurement or modification will be made to the snow fence allowance during the season.*

## **B. Sweeping**

At the end of the snow season, the Town shall be responsible to sweep County road sections that have curb or gutter to remove all abrasive materials and roadside debris.

## **C. Operational Plan**

In November of each year, the Town shall be required to submit an updated operational plan (electronic submission is acceptable), which outlines the approach to meet the requirements of this Agreement. If there are no changes from the previous year, a simple statement submitted by the highway superintendent via email referencing the previous years' plans and stating "no change" is sufficient. The County and Town may modify the operational plan by mutual consent.

## **D. WEBEOC Input**

Towns are required to make entries into the web-based snow and ice board (WebEOC) during "major" storm events to notify the County and other towns of the status of their snow and ice operations, including a brief statement of road conditions within their jurisdiction, and any other pertinent information (e.g., accidents, breakdowns, and staffing issues) that may assist neighboring towns and County DOT and emergency operation staff in managing and responding to storm-related activities. "Major" storm events are defined as those having snowfall rates of at least 2 inches per hour and with the potential for travel advisories or travel bans.

Notification shall be made by the County to the Towns in advance of potentially qualifying "major" storm events. All Towns shall respond that they have received the notification. Towns should begin posting updates to WebEOC at the time and interval as requested by the County in the notification. Weather information will be provided to the Towns leading up to and through such "major" storm events as they are received by Monroe County, so that each Town is preparing based on the same forecast. The County will send a follow-up notification when updates are no longer required to be posted. Towns will be contacted individually if further information is needed between updates.

## **IV. LEVEL OF SERVICE:**

The Town shall be required to maintain a sufficient level of manpower, equipment, and materials to enable it to meet the objectives of this Agreement and the New York State Department of Transportation "Highway Maintenance Guidelines for Snow and Ice Control", as last revised in January 2012; or further updated/revised from time to time through the life of this Agreement.

The Town shall clear such County highways of snow and ice as designated by the County, to the extent that the County may deem necessary to provide reasonable passage and movement of vehicles over such highways, all in accordance with terms, rules and regulations as may be deemed by the County to be in the best interest of the public.

The Monroe County plowing and salting lane mileage inventory for each road in the Town will be provided each year. The County shall update this inventory annually as of December of each year. The County shall provide a copy of this amended inventory to the Town for its review and acceptance. The values contained on the annual inventory will be used for the annual calculation for lump sum payment as outlined in this Agreement.

**V. PAYMENT:**

A. In consideration of the performance by the Town, the County agrees to pay for Standard Activities to the Town each year during the term of this Agreement. The standard activity amount will be calculated by the County in September of each year and forwarded to the Town for review and concurrence. This figure shall be known as the “Standard Activities Payment” for the period. A sample of the calculation is shown in Exhibit “A”.

B. In addition, the County agrees to pay for Special Activities performed by the Town under this Agreement either by unit price, or by actual cost method as indicated in the “Services to be Provided” section of this Agreement. The estimated “Special Activities Payment” for snow fence and sweeping will be detailed in the payment calculation provided to the Town each year and will be combined into a total special activities payment.

C. The total of the “Standard Activities Payment” and the “Special Activities Payment” shall represent the “Total Estimated Payment” to the Town for each period of the Agreement.

**VI. ADJUSTMENT TO RATES:**

At the end of the each snow and ice season, the Town shall submit seasonal actual cost data to the County summarizing the costs of labor, materials and equipment.

The cost of the standard activities work is comprised of the following portions that have been agreed to by the County and Town: Labor 40%, Materials 35% and Equipment 25%.

When the County reduces the number of travel lanes by implementing a road diet in order to install bike lanes, bike lanes will be included in the lane-mile calculation as ½ lane-mile per bike lane per side. For example, bike lanes on both sides of the road are equal to the same number of lane-miles as one travel lane. Bike lanes that were previously paved shoulders will not be included in the lane-mile calculation.

Each year the County will calculate adjustments to the following:

**A. Labor component (salary and fringe rate)**

The labor component of the Agreement shall be calculated and adjusted in the lane-mile rate in each year of the Agreement.

The salary adjustment to the labor component shall use the calculated county wide average of all towns actual salary increase (with yearly high and low removed) for the latest three (3) year period. A sample example of the labor adjustment is shown in Exhibit “B”.

The fringe rate adjustment of the labor component shall be the county-wide average of all towns’ fringe rates using the previous year actual fringe rate data. A sample example of the fringe rates calculation is shown in Exhibit “C”

### **B. Material component**

The material component of the lane mile rate of the Agreement shall be adjusted each year using the current year actual NYS Office of General Services (OGS) salt price changes as compared to the price for the previous year.

### **C. Equipment component**

If the equipment ownership and operation rates, based on the published FEMA Schedule of Equipment Rates change at all from the previous year, the equipment percentage of the lane-mile rate shall be adjusted.

Equipment rate adjustments will be made using data from the most recent version of the FEMA Schedule of Equipment Rates. Equipment not meeting form or function in the FEMA Schedule of Equipment Rates shall be addressed on a case-by-case basis by referencing either the New York State OGS “Heavy Equipment Rental Standby Contract” or the current Equipment Watch Rental Rate Blue Book for Construction Equipment by Randall Reilly. Towns shall notify the County of any equipment not meeting form or function in the FEMA Schedule of Equipment Rates. The rates in the FEMA Schedule of Equipment Rates are for applicant-owned equipment in good mechanical condition, complete with all required attachments. Each rate covers all costs eligible under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., for ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incidental to operation. Radios, GPS, liquid distribution, and automatic controls are considered to be incidental costs included in the FEMA rates. Rates for equipment not listed may be furnished by FEMA upon request.

The following parameters and methodology will apply to equipment rate adjustment. An example of the equipment adjustment calculation is shown in Exhibit “D”.

A summary of the data used for the calculation is as follows:

- A weighted adjustment for 10-Wheel Dump Trucks and 6-Wheel Dump Trucks will be made.
- All 6-Wheel Dump Truck rate adjustments will be based on the 8-10 CY (FEMA Cost Code 8721) hourly rates.
- All 10-Wheel Dump Truck rates adjustments will be based on the 14 CY (FEMA Cost Code 8723) hourly rates.
- In addition to the hourly rates used for each Dump Truck, hourly rates for a One Way (Front) Plow (FEMA Cost Code 8452), Front Plow with Leveling Wing (FEMA Cost Code 8452), Dump Body Mounted Sand Spreader (FEMA Cost Code 8456), Truck Mounted Sand Spreader (FEMA Cost Code 8457), and Chemical Spreader (FEMA Cost Code 8458) will be considered. 6-Wheel Dump Trucks will be paired with the One Way (Front) Plow (FEMA Cost Code 8452), Truck Mounted Sand Spreader (FEMA Cost Code 8457), and Chemical Spreader (FEMA Cost Code 8458). 10-Wheel Dump Trucks

will be paired with the Front Plow with Leveling Wing (FEMA Cost Code 8452), Dump Body Mounted Sand Spreader (FEMA Cost Code 8456), and Chemical Spreader (FEMA Cost Code 8458).

The data and results calculated above will be used to calculate a weighted adjustment percentage factor. The factor will be used to calculate the equipment component adjustment of the lane mile rate for the upcoming snow and ice season.

#### **D. Special Activities**

Adjustments to the special activities will be made periodically through the term of the Agreement during the annual adjustment discussions. Actual data will be gathered for snow fence and sweeping and adjustment to the quantities will be used (based on a 3 year average) to calculate the special activities payment.

#### **E. Seasonal Adjustment**

The seasonal adjustment component is an adjustment in the rate that considers the intensity of the winter snow and ice activities and reported costs of the towns. The current year total seasonal town cost will be added to the spreadsheet "Exhibit E" and a new calculation for the 7 year average (with the high and low years excluded) will be made and used as a "seasonal adjustment" to the lane mile rate for the following year. The seasonal adjustment will be shown in the calculation forwarded to each town and outlined in "Exhibit E."

#### **F. Annual Adjustment**

1. The County will annually notify the Town in writing as to any adjustment to the rates. In the event the Town does not concur with the adjustment to the rates, the Town shall, within ten (10) business days of receipt of the notification by the County, submit in writing the reasons for the non-concurrence. The County shall, within ten (10) business days after receipt of written correspondence by the Town, arrange for a meeting between representatives of the County and the Town to resolve the matter. In the event the matter cannot be resolved, the County may unilaterally impose the modification, and the Town shall comply. In that event, the Town may, if it so elects, notify the County in writing that this Agreement is terminated, which such termination shall be effective not less than one year after receipt of the Town's notice by the County. The County may, in its sole discretion, shorten this period to not less than thirty (30) days, if the County deems it in the public interest.

2. If the Town does not deliver notice to the County within ten (10) business days of receipt of the notification from the County, the Town shall be deemed to have consented to the annual adjustment to the rates.

### **VII. METHOD OF PAYMENT:**

The Town shall be reimbursed for services provided in two (2) payments. The first payment shall represent 90% of the "Total Estimated Payment". The first payment shall be made in February of each year of this Agreement, subject to receipt of the signed mileage certification, Operational Plan, signed voucher, and approved insurance certification. The second and final payment shall be based on the actual Agreement amount and represent the difference between the actual Agreement amount and the first payment. Processing of the final claim is contingent upon the Town's submission of the snow and ice data collection form and updated Town labor and equipment rates.

**VIII. NOTICES**

All notices and other communications hereunder shall be in writing and shall be delivered personally, or by guaranteed overnight delivery, or by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice:

To County, at the following address:  
Monroe County Director of Transportation  
6100 City Place  
50 West Main Street  
Rochester, New York 14614  
Phone: (585) 753-7720

To Town or Village, at the following address:  
Town of Mendon  
16 West Main Street  
Honeoye Falls, New York 14472

**IX. STANDARD CLAUSES**

Appendix "A" hereto contains the Standard Clauses for County Contracts (dated January 1, 2022) and is hereby incorporated herein and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement the date set forth above.

COUNTY OF MONROE

TOWN OF MENDON

By: \_\_\_\_\_  
Thomas J. Frys, P.E.  
Director of Transportation

By: \_\_\_\_\_  
John D. Moffitt  
Supervisor

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **THOMAS J. FRYS**, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **JOHN D. MOFFITT**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, AND RESPONSIBILITY

The undersigned certifies, to the best of his/her knowledge and belief, that the Town and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
2. Have not within a three-year period preceding this transaction/ application/proposal/contract/ agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three-year period preceding this transaction/ application/proposal/contract/ agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Date: \_\_\_\_\_, 20\_\_\_\_

**TOWN or VILLAGE: Town of Mendon**

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

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

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

## APPENDIX A

### STANDARD CLAUSES FOR COUNTY CONTRACTS

The parties to the attached Agreement (hereinafter, "the Agreement") agree to be bound by the following clauses which are hereby made a part of the Agreement (the word "Contractor" herein refers to any party other than the County, whether a contractor, licenser, licensee, lessor, lessee or any other party):

#### **Section 1. AMENDMENTS**

This Agreement may be modified or amended only in writing duly executed by both parties. Any modification or amendment shall be attached to and become part of this Agreement. All notices concerning this Agreement shall be delivered in writing to the parties at the principal addresses as set forth above unless either party notifies the other of a change in address.

#### **Section 2. INSURANCE AND FAMILY LEAVE BENEFITS**

The Contractor will, at its own expense, procure and maintain a policy or policies of insurance during the term of this Agreement. The policy or policies of insurance required are standard Worker's Compensation and Disability Insurance, if required by law; professional liability and general liability insurance (including, without limitation, contractual liability) with single limits of liability in the amount of \$1,000,000 per occurrence, and \$3,000,000 aggregate coverage; automobile liability insurance in the amount of \$1,000,000 with a minimum of \$1,000,000 each occurrence, bodily injury, and property damage. Such coverage may be fulfilled via a combination of primary and excess or umbrella liability policies. Original certificates and endorsements evidencing such coverage shall be delivered to the County before final execution of this Agreement. The certificates shall indicate that such coverage will not be cancelled or amended in any way without thirty (30) days prior written notice to the County and original renewal certificates conforming to the requirements of this section shall be delivered to the County at least sixty (60) days prior to the expiration of such policy or policies of insurance. The Contractor's insurance shall provide for and name Monroe County as an additional insured. All policies shall insure the County for all claims arising out of the Agreement. All policies of insurance shall be issued by companies in good financial standing duly and fully qualified and licensed to do business in New York State or otherwise acceptable to the County.

If any required insurance coverage contain aggregate limits or apply to other operations of the Contractor, outside of those required by this Agreement, the Contractor shall provide Monroe County with prompt written notice of any incident, claims settlement, or judgment against that insurance which diminishes the protection of such insurance affords Monroe County. The Contractor shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

The Contractor will also provide proof duly subscribed by an insurance carrier in a form satisfactory to the Chair of the Worker's Compensation Board that the payment of family leave benefits for all its employees required under New York law to receive such benefits has been secured.

#### **Section 3. INDEMNIFICATION**

The Contractor shall defend, indemnify and save harmless the County, its officers, agents, and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Contractor, its

employees, agents or subcontractors, the provision of any products by the Contractor, its employees, agents or subcontractors, arising from any act, omission or negligence of the Contractor, its employees, agents or subcontractors, or arising from any breach or default by the Contractor, its employees, agents or subcontractors under the Agreement. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Contractor.

**Section 4. INDEPENDENT CONTRACTOR**

For the purpose of this Agreement, the Contractor is and shall in all respects be considered an independent contractor. The Contractor, its individual members, directors, officers, employees and agents are not and shall not hold themselves out as, nor claim to be, an officer or employee of Monroe County nor make claim to any rights accruing thereto, including, but not limited to, Worker's Compensation, unemployment benefits, Social Security or retirement plan membership or credit.

The Contractor shall have the direct and sole responsibility for the following: payment of wages and other compensation; reimbursement of the Contractor's employees' expenses; compliance with Federal, state and local tax withholding requirements pertaining to income taxes, Worker's Compensation, Social Security, unemployment and other insurance or other statutory withholding requirements; and all obligations imposed on the employer of personnel. The County shall have no responsibility for any of the incidences of employment.

**Section 5. EXECUTORY NATURE OF CONTRACT**

This Agreement shall be deemed executory only to the extent of the funding available and the County shall not incur any liability beyond the funds annually budgeted therefor. The County may make reductions in this Agreement for the loss/reduction in State Aid or other sources of revenues. If this occurs, the Contractor's obligations regarding the services provided under this Agreement may be reduced correspondingly.

**Section 6. NO ASSIGNMENT WITHOUT CONSENT**

The Contractor shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Agreement or any of its right, title or interest herein or its power to execute the Agreement, or any part thereof to any person or entity without the prior written consent of the County.

**Section 7. FEDERAL SINGLE AUDIT ACT**

In the event the Contractor is a recipient through this Agreement, directly or indirectly, of any funds of or from the United States Government, Contractor agrees to comply fully with the terms and requirements of Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. The Contractor shall comply with all requirements stated in "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Grant Guidance) Subpart F and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

If on a cumulative basis the Contractor expends Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000.00) or more in federal funds in any fiscal year, it shall cause to have a single audit conducted, the Data Collection Form (defined in Federal Office of Management and Budget Uniform Grant Guidance) shall be submitted to the County; however, if there are findings or questioned costs related to the program that is federally funded by the County, the Contractor shall submit the complete reporting package (defined in Federal Office of Management and Budget Uniform Grant Guidance) to the County.

If on a cumulative basis the Contractor expends less than Seven Hundred and Fifty Thousand and no/100 Dollars (\$750,000.00) in federal funds in any fiscal year, it shall retain all documents relating to the federal programs for three (3) years after the close of the Contractor's fiscal year in which any payment was received from such federal programs.

All required documents must be submitted within nine (9) months of the close of the Contractor's fiscal year end to:

Monroe County Internal Audit Unit  
303 County Office Building  
39 West Main Street  
Rochester, New York 14614

The Contractor shall, upon request of the County, provide the County such documentation, records, information and data and response to such inquiries as the County may deem necessary or appropriate and shall fully cooperate with internal and/or independent auditors designated by the County and permit such auditors to have access to, examine and copy all records, documents, reports and financial statements as the County deems necessary to assure or monitor payments to the Contractor under this Agreement.

The County's right of inspection and audit pursuant to this Agreement shall survive the payment of monies due to Contractor and shall remain in full force and effect for a period of three (3) years after the close of the Contractor's fiscal year in which any funds or payment was received from the County under this Agreement.

#### **Section 8. RIGHT TO INSPECT**

Designated representatives of the County shall have the right to monitor the provision of services under this Agreement which includes having access, at reasonable times and places, to the Contractor's employees, reports, books, records, audits and any other material relating to the delivery of such services. The Contractor agrees to maintain and retain all pertinent records related to this Agreement for a period of ten (10) years after final payment. Contractor may retain all pertinent records in electronic format provided written notice is provided to the County that such method will be used. Retention of electronic records shall be for a period of ten (10) years after final payment.

#### **Section 9. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

a. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status, and will undertake or continue taking steps to ensure that minority group members and women are afforded equal employment opportunities without discrimination, including but not limited to recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

b. At the request of the County, 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, sexual orientation, military status, or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

c. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance

of the County contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status.

d. The Contractor shall include the provisions of Subsections a. through c. of this Section 9 in every subcontract in such a manner that the provisions will be binding upon each subcontractor as to all work done in connection with the County contract.

e. 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 further agrees that neither it, its subcontractors, nor any person acting on behalf of the Contractor or its subcontractor, shall, by reason of race, creed, color, disability, sex, or national origin: (1) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (2) 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, its subcontractors, nor any person acting on behalf of the Contractor or its subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability: (1) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (2) discriminate against or intimidate any employee hired for the performance of work under this contract. In addition to all other rights and remedies under law and in equity, the Contractor shall be subject to penalties by the County of \$50.00 per person per day for any violation of Section 220-e and/or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### **Section 10. CONTRACTOR QUALIFIED, LICENSED, ETC.**

The Contractor represents and warrants to the County that it and its employees is duly and fully qualified under the laws of the state of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possesses as of the date of its execution of this Agreement, and it will maintain throughout the term hereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.

#### **Section 11. CONFIDENTIAL INFORMATION**

a. For the purpose of this Agreement, "Confidential Information" shall mean information or material proprietary to the County or designated as "Confidential Information" by the County, and not generally known by non-County personnel, which Contractor may obtain knowledge of or access to as a result of a contract for services with the County. The Confidential Information includes, without limitation, the following types of information or other information of a similar nature (whether or not reduced to writing): methods of doing business, computer programs, computer network operations and security, finances and other confidential and proprietary information belonging to the County. Confidential Information also includes any information described above which the County obtained from another party which the County treats as proprietary or designates as Confidential Information, whether or not owned or developed by the County. Information publicly known and that is generally employed by the trade at the time that Contractor learns of such information or knowledge shall not be deemed part of the Confidential Information.

##### **1. Scope of Use**

a. Contractor shall not, without prior authorization from the County, acquire, use or

copy, in whole or in part, any Confidential Information.

- b. Contractor shall not disclose, provide or otherwise make available, in whole or in part, the Confidential Information other than to those employees of Contractor who have executed a confidentiality agreement with the County, have a need to know such Confidential Information, and who have been authorized to receive such Confidential Information.
- c. Contractor shall not remove or cause to be removed, in whole or in part, from County facilities, any Confidential Information, without the prior written permission of the County.
- d. Contractor shall take all appropriate action, whether by instruction, agreement or otherwise, to insure the protection, confidentiality and security of the Confidential Information and to satisfy its obligations under this Confidentiality Agreement.

**2. Nature of Obligation**

Contractor acknowledges that the County, because of the unique nature of the Confidential Information, would suffer irreparable harm in the event that Contractor breaches its obligation under this Agreement in that monetary damages would be inadequate to compensate the County for such a breach. The parties agree that in such circumstances, the County shall be entitled, in addition to monetary relief, to injunctive relief as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the County.

**3. Freedom of Information Law**

This subsection a(3) of Section 11 shall apply only after written notice by the Contractor that certain information provided to the County is Contractor's Confidential Information. In the event that the County or any of the County's members, officers, agents or representatives is requested or required (by oral question, interrogatory, request for information or document in a legal proceeding, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information relative to Contractor, the County shall provide Contractor with prompt written notice of any such request or requirement so that Contractor may seek a protective order or other appropriate remedy and/or waive compliance with this provision of the Agreement. Furthermore, in recognition of the fact that the County is subject to laws requiring disclosure of public documents, including the Freedom of Information Law ("FOIL"), the parties agree that in the event that the County receives a request or order for the release of Contractor's Confidential Information, the County shall provide Contractor with prompt notice thereof so that Contractor may seek a protective order or other appropriate remedy prior to such disclosure, if Contractor chooses to do so. If, in the absence of a protective order or waiver from Contractor, the County is nonetheless, in the opinion of the County Attorney and after consultation with Contractor, compelled to disclose some portion of the Contractor's confidential information, the County may disclose such information to such person without penalty under the terms of this Agreement and shall immediately advise Contractor of such disclosure.

a. Notwithstanding any other provision in this Agreement, the Contractor remains responsible for ensuring that any service(s) provided pursuant to this Agreement complies with all pertinent provisions, including but not limited to any and all reporting requirements, of Federal, State and local statutes, rules and regulations, including without limitation, Title VI of the Civil Rights Act of 1964 (CRA Title VI), Federal Executive Order 13166, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA).

b. The Contractor is responsible for ensuring compliance with New York State Labor Law Section 201-g and Executive Law Section 296-d. Upon request by the County, the Contractor shall provide evidence of compliance with the sexual harassment training required under Labor Law Section 201-g for all its employees performing work under this Agreement.

c. To the extent that State-funds/State-authorized payments (SF/SAP) received are used to pay for program services by covered providers, any subcontractors or sub-awardees shall be made aware of the provisions of the regulations of 9 NYCRR Part 6157 - "Limits on Administrative Expenses and Executive Compensation". Additionally, Contractor and any subcontractors shall review as appropriate Executive Order No. 38, which can be located at <http://executiveorder38.ny.gov>.

### **Section 13. EQUAL PAY CERTIFICATION**

Prior to the execution of this Agreement, the Contractor shall submit to the County an Equal Pay Certification ("Certification") affirming the Contractor's compliance with the Federal Equal Pay Act, 29 USC § 206 and New York State Labor Law §194, as amended from time to time ("Equal Pay Laws"). As set forth in the Certification, the Contractor's violation of one or more of the Equal Pay Laws or its filing of a false or misleading Certification during the term of this Agreement may constitute grounds for the County in its sole discretion to immediately terminate the Agreement and for determining the Contractor to be not qualified to participate in future Monroe County contracts.

### **Section 14. LAW**

This Agreement shall be governed by and under the laws of the State of New York without regard or reference to its conflict of law principles. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

### **Section 15. NO-WAIVER**

In the event that the terms and conditions of this Agreement are not strictly enforced by the County, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the County from enforcing each and every term of this Agreement thereafter.

### **Section 16. SEVERABILITY**

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

**Section 17. TITLE TO WORK**

a. The title to all work performed by the Contractor and any unused materials or machinery purchased by the Contractor with funds provided by the County in order to accomplish the work hereunder shall become legally vested to the County upon the completion of the work required under this Agreement. The Contractor shall obtain from any subcontractors and shall transfer, assign, and/or convey to Monroe County all exclusive, irrevocable, or other rights to all work performed under this Agreement, including, but not limited to trademark and/or service mark rights, copyrights, publication rights, distribution rights, rights of reproduction, and royalties.

b. No information relative to this Agreement shall be released by the Contractor or its employees for publication, advertising or for any other purpose without the prior written approval of the County. The Contractor hereby acknowledges that programs described herein are supported by this Agreement by the County and the Contractor agrees to state this fact in any and all publicity, publications and/or public information releases.

**Section 18. 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, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County approved sums due and owing for work done upon the project.

**Section 19. STATE FINANCE LAW PROVISIONS**

a. In accordance with Section 139-d of the State Finance Law, if this Agreement 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 County a non-collusive bidding certification on Contractor's behalf.

b. 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 County may terminate this Agreement by providing written notification to the Contractor in accordance with the terms of the Agreement.

**Section 20. MISCELLANEOUS**

a. The Contractor agrees to comply with all confidentiality and access to information requirements in Federal, State and local laws and regulations.

b. This Agreement constitutes the entire agreement between the County and the

Contractor and supersedes any and all prior agreements between the parties hereto for the services herein to be provided.

c. Attached to this Agreement and incorporated herein is the Certification Regarding Debarment, Suspension and Responsibility/Certification Regarding Monroe County Procurement Policy and Consequences for Violation.

d. The Contractor agrees that this Agreement may be made available to the public and searchable online in a digital format.

---END OF PAGE---