



TOWN OF NORTH ELBA

REGULAR BOARD MEETING

TUESDAY, JANUARY 14, 2014

7:00 PM Regular Board Meeting

1. Call Meeting to Order
2. Pledge of Allegiance
3. Approve Agenda
4. Approve Minutes for December 10, 2013 Board Meeting and 2014 Organizational Meeting.
5. Persons Present Opportunity to Speak
6. New Business:
 - a. Modification of Building Permit Fees
 - b. Agreement for Legal Services
 - c. Approve SL Fire Contract - adjusted cost 2014
 - d. Craig Wood Equipment Lease
 - e. Speed Zone Resolution - Old Military
 - f. Ray Brook Water Study
 - g. Hired Sole Assessor v. Elected
 - h. Municipal Consulting Agreement for Engineering Services
 - i. Approval of 2014 Ironman Race
 - j. Maintenance of Country Roads
 - k. Contract Snow & Ice On County Roads
 - l. Budget Amendments
7. Committee Reports:
8. Town Attorney Reports
9. Essex County Update
10. Approve Audits as per Audit #'s
11. Executive Session
12. Adjournment

ROBERT T. POLITI
 SUPERVISOR
 LAURIE CURTIS DUDLEY
 TOWN CLERK / TAX COLLECTOR
 523-2182
 COUNCIL
 BOB MILLER
 JAY I. RAND
 DEREK DOTY
 JACK FAVRO
 LARRY C. STRAIGHT
 SUPT. OF HIGHWAYS
 523-9081
 CATHERINE R. GREGORY
 BUDGET OFFICER
 TEL: 523-9517
 FAX: 523-2599

TOWN OF NORTH ELBA

2693 MAIN STREET
 LAKE PLACID, NEW YORK 12946
 phone: (518) 523-9516 fax: (518) 523-9569
 web: www.northelba.org



EUGENE MARTIN
 PARK DIST. MGR.
 523-2591
 JAMES E. MORGANSON
 DIRECTOR OF CODES
 523-9519
 ASSESSORS
 KIMBALL DABY, CHAIRMAN
 PHONE 523-1975
 FAX 523-9621
 ARTHUR W. JUBIN
 JAMES BISHOP
 TOWN JUSTICES
 JAMES ROGERS III
 DEAN M. DIETRICH
 RONALD J. BRIGGS
 ATTORNEY FOR THE TOWN

Town of North Elba/Village of Lake Placid

Building Permit Fee Schedule

One or Two Family Dwellings

1-1,000	square feet of area	\$400.00
1,001-1,500	square feet of area	\$600.00
1,501-2,000	square feet of area	\$800.00
2,001-2,500	square feet of area	\$1,000.00
2,501-3,000	square feet of area	\$1,200.00
3,001-3,500	square feet of area	\$1,500.00
3,501-4,000	square feet of area	\$1,900.00
4,001-4,500	square feet of area	\$3,800.00
4,501-5,000	square feet of area	\$4,200.00
5,001-5,500	square feet of area	\$4,600.00
5,501-6,000	square feet of area	\$5,000.00
6,001-7,000	square feet of area	\$5,400.00

Every 1,000 square feet of area add \$200.00

Commercial Property

\$1.00 per square foot of construction

Essex County Department of Public Works

Anthony J. LaVigne, Superintendent

8053 US Route 9
Elizabethtown, NY 12932

Phone: 518-873-6326

Fax: 518-873-9195

November 4, 2013

Mr. Mark J. Kennedy, Regional Traffic Engineer
NYS Department of Transportation, Region 1
50 Wolf Road
Albany, New York, 12232

RE: Speed Reduction Request for Old Military Road, County Route 35, Town of North Elba.

Dear Mr. Kennedy,

Attached please find a speed zone reduction request for Old Military Road, County Route 35, between Bear Cub Road, County Route 26, and Carolyn Road (Town). I am recommending a reduction in speed due to the increased residential development in the Lake Placid area. Old Military Road was previously predominantly used for by-passing the Village of Lake Placid. However, recent years have seen an increase in traffic originating in this area with the development of intersecting residential sub-divisions.

Essex County also recently completed a \$9 million reconstruction project on a portion of Old Military Road. This reconstruction widened shoulders to help accommodate multi-use by pedestrians and bicycles. There are also plans for a multi-use trail to intersect in this area bringing in more diversified travelers.

Lastly, the Adirondack Scenic Railroad has an at-grade crossing in this section. The railroad is seasonally in operation and a lower speed limit will allow for increase reaction time when the crossing is in use.

Thank you for your consideration in this matter.

Yours truly,

Anthony LaVigne, Superintendent
Essex County DPW

CC: Robert Politi, Supervisor, Town of North Elba.
Larry Straight, Highway Superintendent, Town of North Elba
Craig Randall, Mayor, Village of Lake Placid
Brad Hathaway, DPW Superintendent, Village of Lake Placid

Department of Transportation
Division of Traffic Engineering and Safety
State Campus
1220 Washington Ave.
Albany, NY 12226

Gentlemen:

The Town Board of the Town of North Elba, by a resolution adopted _____, 20____, and the County Superintendent of Highways of the County of Essex, hereby request the Department of Transportation, pursuant to Section 1622.1 of the Vehicle and Traffic Law, to establish a lower maximum speed at which vehicles may proceed on

Old Military Road (CR-35), a County Road
Town Highway
Between Carolyn Road (Town) and Bear Cub Road (CR-21).

Upon receipt of the notice that the regulation herein requested has been established, the County of Essex, will provide, install and maintain signs in accordance with the Vehicle and Traffic Law and conforming to the Manual of Uniform Traffic Control Devices of the Department of Transportation.

Dated: _____

Town Clerk

Dated: _____

County Superintendent

Recommended speed limit of 35 mph

Comments by County Superintendent:



Capital of the Adirondacks™

Village of Saranac Lake 39 Main Street, 2nd Floor Suite 9 • Saranac Lake, NY 12983-2294 • Phone: (518) 891- 4150 • www.saranaclakeny.gov

6c.

T.B.

January 2, 2014

Town of North Elba
Attn: Robert T. Politi
2693 Main Street
Lake Placid, NY 12946

Dear Mr. Politi:

Please consider this the Village's invoicing for the 2014 fire contract services. As you are aware, the contract amount was increased due to Santa Clara's decision not to participate.

Your contract payment is due before February 1st in the amount of \$36,536.56.

Should you have any questions, please feel free to call me at your convenience.

Very truly yours,

Paul J. Ellis
Village Treasurer

cc: John M. Sweeney, Village Manager
Christine Krehbiel, Administrative Assistant

*** PLEASE KEEP THIS FORM ATTACHED TO CONTRACT AT ALL TIMES ***

ESSEX COUNTY

Contract Routing Form

Department	Public Works	Contract No	DPW-14-0052
		Contract Term	01/01/14 - 12/31/14
		Contract Cost	Actual Costs
Contractor Legal Name	Town of North Elba		
Address	P.O. Box 385, 301 Main Street, Lake Placid, NY 12946		
Services to be Performed	Maintenance of County Roads		

STEP 1 - To the Department	Date Sent	January 3, 2014
Enclosed in triplicate is the contract you requested be prepared for your department. Please review Appendices A and B to make sure that the services/work to be performed by the Contractor, and the compensation to be paid by the County, are correct. If any changes are needed, please note the same on one contract and return all 3 to our office. If satisfactory, please forward to the Contractor for signing.		
STEP 2 - To the Contractor	Date Sent	1/9/14
Enclosed in triplicate is your contract with ESSEX COUNTY referenced above. Please execute all three copies and return to the County Attorney's Office as soon as possible along with an insurance certificate showing the required coverages (if any) plus any required bonds . Once all copies have been fully executed, one original will be sent to you for your records. All payment vouchers must include the above Contract No. AND your Federal Tax ID #.		
STEP 3 - To County Attorney	Date Sent	
Returned herewith are all 3 executed contracts, insurance certificates and bonds, as required, for approval prior to the Chairman's execution.		
STEP 4 - To Board Chairman	Date Sent	
The attached contract is hereby approved as being in proper form for your execution. County Attorney's Office: _____		
STEP 5 - Distribution	Date Sent	
<input type="checkbox"/> To the Department - 1 original contract and 1 copy. It is your responsibility to furnish the original contract to the Contractor. Retain the copy for your records.		
<input type="checkbox"/> Scanned to Shared Drive		

AGREEMENT FOR MAINTENANCE OF COUNTY ROADS

PARTIES

Essex County

Address: 7551 Court Street, P.O. Box 217, Elizabethtown, NY 12932

Contractor: Town of North Elba

Address: P.O. Box 385, 301 Main Street, Lake Placid, NY 12946

DATE: January 1, 2014

WITNESSETH:

1. WORK/SERVICES TO BE FURNISHED

Contractor agrees to provide, perform and furnish to Essex County the work, labor, services, material and/or equipment more fully described and set forth in Appendix A annexed hereto and made a part hereof.

2. CONTRACT PRICE

Contractor agrees to accept, and Essex County agrees to pay to Contractor, the contract price set forth in Appendix B annexed hereto and made a part hereof.

3. CONTRACT TERM

The term of this agreement is from January 1, 2014 through December 31, 2014.

4. CONTRACT TERMS & CONDITIONS

The parties hereto agree that the following terms and conditions are included in, a part of, and incorporated into this agreement:

- Insurance Requirements – Appendix C
- Essex County Standard Clauses – Appendix D

In the event that there is a conflict between Essex County's Insurance Requirements and Essex County's Standard Clauses and any Contractor's proposal, the terms and conditions of the Essex County Insurance Requirements and Essex County Standard Clauses shall supercede and apply.

5. NOTICES

Notices or communications are to be given or directed to either party at its address specified in this agreement, or to such other addresses as either party may from time to time designate by written notice to the other party.

6. ENTIRE AGREEMENT

This agreement, including the Appendices referred to hereinabove, constitutes the entire agreement between the parties; and there are no other agreements, either written or oral, between the parties pertaining to the work/services or the funds encompassed by this agreement.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto to be effective as of the date set forth above.

ESSEX COUNTY

By: _____
County Manager or Chairman

DEPARTMENT OF PUBLIC WORKS,

By: _____
Anthony J. Lavigne, Superintendent

TOWN OF NORTH ELBA

By:  _____
Roby Politi, Supervisor

APPENDIX A
DESCRIPTION OF SERVICES

Pursuant to the provisions of Highway Law §§117, 133-a and 142-d, the Town agrees to perform general maintenance services County Roads within and adjacent to said Town to the extent necessary to provide reasonable and safe passage and movement of vehicles over such County Roads, all as may be agreed upon by the County Superintendent of Public Works and the Town Highway Superintendent. The Town agrees that in providing and performing such services, the Town shall furnish and/or make available to the County adequate, trained and experienced employees to perform such work, as well as provide all necessary equipment, tools and materials, for the proper performance of this agreement; and such services and work shall be performed according to customary and approved standards and practices so as to accomplish the obligation imposed upon the County with respect to maintenance of County Roads.

All persons employed by the Town in the performance of this agreement shall be employees of the Town for purposes of the payment of wages, wage deductions, unemployment insurance benefits, social security coverage, retirement membership or credits, and liability for workers' compensation.

The parties hereto mutually agree that when working on County Roads, the Town shall:

- a. Periodically inspect County Roads.
- b. Be wholly responsible for maintaining their own machinery and equipment in a serviceable condition.
- c. Furnish at their own expense all materials, fuel, etc. needed -for the proper maintenance and operation of their own machinery and equipment.
- d. Furnish operators for machinery and equipment when applicable and available, and provide additional manpower as needed and requested.
- e. Furnish incidental small tools as required on the project, whenever available and requested.
- f. Equip all machinery and equipment with the proper hazard signs, warning devices, and lights as required by law, and these warning devices will be used whenever the vehicle is being operated.
- g. Mark all projects with the proper warning lights, signs, and barricades, and provide flaggers and flagging equipment when needed, all in compliance with the New York State Manual of Uniform Traffic Control Devices.
- h. Perform all work in a workmanlike manner, satisfactory to, and as directed by, the Superintendent of Public Works of the municipality having jurisdiction over the road where the work is being done, or by a competent representative designated by said Superintendent.

APPENDIX B
COST OF SERVICES

The County agrees to compensate the Town based upon actual costs of the Town to provide and perform the services and work authorized hereunder. Payment to the Town shall be made only after submission by the Town to the County Superintendent of Public Works of an itemized bill and properly completed County voucher and approval thereof by both the County Superintendent and County Auditor. All work time is to be substantiated by properly executed daily reports, or approved time books or cards. The Town shall also furnish information, in form and content satisfactory to the County Superintendent, showing where Town equipment was used and the amount chargeable therefor.

APPENDIX C

INSURANCE REQUIREMENTS

I. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:

→ **Commercial General Liability Insurance**

\$1,000,000 per occurrence/ \$2,000,000 aggregate, including coverage for liability assumed by contract and for completed operations.

→ **Automobile Liability**

\$2,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

→ **Excess/Umbrella Liability Insurance**

\$1,000,000 per occurrence / \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to name the County as an additional insured on the Contractor's Commercial General Liability and Excess/Umbrella insurance policy.

III. The policy/policies of insurance furnished by the Contractor shall:

→ be from an A.M. Best rated "A" New York State licensed insurer; and

→ contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the County for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The County shall be listed as an additional insured on a primary and non-contributory basis.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law from and against any and all liability, suits, judgments, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its performance or failure to perform this agreement

6. Discrimination Prohibited

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. Non-Discrimination In Employment

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract

to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any 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.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. Damage/Injury To Persons & Property

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. 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") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or 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 County shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

10. Claims For Payment

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the

County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.

- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

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

13. **Public Work & Building Service Contract Requirements**

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:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) 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.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, 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, 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 County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County with regard to this contract, any other contract with any County 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 County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

(a) Definitions. The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.

- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
- (2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.
- (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.
- (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
- (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(b) Obligations and Activities of Contractor.

Contractor agrees to:

- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
- (4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
- (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
- (6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;
- (8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from,

or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or

(3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and

shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

(1) either:

(A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or

(B) immediately terminate this Agreement if cure is not possible; and

(2) report the violation to the Secretary.

(i) Miscellaneous.

(1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.

(4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. Severability

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. Entire Agreement

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. In addition to those items required at Paragraph 10 of this Appendix, as conditions for payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge form in the form attached hereto and made a part hereof. All final accompanied by a Contractor and Sub-Contractor Final Payment Waiver, Release and Discharge as in the form attached hereto and made a part hereof. As well as a Contractor Affidavit relative to final

payment, a copy of which is attached hereto and made a part of this contract.

28. **Cooperative Purchasing (Piggybacking)**

Pursuant to General Municipal Law §103 and County Law §408-a, any political sub-division or fire company (as both are defined in Section 100 of the GML) or district authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies may make said purchases under this existing contract (Piggyback) provided, and on condition that this present contract was **LET TO THE LOWEST RESPONSIBLE BIDDER**. Therefore all terms and conditions under this contract are extended to other political sub-divisions and governmental entities.

Purchases under this contract by any other political sub-division other than Essex County shall be pursuant to the terms and conditions of Resolution No. 207 of 2013 dated July 1, 2013.

ESSEX COUNTY

Contract Routing Form

Department: Public Works	Contract No: DPW-14-0069
	Contract Term: 01/01/14 - 12/31/14
	Contract Cost: \$87,560.91
Contractor Legal Name: Town of North Elba	
Address: P.O. Box 385, 301 Main Street, Lake Placid, NY 12946	
Services to be Performed: Control of Snow and Ice on County Roads	

STEP 1 - To the Department	Date Sent <u>January 8, 2014</u>
<p>Enclosed in triplicate is the contract you requested be prepared for your department. Please review Appendices A and B to make sure that the services/work to be performed by the Contractor, and the compensation to be paid by the County, are correct. If any changes are needed, please note the same on one contract and return all 3 to our office. If satisfactory, please forward to the Contractor for signing.</p>	
STEP 2 - To the Contractor	Date Sent <u>1/9/14</u>
<p>Enclosed in triplicate is your contract with ESSEX COUNTY referenced above. Please execute all three copies and return to the County Attorney's Office as soon as possible along with an insurance certificate showing the required coverages (if any) plus any required bonds. Once all copies have been fully executed, one original will be sent to you for your records. All payment vouchers must include the above Contract No. AND your Federal Tax ID #.</p>	
STEP 3 - To County Attorney	Date Sent _____
<p>Returned herewith are all 3 executed contracts, insurance certificates and bonds, as required, for approval prior to the County Manager's execution.</p>	
STEP 4 - To County Manager	Date Sent _____
<p>The attached contract is hereby approved as being in proper form for your execution.</p> <p style="text-align: right;">County Attorney's Office: _____</p>	
STEP 5 - Distribution	Date Sent _____
<p><input type="checkbox"/> To the Department – 2 original contracts. It is your responsibility to furnish one original contract to the Contractor. Retain one copy for your records.</p> <p><input type="checkbox"/> Scanned to Shared Drive</p>	

AGREEMENT FOR CONTROL OF SNOW AND ICE ON COUNTY ROADS

PARTIES

Essex County

Address: 8053 US Route 9, P.O. Box 217, Elizabethtown, NY 12932

Contractor: Town of North Elba

Address: P.O. Box 385, 301 Main Street, Lake Placid, NY 12946

DATE: January 1, 2014

WITNESSETH:

1. WORK/SERVICES TO BE FURNISHED

Contractor agrees to provide, perform and furnish to Essex County the work, labor, services, material and/or equipment more fully described and set forth in Appendix A annexed hereto and made a part hereof.

2. CONTRACT PRICE

Contractor agrees to accept, and Essex County agrees to pay to Contractor, the contract price set forth in Appendix B annexed hereto and made a part hereof.

3. CONTRACT TERM

The term of this agreement is from January 1, 2014 through December 31, 2014.

4. CONTRACT TERMS & CONDITIONS

The parties hereto agree that the following terms and conditions are included in, a part of, and incorporated into this agreement:

- Insurance Requirements – Appendix C
- Essex County Standard Clauses – Appendix D

In the event that there is a conflict between Essex County's Insurance Requirements and Essex County's Standard Clauses and any Contractor's proposal, the terms and conditions of the Essex County Insurance Requirements and Essex County Standard Clauses shall supercede and apply.

5. NOTICES

Notices or communications are to be given or directed to either party at its address specified in this agreement, or to such other addresses as either party may from time to time designate by written notice to the other party.

6. ENTIRE AGREEMENT

This agreement, including the Appendices referred to hereinabove, constitutes the entire agreement between the parties; and there are no other agreements, either written or oral, between the parties pertaining to the work/services or the funds encompassed by this agreement.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto to be effective as of the date set forth above.

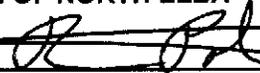
ESSEX COUNTY

By: _____
Chairperson/County Manager

PUBLIC WORKS DEPARTMENT,

By: _____
Anthony J. Lavigne, Superintendent

TOWN OF NORTH ELBA

By:  _____
Robert Politi, Supervisor

APPENDIX A
DESCRIPTION OF SERVICES

Section 135-a of the Highway Law, as amended, provides that the removal of snow from County Roads, as well as the sanding or other treatment of County Roads for the purpose of removing the danger of ice and snow, may be delegated by the County to the Town by agreement; and the County hereby delegates to the Town, and the Town hereby accepts and agrees to perform, such work to control snow and ice upon County Roads during the term of this agreement.

The Town shall remove snow from all County Roads within and adjacent to said Town, and shall sand or otherwise-treat such County Roads for the purpose of removing the danger of ice and snow, to the extent necessary to provide reasonable and safe passage and movement of vehicles over such County Roads. The Town agrees that the work to be performed by it under this agreement includes but is not limited to the following: (a) removal and disposal of accumulated buildup of plowed snow at intersections of one or more County Roads and at other locations along County Roads where necessary or prudent for the safety of public vehicular traffic; (b) cutting of weeps through accumulated buildup of plowed snow along County Roads for purposes of relieving water accumulation on the road surface from snow melt, rain or other sources; (c) such other work as may be necessary for the control of snow and ice on County Roads.

The Town shall furnish adequate, trained and experienced employees to perform such work, as well as provide all necessary equipment, tools and materials, including but not limited to sand and/or salt (but excluding snow fence), for the proper performance of this agreement, and such work shall be performed according to customary and approved standards and practices so as to satisfy and fulfill the obligations imposed upon the County with respect to snow removal and the control of snow and ice on County Roads.

All persons employed by the Town in the performance of this agreement shall be employees of the Town for purposes of the payment of wages, wage deductions, unemployment insurance benefits, social security coverage, retirement membership or credits, and liability for workers' compensation.

The Town also agrees to erect snow fence on County roads, and thaw culverts dammed or blocked by ice, as designated and directed by the County Superintendent of Public Works in writing, provided that the County furnishes the snow fence and materials to thaw the culverts at County cost and expense.

In the event that the County shall abandon any existing County road or part thereof, or transfer any County road or part thereof to the State Highway System, or add any road to the County road system, the County shall notify the Town of such abandonment, transfer or addition, as the case may be, designating the particular County Road and the mileage thereof which has been added, abandoned or transferred, and the compensation under this agreement shall be adjusted accordingly as of the effective date of such addition, abandonment or transfer.

APPENDIX B
COST OF SERVICES

The County agrees to pay to the Town the sum of \$5,435.19 per mile of County Road within or adjacent to said Town for which the Town provides snow and ice control services. It is acknowledged and agreed by the parties that there are 16.11 miles of County Road in the Town, and 0 miles of County Road adjacent to said Town; and therefore the total compensation to be paid by the County to the Town during the year 2013 shall be \$87,560.91, with said sum to be paid in three installments - \$29,186.97 on first day of March - \$29,186.97 on first day of June and \$29,186.97 on first day of September.

In the event the Town fails to maintain or properly maintain any of said roads, or any portion thereof, and the County provides maintenance thereof with its own forces or through a third party, the amount to be paid to the Town shall be reduced by the County's costs for such maintenance.

APPENDIX C

INSURANCE REQUIREMENTS

I. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:

- **Commercial General Liability Insurance**
\$1,000,000 per occurrence/ \$2,000,000 aggregate, including coverage for liability assumed by contract and for completed operations.
- **Automobile Liability**
\$2,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
- **Excess/Umbrella Liability Insurance**
\$1,000,000 per occurrence / \$2,000,000 aggregate.

II. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to name the County as an additional insured on the Contractor's Commercial General Liability and Excess/Umbrella insurance policy.

III. The policy/policies of insurance furnished by the Contractor shall:

- be from an A.M. Best rated "A" New York State licensed insurer; and
- contain a 30-day notice of cancellation

IV. The Contractor agrees to indemnify the County for any applicable deductibles.

V. Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance, and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

VI. All certificates of insurance will provide 30 days notice to the county of cancellation or non-renewal.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VII. Contractor and subcontractor waives all rights of subrogation against the owner and will have the General Liability, Umbrella Liability Workers' Compensation policies endorsed setting forth this Waiver of Subrogation.

VIII. All policies will also contain no exclusions with respect to Section 240 and 241 of the NYS Labor Law.

IX. The County shall be listed as an additional insured on a primary and non-contributory basis.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law from and against any and all liability, suits, judgments, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its performance or failure to perform this agreement

6. Discrimination Prohibited

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's

financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. Non-Discrimination In Employment

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any 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.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. Damage/Injury To Persons & Property

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. 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") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or 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 County shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

10. Claims For Payment

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,

- (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

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

13. **Public Work & Building Service Contract Requirements**

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:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;

- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;
- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) 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.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, 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, 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 County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County with regard to this contract, any other contract with any County 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 County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

(a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.

(1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.

(2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.

(3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health

Information at 45 CFR Part 160 and Part 164, subparts A and E.

(5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.

(6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(b) Obligations and Activities of Contractor.

Contractor agrees to:

(1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;

(2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;

(3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;

(4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;

(5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;

(6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;

(7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;

(8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary, for purposes of the Secretary determining the County's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or

- (2) provided that such use or disclosures are required by law; or
- (3) Contractor
 - (A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,
 - (B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and
 - (C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or
- (4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or
- (5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

- (1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;
- (2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Contractor's use or disclosure of Protected Health Information; and/or
- (3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information

is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

- (1) either:
 - (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or
 - (B) immediately terminate this Agreement if cure is not possible; and
- (2) report the violation to the Secretary.

(i) Miscellaneous.

- (1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- (2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.
- (4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. Severability

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. Entire Agreement

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

27. In addition to those items required at Paragraph 10 of this Appendix, as conditions for payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge form in the form attached hereto and made a part hereof. All final accompanied by a Contractor and Sub-Contractor Final Payment Waiver, Release and Discharge as in the form attached hereto and made a part hereof. As well as a Contractor Affidavit relative to final payment, a copy of which is attached hereto and made a part of this contract.

28. Cooperative Purchasing (Piggybacking)

Pursuant to General Municipal Law §103 and County Law §408-a, any political sub-division or fire

company (as both are defined in Section 100 of the GML) or district authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies may make said purchases under this existing contract (Piggyback) provided, and on condition that this present contract was **LET TO THE LOWEST RESPONSIBLE BIDDER**. Therefore all terms and conditions under this contract are extended to other political sub-divisions and governmental entities.

Purchases under this contract by any other political sub-division other than Essex County shall be pursuant to the terms and conditions of Resolution No. 207 of 2013 dated July 1, 2013.