

NASSAU COUNTY OFFICE OF THE COMPTROLLER
HOWARD S. WEITZMAN
Comptroller



REQUEST FOR PROPOSALS (RFP) FOR A PLAN ADMINISTRATOR TO
REVIEW AND AUDIT CLAIMS FOR THE SMART SAVINGS PROGRAM

Proposal Issuance Date: June 4, 2009

Proposal Submission Date: June 26, 2009

RFP No. CO0529-0917

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I. GENERAL INFORMATION

A. Introduction.

The Nassau County Comptroller (“Comptroller”), on behalf of Nassau County (the “County”), is soliciting proposals for a Plan Administrator to review, analyze and audit claims for the County’s Smart Savings Program. This Request for Proposals (“RFP”) describes the scope of work to be performed; minimum proposer qualifications; required proposal format and content, proposal evaluation criteria, and required terms of any agreement resulting from this RFP.

The Smart Savings Program provides that families of County employees may have only one County paid health insurance policy per family. The proposer will administer claims for reimbursement from participants who have out of pocket medical expenses that would otherwise have been covered by coordination of benefits that exceed the buyback amount, currently \$2,000.

The County expects to enter into an agreement with the vendor submitting the proposal most advantageous to the County. Potential vendors with verifiable qualifications and demonstrated ability are invited to submit proposals for the RFP services.

Nassau County is committed to a policy of equal opportunity and does not discriminate against vendors on the basis of age, sex, sexual orientation, race, color, creed, religion, ethnicity, national origin, disability, marital status, familial status, veteran status or any other basis protected under federal, state, and local laws, regulations and ordinances.

B. RFP Contact.

The sole contact for inquiries and the submission of proposals, and inquiries relating to this RFP is:

Rhonda L. Maco

Confidential Assistant to the Comptroller for Legislative Affairs

Office of the Nassau County Comptroller

240 Old Country Road, Suite 210

Mineola, New York 11501

Phone: (516) 571-2386

Fax: (516) 571-5900

Email: rmaco@nassaucountyny.gov

All questions about the RFP should be submitted in writing. Contact with anyone else in the County government including elected officials, County personnel or their agents or consultants regarding this RFP is strictly prohibited. Violation of this requirement may be grounds for eliminating a proposal from consideration.

C. Proposed Preparation Costs.

Neither the Comptroller nor the County shall be liable for any costs incurred in the preparation and production of a proposal in response to this RFP or for any work performed prior to the issuance of a contract.

D. Rejection of Proposals.

This RFP does not commit the Comptroller or the County to award a contract, or to otherwise procure the services sought by this RFP. The Comptroller reserves the right to accept or reject any or all proposals received, to negotiate with all qualified proposers, and to cancel this RFP in part or in its entirety if the Comptroller determines that it is in the interests of the County to do so.

E. Addenda to Request for Proposals.

Addenda to this RFP may be issued prior to the proposal submission date and will be posted on the County website at: <https://eproc.nassaucountyny.gov/MainBidBoard>. Addenda will be furnished by email to prospective proposers who have specifically informed the RFP Contact, specified in Section I (B) above, of their interest in receiving addenda. Prospective proposers who have not informed the RFP Contact of their interest are responsible for checking the County website frequently for addenda.

F. Submission of Proposals and RFP Timetable.

1. Submission of Proposals.

The original proposal and two (2) copies should be submitted in a sealed envelope addressed to the RFP contact. An authorized representative of the vendor must sign the original. The proposal should also be submitted electronically to Rhonda L. Maco at rmaco@nassaucountyny.gov.

To be considered, proposals must be mailed or hand-delivered so as to be received in the Office of the RFP Contact at 240 Old Country Road, Suite 210, Mineola, NY 11501, no later than 4:00 PM on June 26, 2009. Proposers must allow sufficient time for mail delivery to ensure timely receipt of their proposals, and should consider using registered or certified mail with return receipt requested. When delivering a proposal in person, contact Rhonda Maco at (516) 571-2386, to arrange delivery. Any late proposals will be returned unopened. Proposals received after the above date and time will not be considered.

2. RFP Timetable.

Release of Request for Proposals:	June 4, 2009
Final date for Submission of Questions:	June 12, 2009
Final date for Submission of Proposals:	June 26, 2009
Approximate date for Selection of Vendor:	July 7, 2009

Dates indicated above are subject to change at the sole discretion of the County.

G. Additional Information May Be Required.

The County may award a contract or contracts based upon proposals received without discussion. Each proposal, therefore, should be submitted in the most favorable terms. However, the Comptroller reserves the right to request additional data, oral discussions, or presentations in support of written proposals from any or all proposers.

H. Independent Price Determination.

By submission of its offer, the proposer's certify (and in the case of a joint offer, each party hereto certifies as to its own organization) that, in connection with the procurement:

1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matters relating to such prices with any other proposer or competitor; and
2. Unless otherwise required by law, the prices have been quoted in this offer have not been knowingly disclosed by the proposer prior to award, directly or indirectly, to any other proposer or competitor; and
3. No attempt has been made or will be made by the proposer to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition; and
4. No elected or appointed official or employee of the County shall benefit financially or materially from this contract. The County may terminate this contract if gratuities were offered or given by the proposer or his or her agency to any such official or employee.

I. Time Validity of Proposal.

The proposer must guarantee that the proposal submitted will be valid for six (6) months following the submission deadline.

J. Disclosure of Proposal Contents.

Information submitted to the County, including the information contained in proposals submitted in response to this RFP, may be subject to disclosure under the New York Freedom of Information Law ("FOIL") and other laws. If a vendor is submitting information that it believes is protected from disclosure under FOIL or similar laws, it should clearly identify, at the time of submission, the information at issue and the basis for non-disclosure. If the County receives a request for disclosure of the identified information and the County determines that the identified information is required by FOIL or any other law to be disclosed, the County will use reasonable efforts to notify the vendor prior to disclosing the information in order to enable the vendor to take such action as the vendor deems appropriate. Copies of executed contracts are not exempt from disclosure under FOIL and similar laws.

K. Anticipated Contract Term

The County expects that the contract will be for a three-year term with the option for two additional one-year renewals at the sole discretion of the County, subject to all required County approvals.

L. Award of Contract

The County shall select a proposer by means of Notice of Award issued by the RFP evaluation Committee. Neither the selection of a proposer nor the issuance of a Notice of Award shall constitute the County's acceptance of the proposal nor a binding commitment on behalf of the County to enter into a contract with the proposer, as any binding arrangement must be set forth in a contract signed by both parties and subject to all requisite approvals.

II. SCOPE OF WORK

The vendor selected in response to this RFP is to review, analyze and audit claims that are submitted under the County's Smart Savings Program. The Program provides that families of County employees may have only one County paid health insurance policy per family. The family member who surrenders his/her health insurance policy receives a buyback of their coverage which is currently \$2,000.00.

Smart Savings ("the Program") currently applies to 271 couples. The Program began in 2006 and initially applied to only non-union employees. The Program has since been extended to all but one of the County's smaller unions and to the College's non-union workforce. It is expected that the Program will be extended to all County employees as new collective bargaining agreements are negotiated. The Program applies to all non-union retirees and to unionized employees who retire after the Program took effect.

Smart Savings guarantees that affected employees and retirees will be reimbursed for their out of pocket expenses that total more than the buyback amount, currently \$2,000, if the expenses incurred would have been covered by two health insurance policies through the New York State Health Insurance Program ("NYSHIP") coordination of benefits standard. Since the affected employees are already covered under the NYSHIP plan as dependents, most of their expenses should be covered and out-of-pocket expenses are expected to be minimal.

The services to be provided by the vendor shall consist of reviewing and auditing claims for the Program. The vendor will use the NYSHIP coordination of benefits standard when auditing claims. The vendor will review and determine the application for reimbursement and inform the County of its determination. The County will make the payment to the employee.

As part of its responsibilities, the vendor shall review all available information to advise the County on whether a claimant's reimbursements have reached a level where it would be fiscally in the County's best interest to provide the claimant with a second insurance policy. Any determination that it is in the County's best interest to issue a second insurance policy will in no way affect any amount which the vendor concludes that the claimant is entitled to as reimbursement for covered expenses incurred prior to the issuance of a second insurance policy by the County.

While the County provides the reimbursement forms and instructions to Smart Savings participants, the vendor must also provide Smart Savings participants with access to reimbursement forms and designate a contact person who will respond to participant questions by telephone and/or e-mail. The County has developed all explanatory material and forms for submission of claims. The vendor may change these forms with County approval.

The vendor is required to make final determinations on claims within 30 days of receiving a claim.

III. PROPOSAL FORMAT AND CONTENT

Proposals that do not meet the requirements of this RFP will not be considered.

The proposal should be submitted in one volume divided into the following sections:

A. Cover Letter.

The cover letter must contain the following:

1. Identify the proposal as a response to the RFP for the Smart Savings Program.
2. Name, address and email address of vendor, and addresses from which services will be provided, if different.
3. Name, title, email address and telephone number of individual to be contacted regarding the proposal.
4. Name, title, address, email address, telephone number and signature of the official authorized to bind the vendor.

B. Disclosure.

Organizations contracting with Nassau County are required to disclose the names and business addresses of all principals.

The cover letter must provide the following as indicated by the type of ownership:

1. Sole proprietorship/individual. The name and email address of the sole proprietorship/individual. "Sole ownership" must be stated on the disclosure.
2. Closely held corporation. The names and email addresses of all shareholders, officers and directors.
3. Publicly traded corporation. Only the page(s) of the SEC Form 10-K setting forth the names of all officers and directors.
4. Not for profit corporation. The names and email addresses of all members, officers and directors.
5. Partnership. The names and email addresses of all general and limited partners.
6. Limited Liability Company. The names and email addresses of all members.
7. Limited liability partnership. The names and email addresses of all members.
8. Joint venture. The names and email addresses of all joint members.

List any possible conflicts of interest, and how the proposer would resolve the conflict. Also list any other work the proposer performs for the County, NCC, or any other entity related to the County, including but not limited to, the Nassau County Deferred Compensation Board, Nassau County OTB, the Nassau County IDA, the Nassau Health Care Corporation, the Nassau County Sewer and Storm

Finance Authority, and the Nassau County Tobacco Settlement Corporation, even if it does not believe that the work poses a conflict.

C. Affirmative Statement

An affirmative statement, with supporting documentation, that the proposer meets the following minimum qualifications:

1. At least three years' experience in administering a claims review and audit of an insurance reimbursement program for government entities and the requisite licenses to meet national and state requirements to operate the proposer's business.

D. Table of Contents.

E. Organizational Overview.

Provide an organizational chart and a brief description of the type and general history of your organization, size, staffing, annual budget, and number/type of clients. Describe your experience in providing claims review and auditing services, and your experience in working with public sector clients.

F. References.

Provide the name, address, contact person, telephone number and email address for the three largest governmental entities for which you currently provide claims review and auditing services (preferably services similar to those described in this RFP), and if applicable, three for which you no longer provide such services. For entities that have terminated their relationship with your firm, specify the reasons for termination. Include all governmental entities for which you have provided similar services.

G. Technical Proposal.

Describe your implementation plan and project schedule for accomplishing the work outlined in the Scope of Work. We expect the implementation of the Program to commence within one (1) month from the award of the contract. Include a brief introduction outlining the proposer's overall approach to the proposed program and demonstrate your understanding of the needs that the program is intended to address. The proposals must contain the following information:

1. A brief introduction outlining the overall technical approach to the engagement, including the disclosure of all materiality factors that will be used.
2. Narrative descriptions of the proposer's treatment of each deliverable required in Sections II and III of this RFP.
3. A detailed approach and work plan, in narrative and tabular forms, listing strategies, tasks to be accomplished and their sequence. The work plan must include:
 - Estimated work hours for completing each task and/or deliverable and total project work hours;
 - Number of work hours by staff category, including expectations of County staff; and

- A detailed implementation schedule clearly indicating tasks and their respective completion dates, and the work product(s) to be provided at the completion of each task (i.e., commencement of review and interim and year-end work).
4. An enumeration of the problems that the proposer might reasonably expect during the engagement and the proposer's approaches to solving those anticipated problems.

H. Cost Proposal

This section of the proposal must contain all information related to costs, fees, and hourly rates for providing the services requested in this RFP. Cost proposals must be submitted in a separate, sealed package.

The County will accept a cost proposal framed as a flat fee, a fee per reimbursement review or an hourly rate.

Cost proposals must be inclusive of all costs. Proposers must submit proposed fee schedules showing maximum, not-to-exceed amounts. Payments to the successful proposer will not exceed the maximum amount. Fees are not subject to adjustment after the contract is awarded.

Once a proposal is submitted, the cost proposal is irrevocable until contract award, unless the proposal is withdrawn. Cost proposals may be withdrawn only in writing and only upon the expiration of 180 calendar days after the submission date. Withdrawals must be received by the RFP Contact prior to award.

Cost proposals must not include any state or local sales or use taxes. The County is tax exempt.

The Cost Proposal must contain the following information:

1. For each fiscal year:
 - Subcontract costs, if any, must be disclosed.
2. Proposers must also provide the estimated number of hours and projected billing rates for the various categories of audit staff to be assigned to the engagement.

IV. EVALUATION CRITERIA

The selection of a vendor for contract award will be made by an Evaluation Committee consisting of Comptroller's Office and other County representatives. A proposal's merit will be evaluated as follows:

A. Minimum Qualification Requirements (MQRs) (Pass/Fail)

To be considered, the proposer must meet the MQRs enumerated in Section III (A) (6) of this RFP.

B. Technical Proposal (75%)

1. Overall quality of the proposal (50 points), including:

- Technical approach and methodology to completing the claims review and audit, including strategies and the planned sequence, appropriateness, comprehensiveness, and general quality of the proposed work and management plans;
 - Ability of the proposer to successfully complete the claims audit within the proposed schedule, including commitment and quantity of assigned staff, accessibility, availability and commitment of partners to be assigned to the engagement.
2. Proposer’s characteristics, quality of staff assigned, and experience providing similar services (25 points), including:
- The qualifications, experience and level of personnel, including any sub-contractors, the proposer will assign to the audit, and their commitment;
 - The firm’s commitment to the continuing education and professional development of its staff;
 - The strength of the proposer’s references and prior performance on claims audits of similar scope and size, including the proposer’s experience with similar services for governmental entities;
 - The depth and breadth of the proposer’s experience; and
 - The proposer’s financial stability.

C. Cost Proposal (25%)

After the Evaluation Committee completes its technical evaluations, it may eliminate those proposals it considers not competitive. Cost proposals will then be opened from competitive technical proposals. A maximum of 25 points may be awarded to the proposal judged to be lowest overall in cost, and lower amounts to more expensive proposals.

V. TERMS OF AGREEMENT

By submitting a proposal, proposers agree to be bound by the terms of their proposals and by the terms of this RFP. Other standard clauses for Nassau County contracts include:

A. Standard Clauses for Nassau County Contracts

1. Independent Contractor.

The Contractor is an independent contractor of the County. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a “Contractor Agent”), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word “Person” means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

2. No Arrears or Default.

The Contractor is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

3. Compliance With Law.

- Generally. The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, and disclosure of information, in connection with its performance under this Agreement. In furtherance of the foregoing, the Contractor is bound by and shall comply with the terms of Exhibits EE and U attached hereto. As used in this Agreement the word “Law” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.
- Nassau County Living Wage Law. Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, the Contractor agrees as follows:
 - Contractor shall comply with the applicable requirements of the Living Wage Law, as amended;
 - Failure to comply with the Living Wage Law, as amended, constitutes a material breach of this Agreement, the occurrence of which shall be determined solely by the County. Contractor has the right to cure such breach within thirty days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.
 - It shall be a continuing obligation of the Contractor to inform the County of any material changes in the content of its certification of compliance, attached to this Agreement as Appendix L, and shall provide to the County any information necessary to maintain the certification’s accuracy.
- Records Access. The parties acknowledge and agree that all records, information, and data (“Information”) acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Contractor acknowledges that Contractor Information in the County’s possession may be subject to disclosure under Article 6 of the New York State Public Officer’s Law (“Freedom of Information Law” or “FOIL”). In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate

4. Minimum Service Standards. Regardless of whether required by Law:

- The Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.
- The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications (“Approvals”) necessary or appropriate in connection with this Agreement.

5. Indemnification; Defense; Cooperation.

- The Contractor shall be solely responsible for and shall indemnify and hold harmless the County, its officers, employees, and agents (the “Indemnified Parties”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys’ fees and disbursements) and damages (“Losses”), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of the County.
- The Contractor shall, upon the County’s demand and at the County’s direction, promptly and diligently defend, at the Contractor’s own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.
- The Contractor shall, and shall cause Contractor Agents to, cooperate with the County in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement.
- The provisions of this Section shall survive the termination of this Agreement.

6. Insurance.

- Types and Amounts. The Contractor shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name “Nassau County” as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate coverage, (ii)

if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than two million dollars (\$2,000,000) per occurrence, (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance as the County may reasonably request from time to time.

- Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed or authorized to do business in New York State and acceptable to the County, and (ii) in form and substance acceptable to the County. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The Contractor shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Contractor under this Agreement.
- Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the County Attorney's Office. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Contractor shall provide written notice to the County Attorney's Office of the same and deliver to the County Attorney's Office renewal or replacement certificates of insurance. The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

7. Assignment, Amendment, Waiver, Subcontracting.

- This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County Executive or his or her duly designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

8. Termination.

- Generally. This Agreement may be terminated (i) for any reason by the County upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the County immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the County and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.
- As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.
- By The Contractor. This Agreement may be terminated by the Contractor if performance becomes impracticable through no fault of the Contractor, where the impracticability relates to the Contractor's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Contractor delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Contractor is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Contractor's right to terminate under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.
- Contractor Assistance Upon Termination. In connection with the termination or impending termination of this Agreement the Contractor shall, regardless of the reason for termination, take all actions reasonably requested by the County (including those set forth in other provisions of this Agreement) to assist the County in transitioning the Contractor's responsibilities under this Agreement. The provisions of this subsection shall survive the termination of this Agreement.

9. Accounting Procedures; Records.

- Accounting Procedures; Records. The Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Contractor is a non-profit entity, must comply with the accounting guidelines set forth in the federal Office of Management & Budget Circular A-122, "Cost Principles for Non-Profit Organizations." Such Records shall at all times be available for audit and inspection by the County Comptroller, the County Attorney's

Office, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

10. Right to Works/Intellectual Property Rights.

- Except as noted in Subsection (c) below, upon execution of this Agreement, any reports, documents, data, designs, drawings, photographs and/or any other material or information provided by the County or compiled by the Contractor for the County pursuant to this Agreement shall remain exclusive property of the County.
- The completed project deliverables as well as all working material shall become the sole property of the County. The completed audits, reports, documents, and any additional products shall be copyrighted in the County's name. The Contractor shall not sell or distribute any of these County project deliverables in whole or in part to any third parties. The Contractor, with the expressed written permission of the County, may be allowed to use limited examples of the completed work for marketing or other uses.
- Contractor Property or Works. Unless otherwise agreed upon between the parties, Contractor retains all right, title and interest, including all copyrights, patent rights and trade secret rights, in any pre-existing Contractor property or work, including all intellectual property interests therein, except solely the specific modifications made by the County, which modifications shall be owned by the County.
- Where applicable, works for authorship created by the Contractor for the County in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act.

11. Limitations on Actions and Special Proceedings Against the County.

- No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:
 - Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the County.
 - Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the

termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

12. Work Performance Liability.

- The Contractor is and shall remain primarily liable for the successful completion of all work in accordance this Agreement irrespective of whether the Contractor is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the County.

13. Consent to Jurisdiction and Venue; Governing Law.

- Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

14. Notices.

- Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed by a County employee, three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, and (d)(i) if to the Department, to the attention of the Commissioner at the address specified above for the Department, (ii) if to an Applicable DCE, to the attention of the Applicable DCE (whose name the Contractor shall obtain from the Department) at the address specified above for the County, (iii) if to the Comptroller, to the attention of the Comptroller at 240 Old Country Road, Mineola, NY 11501, and (iv) if to the Contractor, to the attention of the person who executed this Agreement on behalf of the Contractor at the address specified above for the Contractor, or in each case to such other persons or addresses as shall be designated by written notice.

15. All Legal Provisions Deemed Included, Severability, Supremacy, Construction.

- Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon

the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

- In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.
- Each party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either party as drafter.

16. Section and Other Headings.

- The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

17. Entire Agreement.

- This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

18. Administrative Service Charge.

- The Contractor agrees to pay the County an administrative service charge of _____ dollars (\$_____) for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Number 201-2001. The administrative service charge shall be due and payable to the County by the Contractor upon signing this Agreement.

<u>Value of contract:</u>	<u>Administrative fee:</u>
\$0 - \$5,000	\$0
\$5,001 - \$50,000	\$160
\$50,001 - \$ 100,000	\$266
\$100,001 or more	\$533

19. Executory Clause.

- Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County approvals have been obtained, including, if required, approval by the County Legislature, and (ii) this Agreement has been executed by the County Executive (as defined in this Agreement).
- Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the State and/or federal governments, then beyond funds available to the County from the State and/or federal governments.

APPENDIX EE

Equal Employment Opportunities for Minorities and Women

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor 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 or marital status.

(d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

(g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent

feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

(h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.

(i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

(j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

(k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

(l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the

amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrator's award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term "Best Efforts Checklist" shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for

the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term “County Contractor” means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term “County Contractor” shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE “Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises” shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor’s affidavit with a notary’s signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation.
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation.
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.

- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation.
- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation.
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term “Executive Director” shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term “Subcontract” shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term “Subcontractor” shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

APPENDIX U

Local Law No. 19 – 2003

A LOCAL LAW TO PROHIBIT THE USE OF COUNTY RESOURCES TO INTERFERE WITH COLLECTIVE BARGAINING ACTIVITIES OF UNIONS IN NASSAU COUNTY.

BE IT ENACTED by the Nassau County Legislature as follows:

The Miscellaneous Laws of Nassau County are amended by adding a new title to read as follows:

Title 56

COLLECTIVE BARGAINING ACTIVITIES OF UNIONS IN NASSAU COUNTY

§ 1. Legislative Intent.

This Legislature hereby finds and determines that funds appropriated by the County Legislature for the purchase of necessary goods and services should ultimately be expended solely for the purpose for which they were appropriated and should not be used to deter, or promote union organizing.

This Legislature also finds that the use of County funds and property to assist, deter or promote union organizing causes conflicts and work interruptions which waste scarce County resources on issues of secondary importance.

This Legislature further finds and determines that where the County expends significant resources for the purchase of goods or the delivery of needed human services, the County's financial interests is advanced by the promotion of non-confrontational procedures which limit the economic and social disruptions associated with collective bargaining disputes.

This Legislature also determines that the State of New York has recently enacted amendments to the New York Finance Law to restrict the use of State funds in assisting, deterring or promoting union organizing.

Therefore, the purpose of this law is to protect the County's financial interests in connection with its commitment of economic resources by prohibiting funding of certain forms of labor/management conflict and is not intended to provide an advantage to either labor or management during the conduct of union organization campaigns, nor to express any generally applicable policy regarding labor/management relations.

§2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

- A) "Assist, Promote or Deter Union Organizing" shall mean any attempt by an employer to influence the decision of its employees in the County of Nassau or those of its subcontractors regarding either of the following:
- 1.) whether to support or oppose a labor organization that represents or seeks to represent those employees; and
 - 2.) whether to become a member of any labor organization.
- B.) "Binding Arbitration Agreements" shall mean a written agreement to submit any dispute arising out of the efforts of a labor organization to represent the employees of a County contractor to final and binding arbitration.
- C.) "County Contractor" shall mean any employer that receives more than Fifty Thousand (\$50,000) Dollars in County finds for supplying goods or services pursuant to a written license with the County of Nassau or any of its agencies; pursuant to a Nassau County grant; pursuant to a Nassau County program; pursuant to a Nassau County reimbursement for services provided in any calendar year; or pursuant to a sub-license with any of the above.
- D.) "County Funds" shall mean any monies appropriated by the Nassau County Legislature.
- E.) "County Property" shall mean any property or facility owned or leased to or by the County of Nassau or any Nassau County agency or authority.
- F.) "Employee" shall mean any person employed by an employer other than a person employed in a supervisory, managerial or confidential position as defined by applicable law.
- G.) "Employer" shall mean any individual, corporation, unincorporated association, partnership, government agency or authority, or another legal entity, whether a for profit entity, a not-for-profit entity or a public entity that employs more than one person in the County of Nassau.
- H.) "Fair Communication Agreements" shall mean a written agreement requiring the parties to such agreement to refrain from providing employees with false and misleading information regarding the circumstances surrounding their employment.
- I.) "Human Services License" shall mean a County license, grant or reimbursement of over Fifty Thousand (\$50,000) Dollars for the provision of health, mental health, residential or day treatment services to the mentally ill and developmentally disabled, social services and other care and treatment services of the County.
- J.) "Labor Disputes" shall mean any concerted action concerning wages, hours and conditions of employment or concerning the representation of person in negotiating, maintaining changing or seeking to arrange wages, hours and conditions of employment.
- K.) "Labor Organization" shall mean an organization of any kind in which employees participate and which exists for the purpose, in whole or in part, or representing employees concerning wages,

rates for pay, benefit, grievances, labor disputes, hours of employment, working conditions or other matters incidental to the employment relationship, and shall include the parent, national or international organization of a local labor organization.

- L.) "Majority Authorization Card Agreement" shall mean a written agreement authorizing the recognition of a labor organization as the exclusive bargaining agent for a bargaining unit based on the presentation of a majority of authorizing cards.
- M.) "Neutrality Agreement" shall mean a written agreement by a County contractor not to participate in or request or otherwise seek to influence, either in writing or orally, the decision of its employees as to whether or not to be represented by a labor organization.
- N.) "Non-Intimidation Agreements" shall mean a written agreement prohibiting the parties from coercing or intimidating employees explicitly or implicitly in selecting or not selecting a bargaining representative.
- O.) "Reasonable Access Agreement" shall mean a written agreement granting a labor organization reasonable access to employees and information necessary to be communicated therewith.

§3. Prohibitions

- A) A County contractor shall not use any of County funds to assist, promote or deter union organizing.
- B.) No County funds shall be used to reimburse a County contractor for any costs incurred to assist, promote or deter union organizing.
- C.) The County of Nassau shall not use County funds to assist, promote or deter union organizing.
- D.) All County contracts, grant applications, program guidelines and any other relevant documents shall contain the text of the prohibitions in this section.
- E.) No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote or deter union organizing.
- F.) Prior to the award of a County contract or grant, and/or prior to authorization to participate in a County program, the potential awardee, recipient, and or program participant, as the case may be, shall provide a certification, subscribed by such awardee, recipient and or program participant and affirmed by said person as true under the penalties of perjury to the County agency or authority involved that none of the funds shall be used to assist, promote or deter union organizing.
- G.) Every request for payment of County funds by a County contractor shall include a certification, subscribed to by such person seeking reimbursement and affirmed by said person as true under the penalties of perjury, that the contractor is not seeking reimbursement for costs incurred to assist, promote or deter union organizing.

- H.) Every County Department, Agency, Authority or Office shall require those seeking County contracts, grants, awards, program participation and/or County reimbursement to certify and affirm as true under the penalty of perjury that such entities will take all action necessary to ensure that County funds are not used to assist, promote or deter union organizing.
- I.) Any County contractor who makes expenditures or incurs costs to assist, promote or deter union organizing shall maintain records sufficient to show that no County funds were used for those expenditures and, as applicable, that no reimbursement from County funds has been sought for such costs. Such records shall be made available to the pertinent County agency or authority, the County Comptroller, or the County Attorney, upon request.

§ 4. Accounting.

Each County contractor shall account for funds spent on assisting, deterring or promoting union organizing activities as follows:

- A) County funds designated by the County for use for a specific expenditure of the recipient shall be accounted for as allocated to the expenditure.
- B.) County funds that are not designated as described in paragraph (A) of this section shall be allocated on a pro rata basis to all expenditures by the recipient that support the program for which the grant is awarded.
- C.) If County funds and other funds are commingled, and the contractor fails to keep records sufficient to satisfy the requirements of paragraphs (A) or (B) of this section, any expenditure to assist, promote or deter union organizing shall be allocated between the County funds and other funds on the pro rata basis derived from the interplay of paragraphs (A) and (B) of this section.
- D.) Any expense, including legal and consulting fees and salaries of supervisor and employees, incurred for research for, or preparation, planning or coordination of, carrying out, an activity to assist, promote or deter union organizing shall be treated as paid or incurred for that activity.

§ 5. Applicability.

- A) This law shall apply to any contracts awarded on or after the effective date of this law.
- B.) This law shall not apply to an activity performed or to an expense incurred in connection with any of the following:
 - 1.) addressing a grievance or negotiating or administering a collective bargaining agreement;
 - 2.) allowing a labor organization or its representative's access to the employer's facility or property;
 - 3.) performing an activity required by Federal or State law or by a collective bargaining agreement; and

- 4.) negotiating, entering into or carrying out a voluntary recognition agreement with a labor organization.

§ 6. Implementation.

Every Nassau County Department, Agency; Authority or Office shall:

- 1.) Include in all bid documents, County grant applications, County program guidelines and County reimbursement documents, a statement informing potential and actual County contactors that the efficient, timely and non-disruptive provision of goods and services sought by such Department, Agency, Authority or Office is a paramount financial interest of the County of Nassau and as such the County expects the potential County contractor to protect the County's financial interest by adopting non-confrontational procedures for the orderly resolution of labor disputes. The statement shall also inform the potential and actual County contractors that such non-confrontational procedures may include, but are not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, non-intimidation agreements and reasonable access agreements.
- 2.) Require County contractors and those seeking County contracts, to certify and affirm as true under the penalty of perjury:
 - a.) that such contractor will not express to employees any false or misleading information that is intended to influence the determination of employee preferences regarding union representation;
 - b.) that such contractor will not coerce or intimidate employees, explicitly or implicitly, in selecting or not selecting a bargaining representative;
 - c.) that such contractor will not require an employee, individually or in a group, to attend a meeting or an event that is intended to influence his or her decision in selecting or not selecting a bargaining representative;
 - d.) that such contractor understands its obligation to limit disruptions caused by pre-recognition labor disputes through the adoption of non-confrontational procedures for the resolution of pre-recognition labor disputes with employees engaged in the production of goods or the rendering of services for the County; and
 - e.) that such contractor has and will adopt any or all of the above-referenced procedures, or their functional equivalent, to ensure the efficient, timely and quality provision of goods and services to the County. The contractor shall include a list of said procedures in such certification.
- 3.) Ensure that every County contract for the provision of services, when such services will be performed on County property, include as a condition of award, grant receipt or

reimbursement, as the case may be, a requirement that such County contractor adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

- 4.) Ensure that every County contract for the provision of human services, when such services are not to be performed on County property, include as a condition of award, grant receipt or reimbursement, as the case may be, a requirement that such County contractor adopt, at the least, a neutrality agreement.

§ 7. Penalties.

- A) A County contractor who expends funds and/or obtains reimbursement for funds spent in violation in Section 3 or 4 of this law shall be liable for any funds so expended plus a civil penalty equal to twice the amount of those funds. Such penalty shall not be paid by the contractor from any other County funds. In addition, said County contractor shall be prohibited from bidding on County contracts for a period of five (5) years from the final determination of a violation, either by administrative action or judicial action.
- B.) An employer that violates Section 3 of this law, shall also be liable for a civil penalty equal to One Thousand (\$1,000) Dollars per employee per meeting. Such penalty shall not be paid by the employer from any other County funds.
- C.) Any public official who knowingly authorizes the use of County funds in violation of Section 3 of this law, shall be liable to the County for those funds.

Section 8. Enforcement.

- A) A civil action for a violation of this law may be brought by the County Attorney's office for injunctive relief, damages, civil penalties and other appropriate equitable relief.
- B.) All damages and civil penalties collected pursuant to this law shall be paid to the general fund of the county;
- C.) Any Labor Organization may file a complaint with the Nassau County Department of Labor or the Nassau County Attorney's office alleging violations of this law. Said complaint shall be promptly investigated and a written response shall be issued to the complaining Labor Organization.

§ 9. Rules and Regulations.

The Department of Labor shall promulgate such rules and regulations as it deems necessary and appropriate for the implementation and enforcement of any provision of this law.

§ 10. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be

adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 11. Effective Date.

This law shall take effect on the later of March 1, 2004 or upon the filing with the Office of the Secretary of State.

APPENDIX C

Business History Form

The Contract shall be awarded to the responsible Proposer who, at the discretion of the County, taking into consideration the reliability of the Proposer and the capacity of the Proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of proposals, each Proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the proposal.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date : _____

1) Proposer's Legal Name: _____

2) Address of Place of Business: _____

List all other business addresses used within last five years:

3) Mailing Address (if different): _____

Phone : _____

Does the business own or rent its facilities? _____

4) Employer Federal Identification Number: _____

5) Dun and Bradstreet number: _____

6) The proposer is a (check one): Sole Proprietorship Partnership Corporation
Other (Describe) _____

7) Does this business share office space, staff, and equipment of expenses with any other business? Yes No If Yes, please provide details: _____

8) Does this business control one or more other businesses? Yes No If Yes, please provide details: _____

9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business? Yes ___ No ___ If Yes, provide details. _____

10) Has the Proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated? Yes ___ No ___ If Yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details regarding the termination (if a contract).

11) Has the Proposer, during the past seven years, been declared bankrupt? Yes ___ No ___ If Yes, state date, court jurisdiction, amount of liabilities and amount of assets _____

12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation. _____

13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business. Yes ___ No ___ If Yes, provide details for each such investigation. _____

14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during such person's employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:

a) Any felony charge pending? ___ No ___ Yes If Yes, provide details for each such charge. _____

b) Any misdemeanor charge pending? ___ No ___ Yes If Yes, provide details for each such charge. _____

c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? ___ No ___ Yes If Yes, provide details for each such conviction _____

d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor? ___ No ___ Yes If Yes, provide details for each such conviction. _____

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions? ___ No ___ Yes If Yes, provide details for each such occurrence. _____

15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? ___ No ___ YES; If Yes, provide details for each such instance. _____

16) For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? ___ No ___ Yes If Yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire. _____

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

17) Conflict of Interest:

a) Please disclose:

(i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

(ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting as collection agent on behalf of Nassau County.

(iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting as a collection agent on behalf of Nassau County.

- b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.

APPENDIX D

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered and the answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name _____
Date of birth ____/____/____
Home address _____
City/state/zip _____
Business address _____
City/state/zip _____
Telephone _____
Other present address(es) _____
City/state/zip _____
Telephone _____
List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)
President ____/____/____ Treasurer ____/____/____
Chairman of Board ____/____/____ Shareholder ____/____/____
Chief Exec. Officer ____/____/____ Secretary ____/____/____
Chief Financial Officer ____/____/____ Partner ____/____/____
Vice President ____/____/____ _____ ____/____/____
(Other)

3. Do you have an equity interest in the business submitting the questionnaire?
NO ___ YES ___ If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire? NO ___ YES ___ If Yes, provide details.
5. Within the past 3 years, have you been a principal owner or officer of any business or not-for-profit organization other than the one submitting the questionnaire? NO ___ YES ___; If Yes, provide details.
6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer? NO ___ YES ___ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency.

Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
 - a. Been debarred by any government agency from entering into contracts with that agency? NO ___ YES ___ If Yes, provide details for each such instance.
 - b. Been declared in default and/or terminated for cause on any contract, and/or had any contract cancelled for cause? NO ___ YES ___ If Yes, provide details for each such instance.
 - c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards? NO ___ YES ___ If Yes, provide details for each such instance.
 - d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contracts? NO ___ YES ___ If Yes, provide details for each such instance.
8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated? If 'Yes', provide details for each such instance. (Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.)
 - a) Is there any felony charge pending against you? NO ___ YES ___ If Yes, provide details for each such charge.

- b) Is there any misdemeanor charge pending against you? NO ____ YES ____ If Yes, provide details for each such charge.
- c) Is there any administrative charge pending against you? NO ____ YES ____ If Yes, provide details for each such charge.
- d) In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business? NO ____ YES ____ If Yes, provide details for each such conviction.
- e) In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor? NO ____ YES ____ If Yes, provide details for each such conviction.
- f) In the past 5 years, have you been found in violation of any administrative or statutory charges? NO ____ YES ____ If Yes, provide details for each such occurrence.
9. In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? NO ____ YES ____ If Yes, provide details for each such investigation.
10. In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer? NO ____ YES ____ If Yes; provide details for each such investigation.
11. In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held? NO ____ YES ____ If Yes; provide details for each such instance.
12. For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges? NO ____ YES ____ If Yes, provide details for each such year.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

I, _____, being duly sworn, state that I have read and understand all the items contained in the foregoing pages of this questionnaire and the following pages of attachments; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this questionnaire and before the execution of the contract; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this questionnaire as additional inducement to enter into a contract with the submitting business entity.

Sworn to before me this day of 2009.

Notary Public

Name of submitting business

Print name

Signature

Title

_____/_____/_____
Date

APPENDIX L

Certificate of Compliance

In compliance with Local Law 1-2006, as amended (the “Law”), the Contractor hereby certifies the following:

1. The chief executive officer of the Contractor is:

_____ (Name)

_____ (Address)

_____ (Telephone Number)

2. The Contractor agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law. In the event that the contractor does not comply with the requirements of the Law or obtain a waiver of the requirements of the Law, and such contractor establishes to the satisfaction of the Department that at the time of execution of this agreement, it had a reasonable certainty that it would receive such waiver based on the Law and Rules pertaining to waivers, the County will agree to terminate the contract without imposing costs or seeking damages against the Contractor

3. In the past five years, Contractor _____ has _____ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against the Contractor, describe below:

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action _____ has _____ has not been commenced against or relating to the Contractor in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

5. Contractor agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

Dated

Signature of Chief Executive Officer

Name of Chief Executive Officer

Sworn to before me this

_____ day of _____, 2009.

Notary Public

