

*Office for the Aging, NUTRITION SITE AGREEMENT  
January 1, 2019– December 31, 2019 (III C1)  
JOH-L-03-19*

**OFA SENIOR NUTRITION SITE AGREEMENT**

This Agreement is hereby made to commence at 12:01:01 a.m. on the **1st day of January, 2019** and to terminate at 11:59:59 p.m. on the **31<sup>st</sup> day of December, 2019** by and between **NIAGARA COUNTY, N.Y.** (hereinafter referred to as the "**LESSEE**"), acting through its agent, **THE OFFICE FOR THE AGING** (hereinafter referred to as "**OFA**"), whose administrative offices are located at 111 Main Street, Suite 101, Lockport, NY 14094, and **THE CITY OF NIAGARA FALLS** located at 745 Main Street, P.O. Box 69, Niagara Falls NY 14302 (hereinafter referred to as the "**LESSOR**").

**WITNESSETH:**

That the Lessor has let and leased and does by these presents let and lease unto the Lessee, and the Lessee does by these presents hire and take, the premises known and described as the dining room and kitchen facilities at the **John Duke Senior Center** located at 1201 Hyde Park Blvd, Niagara Falls NY 14301, for the purpose of operating through its agent, the OFA, a Senior Nutrition Program congregate dining site.

**DURATION:**

1. This Agreement for lease will be made and shall remain effective from January 1, 2019 to December 31, 2019.

2. The parties agree that this Agreement shall terminate automatically upon default in funding by the New York State Office for the Aging, and that furthermore this agreement may be terminated by either party at its discretion upon sixty (60) days notice to the other party by certified mail to the applicable address as indicated above, or terminate pursuant to the provisions hereafter contained in general provisions, paragraph 10, titled "Termination of Agreement".

**AUTHORIZED DAYS OF USE:**

1. The Lessor agrees to make the premises set forth in this lease agreement available to the Lessee for the operation of the congregate dining program on the following days of the week and each and every week during the course of the term of this agreement:

**Days of operation: Monday through Friday (subject to change d/t holidays)**

**DUTIES AND RESPONSIBILITIES OF THE PARTIES:**

1. The Lessor agrees to provide to the Lessee the exclusive use of the described facilities between the hours of 10:00 a.m. through 1:00 p.m. on the days of the week designated herein

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and every week during the term of this lease.

2. The Lessor agrees to provide to the Lessee the use of all utilities necessary for adequate functioning of the dining areas, including adequate heat for the comfort of the patrons during cold weather.

3. The Lessor agrees to provide to the Lessee the use of all dining room equipment required to operate the congregate dining program, including but not limited to tables, chairs, etc, and all kitchen equipment required to operate the dining program, including but not limited to sinks, preparation areas, coffee makers, and major appliances. The County, at its expense, will repair equipment used by the county personnel which is damaged due to County negligence. Such repairs shall be made and performed promptly when necessary.

4. The Lessor agrees to provide adequate janitorial services to maintain toilet facilities and cleanliness of the dining area and kitchen area.

5. Any renovations to the facility required by Niagara County for the proper operation of a congregate dining site will be performed by the Lessor and become the property of the Lessor.

6. Any equipment purchased and installed at the site by Niagara County shall remain the property of Niagara County, which shall retain the option, at the termination of its program at said site, of removing the equipment and restoring the facility to its original condition, or of negotiating with the Lessor to transfer ownership of said equipment.

7. Lessor agrees, to maintain and provide proof of sufficient insurance coverage in type and amount to comply with New York State Law for a facility of its kind and to meet minimum specifications to protect the County's interest. Lessor agrees to notify the Lessee, in writing, of any cancellation of its insurance coverage. Niagara County Insurance Requirements are attached hereto and made a part hereof known as "Exhibit A."

8. Lessor and Lessee hereby acknowledge that Niagara County is self-insured for public liability and property damage liability coverage, as well as NYS Worker's Compensation coverage. The foregoing public liability and property damage coverage shall have a combined single limit of \$500,000 per occurrence.

**INDEMNIFICATION AND HOLD HARMLESS CLAUSE:**

1. The Lessor agrees to defend and indemnify the County of Niagara, their officers and employees, and shall hold them harmless from any and all liabilities, obligations, damages, losses and expenses, including claims of every kind and nature, whether accrued, absolute, contingent or otherwise resulting from or arising out of the work and/or service performed by the Lessor, or its sub-Lessor, under this Agreement;

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provided however, that Lessor shall not be required to indemnify the County with respect to such risks to the extent caused by the negligence or intentional misconduct of the County or the County's consultants, over whom the Lessor has no authority or control.

2. The Lessor agrees that if the County of Niagara receives a claim, complaint, or is sued under this Agreement pertaining to the Lessor's work, acts or services then Lessor agrees to pay all attorney fees and expenses; the selection of such attorney to represent Niagara County shall be the sole and exclusive determination of Niagara County.
3. The Lessee agrees to hold the Lessor harmless from and against all loss, cost expense, including attorneys fees in connection with the injury or death to any person(s) and any damage to or of the property caused solely by the negligence of the county, its employees, agents, contractors or anyone the lessee brings on the property to conduct business.

**GENERAL PROVISIONS:**

1. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS:

All representations, warranties and covenants made by the parties shall survive the execution and delivery of this Agreement. A party electing to proceed hereunder notwithstanding the non-fulfillment of any of the conditions of this Agreement shall not be deemed to thereby have waived any representation, warranty or covenant contained in this Agreement.

2. EXPENSES: The parties shall each pay all of their respective legal, accounting and other expenses incurred in connection with the transactions contemplated by this Agreement, with the exception of the obligations under the Indemnification and Hold Harmless paragraph herein.

3. NOTICES: Any notice or other communication required or permitted hereunder shall be in writing and delivered personally, by courier service or mailed by Registered or Certified Mail return receipt requested, postage prepaid, addressed as follows or to such other address as a party shall specify for this purpose in a notice given in the same manner:

To: Niagara County:  
c/o Claude A. Joerg  
Niagara County Attorney  
175 Hawley Street  
Lockport, New York 14094

To: City of Niagara Falls  
Attn: Paul A. Dyster, Mayor  
745 Main Street, P.O. Box 69

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Niagara Falls NY 14302-0069

Notices given pursuant to this section shall be deemed to have been received by a party: (a) if personally delivered or sent by courier service, upon delivery to the applicable address for such party as provided above; or (b) if sent by Registered or Certified Mail return receipt requested, three (3) days after the notice was mailed to the applicable address for such party as provided above.

4. BINDING EFFECT; ASSIGNMENT: This Agreement and the rights of City of Niagara Falls and/or Niagara County hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns but may not be assigned by any party without the consent of all the others. None of the provisions of this Agreement shall be for the benefit of, or enforceable by, any person or entity which is not a party hereto.

5. ENTIRE AGREEMENT: This instrument contains the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, with respect to the transactions contemplated herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the party to be charged therewith.

6. JURISDICTION: The parties agree that the courts of the State of New York shall have personal jurisdiction over all parties to this Agreement and any action involving a dispute arising under or in connection with this Agreement shall have as its exclusive venue a court located in the State of New York, Niagara County.

7. CHOICE OF LAW: This Agreement shall be interpreted under the laws of the State of New York without regard to that state's conflicts of laws principles.

8. WAIVER: No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any waiver must be in writing and signed by the party entitled to performance.

9. COUNTERPARTS: This Agreement may be executed in counterparts and will be effective when at least one counterpart has been executed by each party hereto. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute but one agreement. This Agreement may be executed and delivered via telefax or other means of electronic transmission.

10. TERMINATION OF AGREEMENT: This Agreement may be terminated at any time prior to its completion, in the following manner:

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a. by the mutual written consent of Niagara County and City of Niagara Falls;

b. by either Niagara County and/or City of Niagara Falls if there has been a material misrepresentation or material breach of warranty or covenant on the part of the other party. In the event of the termination of this Agreement pursuant to this provision, no party shall have any further liabilities or obligations under this Agreement, except that Niagara County and/or City of Niagara Falls shall each be liable to the other for any claims arising prior to such termination as a result of a material misrepresentation or a material breach of warranty or covenant by such party under this Agreement; and

c. by operation of the provisions contained herefore in the Duration section of this Agreement.

11. PARTIAL INVALIDITY: If any provision of this Agreement shall be held by competent authority to be invalid or unenforceable, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

IN WITNESS WHEREOF, the parties hereto have hereby set their hands and seals to be made effective the first date of this agreement:

By: \_\_\_\_\_  
Chairman, Niagara Co. Legislature

By: \_\_\_\_\_  
City of Niagara Falls, NY

*APPROVED AS TO FORM  
NIAGARA COUNTY ATTORNEY*

\_\_\_\_\_

EXHIBIT A

**SPECIFIC INSURANCE REQUIREMENTS:** The following are the minimum insurance types, documentation and limits acceptable to the County of Niagara which Lessor will maintain for the entire duration of this Agreement or any extensions thereto:

**INSURANCE COVERAGES, DOCUMENTS AND MINIMUM LIMITS**

**for  
Contracted Services**

<u>Coverage and Documents</u>	<u>Limits</u>
A. General Liability (GL)	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
B. Auto Liability	\$1,000,000 Combined Single Limit
C. Excess/Umbrella Liability	\$1,000,000 Each Occurrence \$1,000,000 General Aggregate
D. Workers' Compensation and Employers Liability <i>CE-200, C-105.2, or SI-12</i>	Statutory Limits
F. Disability Benefits <i>CE-200, DB-120.1, DB-820/829 or DB-155</i>	Statutory Limits

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**WITNESSETH:**

That the Lessor has let and leased and does by these presents let and lease unto the Lessee, and the Lessee does by these presents hire and take, the premises known and described as the dining room and kitchen facilities at the **LaSalle Senior Center** located at 9501 Colvin Blvd, Niagara Falls NY 14304, for the purpose of operating through its agent, the OFA, a Senior Nutrition Program congregate dining site.

**DURATION:**

1. This Agreement for lease will be made and shall remain effective from January 1, 2019 to December 31, 2019.
2. The parties agree that this Agreement shall terminate automatically upon default in funding by the New York State Office for the Aging, and that furthermore this agreement may be terminated by either party at its discretion upon sixty (60) days notice to the other party by certified mail to the applicable address as indicated above, or terminate pursuant to the provisions hereafter contained in general provisions, paragraph 10, titled "Termination of Agreement".

**AUTHORIZED DAYS OF USE:**

1. The Lessor agrees to make the premises set forth in this lease agreement available to the Lessee for the operation of the congregate dining program on the following days of the week and each and every week during the course of the term of this agreement:

**Days of operation: Monday through Friday (subject to change d/t holidays)**

**DUTIES AND RESPONSIBILITIES OF THE PARTIES:**

1. The Lessor agrees to provide to the Lessee the exclusive use of the described facilities between the hours of 10:00 a.m. through 1:00 p.m. on the days of the week designated herein

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and every week during the term of this lease.

2. The Lessor agrees to provide to the Lessee the use of all utilities necessary for adequate functioning of the dining areas, including adequate heat for the comfort of the patrons during cold weather.

3. The Lessor agrees to provide to the Lessee the use of all dining room equipment required to operate the congregate dining program, including but not limited to tables, chairs, etc, and all kitchen equipment required to operate the dining program, including but not limited to sinks, preparation areas, coffee makers, and major appliances. The County, at its expense, will repair equipment used by the county personnel which is damaged due to County negligence. Such repairs shall be made and performed promptly when necessary.

4. The Lessor agrees to provide adequate janitorial services to maintain toilet facilities and cleanliness of the dining area and kitchen area.

5. Any renovations to the facility required by Niagara County for the proper operation of a congregate dining site will be performed by the Lessor and become the property of the Lessor.

6. Any equipment purchased and installed at the site by Niagara County shall remain the property of Niagara County, which shall retain the option, at the termination of its program at said site, of removing the equipment and restoring the facility to its original condition, or of negotiating with the Lessor to transfer ownership of said equipment.

7. Lessor agrees, to maintain and provide proof of sufficient insurance coverage in type and amount to comply with New York State Law for a facility of its kind and to meet minimum specifications to protect the County's interest. Lessor agrees to notify the Lessee, in writing, of any cancellation of its insurance coverage. Niagara County Insurance Requirements are attached hereto and made a part hereof known as "Exhibit A."

8. Lessor and Lessee hereby acknowledge that Niagara County is self-insured for public liability and property damage liability coverage, as well as NYS Worker's Compensation coverage. The foregoing public liability and property damage coverage shall have a combined single limit of \$500,000 per occurrence.

**INDEMNIFICATION AND HOLD HARMLESS CLAUSE:**

1. The Lessor agrees to defend and indemnify the County of Niagara, their officers and employees, and shall hold them harmless from any and all liabilities, obligations, damages, losses and expenses, including claims of every kind and nature, whether accrued, absolute, contingent or otherwise resulting from or arising out of the work and/or service performed by the Lessor, or its sub-Lessor, under this Agreement;



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provided however, that Lessor shall not be required to indemnify the County with respect to such risks to the extent caused by the negligence or intentional misconduct of the County or the County's consultants, over whom the Lessor has no authority or control.

2. The Lessor agrees that if the County of Niagara receives a claim, complaint, or is sued under this Agreement pertaining to the Lessor's work, acts or services then Lessor agrees to pay all attorney fees and expenses; the selection of such attorney to represent Niagara County shall be the sole and exclusive determination of Niagara County.
3. The Lessee agrees to hold the Lessor harmless from and against all loss, cost expense, including attorneys fees in connection with the injury or death to any person(s) and any damage to or of the property caused solely by the negligence of the county, its employees, agents, contractors or anyone the lessee brings on the property to conduct business.

**GENERAL PROVISIONS:**

1. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS:

All representations, warranties and covenants made by the parties shall survive the execution and delivery of this Agreement. A party electing to proceed hereunder notwithstanding the non-fulfillment of any of the conditions of this Agreement shall not be deemed to thereby have waived any representation, warranty or covenant contained in this Agreement.

2. EXPENSES: The parties shall each pay all of their respective legal, accounting and other expenses incurred in connection with the transactions contemplated by this Agreement, with the exception of the obligations under the Indemnification and Hold Harmless paragraph herein.

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Niagara County Attorney  
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To: City of Niagara Falls  
Attn: Paul A. Dyster, Mayor  
745 Main Street, P.O. Box 69

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Niagara Falls NY 14302-0069

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4. BINDING EFFECT; ASSIGNMENT: This Agreement and the rights of the City of Niagara Falls and/or Niagara County hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns but may not be assigned by any party without the consent of all the others. None of the provisions of this Agreement shall be for the benefit of, or enforceable by, any person or entity which is not a party hereto.

5. ENTIRE AGREEMENT: This instrument contains the entire agreement between the parties and supersedes all prior agreements and understandings, oral or written, with respect to the transactions contemplated herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the party to be charged therewith.

6. JURISDICTION: The parties agree that the courts of the State of New York shall have personal jurisdiction over all parties to this Agreement and any action involving a dispute arising under or in connection with this Agreement shall have as its exclusive venue a court located in the State of New York, Niagara County.

7. CHOICE OF LAW: This Agreement shall be interpreted under the laws of the State of New York without regard to that state's conflicts of laws principles.

8. WAIVER: No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any waiver must be in writing and signed by the party entitled to performance.

9. COUNTERPARTS: This Agreement may be executed in counterparts and will be effective when at least one counterpart has been executed by each party hereto. This Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute but one agreement. This Agreement may be executed and delivered via telefax or other means of electronic transmission.

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- a. by the mutual written consent of Niagara County and City of Niagara Falls;
- b. by either Niagara County and/or City of Niagara Falls if there has been a material misrepresentation or material breach of warranty or covenant on the part of the other party. In the event of the termination of this Agreement pursuant to this provision, no party shall have any further liabilities or obligations under this Agreement, except that Niagara County and/or City of Niagara Falls shall each be liable to the other for any claims arising prior to such termination as a result of a material misrepresentation or a material breach of warranty or covenant by such party under this Agreement; and
- c. by operation of the provisions contained herefore in the Duration section of this Agreement.

11. PARTIAL INVALIDITY: If any provision of this Agreement shall be held by competent authority to be invalid or unenforceable, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

IN WITNESS WHEREOF, the parties hereto have hereby set their hands and seals to be made effective the first date of this agreement:

By: \_\_\_\_\_  
Chairman, Niagara Co. Legislature

By: \_\_\_\_\_  
City of Niagara Falls, NY

*APPROVED AS TO FORM  
NIAGARA COUNTY ATTORNEY*

\_\_\_\_\_

EXHIBIT A

**SPECIFIC INSURANCE REQUIREMENTS:** The following are the minimum insurance types, documentation and limits acceptable to the County of Niagara which Lessor will maintain for the entire duration of this Agreement or any extensions thereto:

**INSURANCE COVERAGES, DOCUMENTS AND MINIMUM LIMITS**  
for  
Contracted Services

<u>Coverage and Documents</u>	<u>Limits</u>
A. General Liability (GL)	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
B. Auto Liability	\$1,000,000 Combined Single Limit
C. Excess/Umbrella Liability	\$1,000,000 Each Occurrence \$1,000,000 General Aggregate
D. Workers' Compensation and Employers Liability CE-200, C-105.2, or SI-12	Statutory Limits
F. Disability Benefits CE-200, DB-120.1, DB-820/829 or DB-155	Statutory Limits