

Monday – September 21, 2015 Council Meeting

**PRESENTATIONS:**

1. Niagara Military Affairs Council (NIMAC), in support of the Niagara Falls Air Reserve Station (NFARS) – Presented by John Cooper & Bill Wagner

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**ADMINISTRATIVE UPDATE:**

None

Agenda Item #1

Council Members:						
The following is a report of the licenses issued and collections made in the Office of the City Clerk during the month of August 2015.						
					<b><u>CONTROLLER</u></b>	<b><u>TOTAL</u></b>
A1255-001 A012		Vital Statistics			\$ 4,108.00	\$ 4,108.00
A1255-004 A013		Copies of Records			\$ 520.50	\$ 520.50
A1255-004 A013		Certificates of Marriage			\$ 950.00	\$ 950.00
A2501-006 A042		Tour Driver/Guide			\$ 5.00	\$ 5.00
A2501-014 A046		Electrician - Active			\$ 125.00	\$ 125.00
A2542-000 A053		Dogs/NYS Agr. & Mkts	\$ 380.00		\$ -	\$ 380.00
A2542-000 A053		Additional Dogs			\$ 3,715.50	\$ 3,715.50
A2545-001 A054		Marriage License/NYSHD	\$ 2,137.50		\$ 712.50	\$ 2,850.00
A2550-001 A056		Loading Zone			\$ 55.00	\$ 55.00
A1255-002 A123		Commissioners of Deeds			\$ 5.00	\$ 5.00
A2545-023 A318		Hunters/NYS DEC RAU	\$ 3,076.62		\$ -	\$ 3,076.62
A2545-023 A318		Hunters Fees			\$ 179.38	\$ 179.38
A1255-003 A499		Notary Fee			\$ 18.00	\$ 18.00
A1255-005 A528		Dog Release			\$ 300.00	\$ 300.00
TA63008 A597		Marriage Performance			\$ 650.00	\$ 650.00
<b>TOTAL:</b>			<b><u>\$ 5,594.12</u></b>		<b><u>\$ 11,343.88</u></b>	<b><u>\$ 16,938.00</u></b>
Check #	<u>15415</u>	NYS Dept. of Arg. & Mkts		\$ 380.00		
Check #	<u>15388</u>	NYS Health Department		\$2,137.50		
Check #	<u>ET</u>	NYS DEC RAU		\$3,076.62		

Agenda Item #2

**SUBJECT: Hyde Park Ice Pavilion Phase IV –  
Ice Rink Floor & Dasher Board Replacement  
CHANGE ORDER #1 (Rink Contract)**

A contract for the above referenced project was awarded to Mollenberg Betz, Inc., 300 Scott Street, Buffalo, NY, on March 9, 2015 in an amount of \$1,720,000.00.

The project required various revisions in scope for unanticipated and necessary repair work. The Change Order items (PCO) listed below were required in order for the rink to operate. The work was of a special nature and had to be performed by the qualified contractor that we currently have under contract.

Furthermore, during the course work, several cost saving measures were invoked to offset increases. Listed are the three change orders that result in credits totaling \$11,169.00.

1. PCO-1; Change (2) 30 gal. expansion tanks to (1) 60 gal. expansion tank (\$1,847.00)
2. PCO-2; Change specified rink piping to HDPE ..... (\$6,822.00)
3. PCO-3; Brine Pump, base and valve replacement.....\$32,987.00
4. PCO-6; Rink 1 collar ties..... \$23,677.00
5. PCO-8; Rink 2, 8” brine piping repair..... \$8,285.00
6. PCO-9; Rink 2, Brine Pipe covers..... \$850.00
7. PCO-10; Existing brine line and tank integrity testing..... \$1,600.00
8. PCO-11; Ice Mesh Seal ..... \$ 2,500.00
9. Contract Allowance for Geo Fabric Mesh; .....(\$2,500.00)

Therefore, it is the recommendation of the undersigned that **Change Order #1** in the amount of \$58,730.00 be approved, bring the new contract total to \$1,778,730.00. Sufficient funds presently exist in Bond Resolution approved by City Council.

Will the council vote to approve and authorize the Mayor to execute a contract in a form acceptable to the Corporation Council?

**CITY OF NIAGARA FALLS, NEW YORK**

**TO:** City Council  
**FROM:** Mayor Paul A. Dyster  
**DATE:** September 21, 2015  
**RE:** **City Council Agenda Item:  
Transfer of 3625 Highland Avenue to  
Niagara Falls Urban Renewal Agency**

**Council Members:**

On July 20, the City Council approved acquiring 3625 Highland Avenue, a 5.5 acre former industrial site currently housing the Niagara Science Museum, located on the east side of Highland Avenue. At that time, it was intended that the City would convey the property to Niagara Falls Urban Renewal Agency.

The acquisition of land by an Urban Renewal Agency for which there is no immediate development use is regulated by General Municipal Law §555. The procedure requires a Planning Board recommendation after a public hearing, and City Council approval. The Planning Board has held its public hearing and recommended in favor of the acquisition of the property by Niagara Falls Urban Renewal Agency. A copy of the Planning Board resolution recommending the transfer is attached. NFURA has indicated its willingness to hold title to the property, NFURA has appropriated funds to cover the conveyance costs.

Will the Council vote to approve acquisition by Niagara Falls Urban Renewal Agency of the 5.5 acre 3625 Highland Avenue parcel, approve the transfer to Niagara Falls Urban Renewal Agency as set forth herein, and authorize the Mayor to execute any documents necessary to effectuate the same?

Respectfully submitted,

\_\_\_\_\_  
Paul A. Dyster, Mayor

\_\_\_\_\_  
Thomas J. DeSantis, AICP  
Acting Director of Planning and  
Economic Development

\_\_\_\_\_  
Donna D. Owens, City Administrator

Anderson \_\_\_\_\_ Chookolian \_\_\_\_\_ Grandinetti \_\_\_\_\_ Walker \_\_\_\_\_ Touma \_\_\_\_\_



# City of Niagara Falls, New York

100 West 60, Niagara Falls, NY 14302-0001

September 9, 2015

## NIAGARA FALLS PLANNING BOARD

**RECOMMENDATION TO CITY COUNCIL – DISPOSITION OF REAL PROPERTY  
APPROVAL OF TRANSFER**

Pursuant to action taken by the Niagara Falls Planning Board on the 9<sup>th</sup> day of September 2015, your request is hereby granted.

**NAME OF OWNER:** City of Niagara Falls

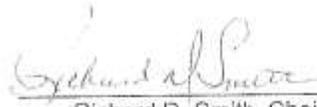
**ADDRESS OF ACTION:** 3625 Highland Avenue

**PURPOSE:** Transfer ownership of parcel (SBL 130.18-2-14) from the City to the Niagara Falls Urban Renewal Agency

This application is hereby granted.

Resolution attached

DATE: September 9, 2015

  
Richard D. Smith, Chairman  
Niagara Falls Planning Board

**RESOLUTION  
OF THE  
NIAGARA FALLS PLANNING BOARD**  
City of Niagara Falls, New York

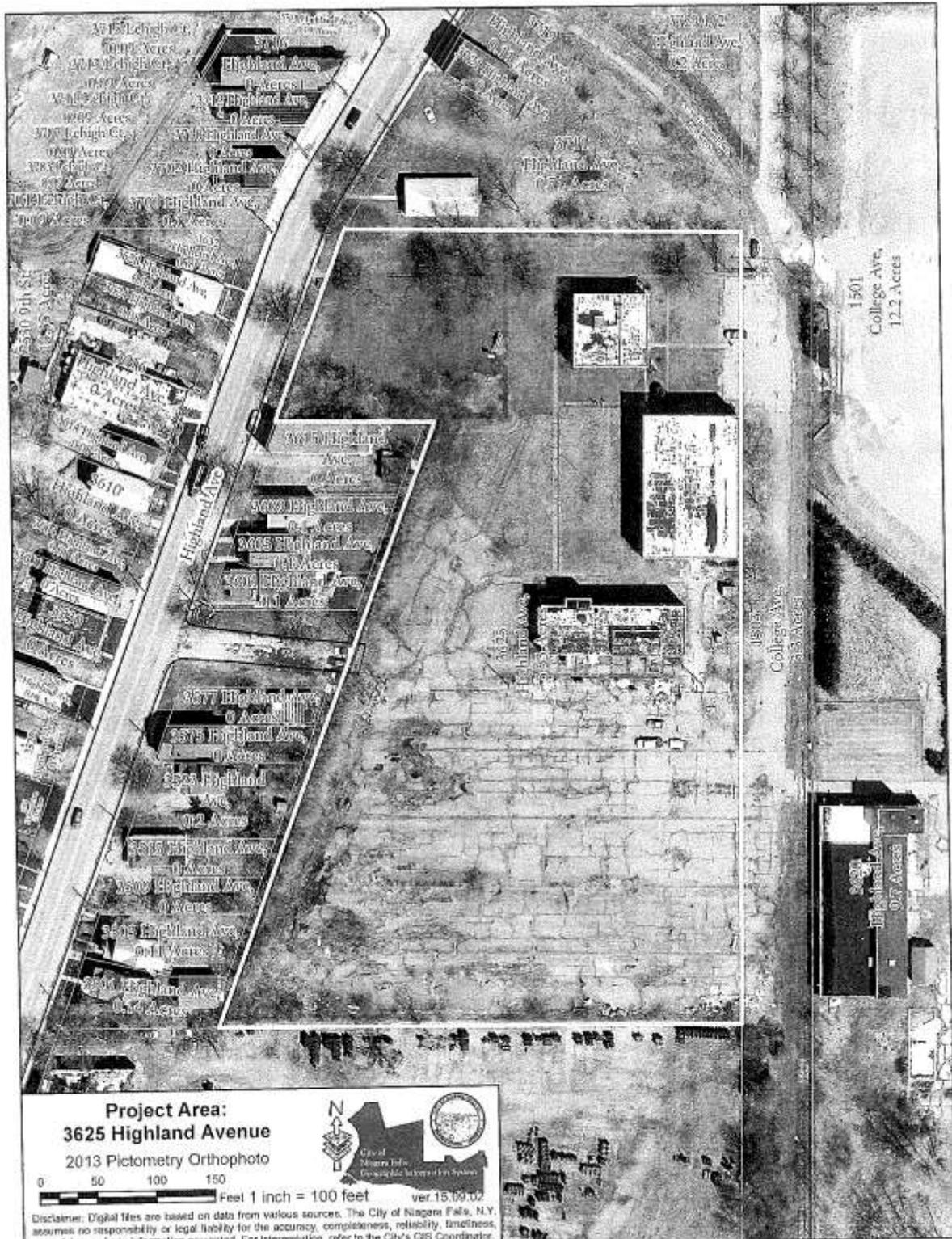
AT A REGULAR MEETING OF THE CITY OF NIAGARA FALLS PLANNING BOARD  
DULY CALLED AND HELD ON THE NINTH DAY OF SEPTEMBER 2015.

WHEREAS, on July 20, 2015, the Planning Board held a public hearing on a proposal for early acquisition by the Niagara Falls Urban Renewal Agency of real property known as 3625 Highland Avenue, Niagara Falls, New York, an approximately 5.5 acre former industrial site currently housing the Niagara Science Museum, located on the east side of Highland Avenue, Niagara Falls, NY, SBL No. 130.18-2-14, which real property may ultimately be necessary or proper to effectuate Urban Renewal purposes although temporarily not required for such purposes.

NOW THEREFORE BE IT RESOLVED, that the Planning Board does recommend to the Niagara Falls City Council approval of the early acquisition of such real property by the Niagara Falls Urban Renewal Agency.

Date: 9/9/15

  
Richard D. Smith, Chairman  
Niagara Falls Planning Board



**Project Area:**  
**3625 Highland Avenue**  
 2013 Pictometry Orthophoto

0 50 100 150  
 Feet 1 inch = 100 feet ver. 15.09.07

City of Niagara Falls  
 Department of Information Systems

Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y. assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.

Agenda Item #4

*RE: Agreement with Palladian Employee Assistance Program*

Council Members:

Attached please find the proposed agreement between the City and Palladian Health, LLC, whereby Palladian will provide Employee Assistance Program services for all non-public safety employees. The cost for these services is \$17.40 per employee per year based on an employee count of 250. This equals \$4,350.00. Funds are available in the Department of Human Resources budget line A1430.0000.0451.000.

Will the Council so approve?

**Palladian Employee Assistance Program  
&  
City of Niagara Falls  
Agreement to Provide EAP Services**

Agreement effective on this 1<sup>st</sup> day of October, 2015 between Palladian Health, LLC, a Delaware Limited Liability Company, having its administrative offices located at 2732 Transit Road, West Seneca, NY 14224 ("Contractor") and City of Niagara Falls, having its administrative offices located at 745 Main Street, Niagara Falls, NY 14302 ("Organization").

In consideration of the mutual promises and agreements hereinafter set forth, Contractor and Organization agree as follows:

1. **PURPOSE:** The Purpose of this Agreement is for the Contractor to provide Employee Assistance services to employees and their dependents of the Organization, its divisions and subsidiaries.
2. **DURATION:** The term of this Agreement shall commence October 1, 2015 and will continue for 1 year, at which point both parties will agree to review the program and discuss opportunities for program continuation.
3. **EMPLOYEE ASSISTANCE PROGRAM:** Employees, their spouses and their Dependents who reside in the same household are eligible to receive EAP Services. "Dependent" shall mean an individual who is a dependent person for federal income tax purposes. Verification of eligibility is made at the first visit via presentation of an employee identification badge. At minimum, Contractor agrees to provide the following services to the employees and dependents of the Organization:
  - Unlimited calling access to the EAP Services.
  - 24-hour toll-free access to Qualified Employee Assistance Professionals.
  - Consultation regarding the program, including its overall design, development, implementation and administration. This will include information to assist the Organization in the development of a comprehensive, clearly defined policy and procedures statement.
  - Up to four (4) EAP sessions to include information, evaluation, referral and short-term counseling for a range of employee problems. Employee missed or canceled sessions will be counted against the four (4) EAP sessions provided under the Contract.
  - Referral coordination to external treatment providers as appropriate.

- Referrals for telephonic or in person legal (30 min.) or financial (60min) consultations
  - 4 annual Orientations, scheduled as mutually agreed upon by Contractor and the Organization. The Orientation presentation is also available via our website. EAP services not scheduled during the year do not accrue.
  - Onsite Critical Incident Stress Debriefing (CISD)
  - Administrative EAP Referrals
  - 6 EAP training hours annually. The Organization is responsible for scheduling the trainings with the Contractor. EAP trainings not scheduled during the year do not accrue.
  - Marketing materials including brochures, announcements, posters and other appropriate means in reasonable quantities and at reasonable times throughout the year.
  - SAP (Substance Abuse Professional) referrals for DOT employees priced at \$250 per referral.
  - Quarterly Newsletters
  - Quarterly and annual reporting of program results and utilization.
4. **FEES:** In consideration of all the services provided by the Contractor under this Agreement, Organization shall pay Contractor a fee of **\$ 17.40 per** employee per year, billed in quarterly increments on the 1<sup>st</sup> day of each calendar quarter, based on an employee count of **250**. Organization shall provide its employee count to Contractor no later than thirty (30) days after the 1<sup>st</sup> of each renewal year. Organization shall also provide its employee count to Contractor in the event that the Organization experiences an increase or decrease in the number of its full-time employees greater than ten (10) percent. Such notification shall be made to the Contractor by the Organization no later than the first day of the quarter following the change. The employee count shall be subject to verification by record submission as mutually agreed upon by the parties upon reasonable notice to Organization. Payments are to be made quarterly, due no later than thirty (30) days after the date of each quarterly invoice. Significant changes in the employee count (i.e. increase or decrease in the number of full-time employees greater than ten (10) percent) may result in an adjustment in the EAP price per employee. Any adjustments will be presented in writing to the Organization and will be reflected in the quarterly invoice following notification of the employee count. An annual operations adjustment of 5% will be applied to the per employee per year cost at the beginning of each new contract year and will be reflected in quarterly invoice. Should default be made

in the payment of any sums due, such defaulted sum shall bear interest at 1.5% per month.

5. **INTERPRETATION AND CONSTRUCTION:** This Agreement shall be interpreted as a unified contractual document with the Articles having equal effect. The laws of the State of New York shall govern the construction of this Agreement. The title designations of the numbered Articles in this Agreement are for convenience only and shall not affect the interpretation of construction hereof.
6. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The relationship of the Contractor to Organization is that of an independent contractor and nothing herein shall be construed as creating any other relationship. The Contractor may adopt such arrangements as it may desire with regard to the details of the services performed hereunder, including the hiring, compensation, termination, and other matters relating to persons, companies or entities employed by contractor, the hours during which said services are provided, and the place or places where services are provided that such details, hours and services shall be consistent with the proper accomplishment of said services and provided further that said services shall be performed in a manner calculated to attain the most satisfactory results for the Organization. Contractor hereby holds harmless and indemnifies Organization for any liability arising from this Agreement caused or alleged to be caused by Contractor or any of its EAP referral network providers. This provision shall survive the termination of this Agreement for at least a period of time equal to three (3) years and a day from the effective date of termination.
7. **EAP RECORD CONFIDENTIALITY AND DISCLOSURE:** All records maintained in conjunction with the program shall be kept in strict confidence in accordance with State and Federal laws and regulations and except for a statutory exception. It is the Contractor's policy that no information regarding a client, including their name and status as a client may be disclosed unless the client consents in writing using an approved release, which is properly executed.
8. **CORPORATE CONFIDENTIALITY AND DISCLOSURE:** During the Term of the Agreement, Contractor and Organization may exchange certain business information, ideas, concepts, and data, in written, oral, electronic, photographic and/or other forms (collectively "Information").

Such Information shall be used solely for purposes related to the Agreement. The Information is proprietary and confidential, and shall remain the property of the disclosing party as the case may be. Tangible forms of the Information shall not be copied without prior written consent of the disclosing party, and all tangible forms of the Information shall be destroyed or returned to the disclosing party upon request or upon termination of the Agreement, whichever occurs earlier. Each party shall utilize its best efforts and all security measures employed for the protection of its own confidential information to prevent the disclosure of the Information.

**9. OWNERSHIP OF EAP RECORDS:** All employees', former employees', eligible dependents', and other employee activity and related records maintained by the Contractor, shall be the property of the employee, or where applicable, their eligible dependent, and the Contractor. EAP treatment records are confidential and owned by the Contractor.

**10. DISCIPLINE:** It is acknowledged that disciplinary action relating to any Organization employee shall continue to be the sole responsibility of the Organization in accordance with established practices and procedures. It is specifically acknowledged that the EAP program established hereunder will not be available or serve as a sanctuary of disciplinary immunity for any employee whatsoever nor shall the Organization be bound by or to any recommendations or treatment options offered or implemented by the EAP Program as a disciplinary outcome, alternative or substitute to any disciplinary action otherwise administered by the Organization in its sole discretion.

**11. INSURANCE:** The Contractor shall carry at its own cost and expense, malpractice and/or professional liability insurance and comprehensive general liability insurance policies with coverage of \$1 million per incident. Organization shall have the right to inspect such policies of insurance during Contractor's regular business hours.

**12. MUTUAL INDEMNIFICATION:** Both Parties agree to indemnify and hold harmless the other against any claim, suit, cost, expense or liability (including reasonable attorneys' fees when and as incurred) arising as a result of the act or failure to act on the part of the indemnifying Party's obligations under the Agreement, for a period ending three (3) years from the date this Agreement is terminated.

**13. WAIVER:** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect the full right to require such performance at any time thereafter. The waiver by either party of a breach of the same or a waiver of the provision itself.

**14. TERMINATION:**

This Agreement shall be effective on the Effective Date and shall continue in effect for an initial term of one (1) year ("Initial Term"), and thereafter for successive one (1) year terms ("Extended Terms"), unless either Party provides the other written notification that it elects not to renew the Agreement at least sixty (60) days prior to the end of the Initial or any Extended Term.

15.2 **Termination for Cause:** either party may elect to terminate this Agreement immediately upon written notice to the other in the event that:

15.2.1 the health, safety, or welfare of benefit eligible individuals are jeopardized by continuation of this Agreement;

15.2.2 the other Party commits fraud, intentional wrongdoing, or misrepresentation; or

15.2.3 the other Party (i) files a voluntary petition for bankruptcy or reorganization; or (ii) makes a general assignment in favor of creditors; or (iii) has an involuntary petition filed against it which petition is not dismissed within ninety (90) days of the return date of said petition; or (iv) is the subject of reorganization, dissolution, liquidation or similar proceeding.

15.3 Contractor shall have the right to terminate this Agreement with sixty (60) days notice for failure to receive payment in a timely fashion. Such termination shall only become effective after Organization has had an opportunity to remedy payment failure of not less than fifteen (15) days. Additionally, termination may occur should the actions or inactions of Organization cause substantial aberration from the core program, such that the quality of the educational experience and/or outcomes of the program become substantially negatively affected.

15.4 Organization shall have the right to terminate this Agreement with sixty (60) days notice for failure of Contractor to fulfill any requirement of this Agreement. Such termination shall only become effective after Contractor has had an opportunity to remedy such breach of not less than fifteen (15) days.

15.5 If work is terminated pursuant to this Agreement, Organization shall pay Contractor pro-rata through date of termination of this Agreement for the EAP program.

**15. SEVERABILITY:** In the event that any part of this Agreement be illegal or unenforceable under the law as it is now or hereafter in effect, either party may terminate this Agreement. Unless terminated, the parties will be excused from performance of such portion or portions of this Agreement as shall be found to be illegal or unenforceable without affecting the validity of the remaining provisions of this agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement in Buffalo, New York, on the day and year first written above,

Palladian Health, LLC:

City of Niagara Falls:

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

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

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

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

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

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

Agenda Item #5

*RE: Affordable Care Act Administration and Business Associate Agreements*

*With Seneca Consulting Group Inc.*

Council Members:

Attached please find the proposed Affordable Care Act Administration and Business Associate Agreements between the City of Niagara Falls and the Seneca Consulting Group Inc. With the 2010 passage of the Patient Protection and Affordable Care Act (ACA), large employers such as the City are faced with a number of reporting and administration obligations relative to their employees and their health care plans. The ACA also requires that significant amounts of employee and health care information be submitted to the Internal Revenue Service for yearly reporting purposes. Failure to report such information can lead to significant penalties of as much as \$2,000 per full-time employee.

In order to gather and process the required information, the City has negotiated an agreement with Seneca Consulting Group. The Seneca Consulting Group currently provides ACA administration services to over sixty (60) public sector employers with an average group size of over 1,000 employees. In the proposed agreement, the Seneca Group will assist the City in meeting its employer mandate obligations under the ACA as well as assisting the City to meet its IRS reporting obligations. Further, the Seneca Group will provide the City with additional services to our Payroll and MIS Departments to assist in future reporting obligations.

Funding for the total cost of the proposed contract is \$29,550.00. Funding for this agreement will come from the budgeted health care premiums account.

Will the Council so approve and authorize the mayor to execute the agreements, acceptable to the Corporation Counsel?

## AFFORDABLE CARE ACT ADMINISTRATION AGREEMENT

**AGREEMENT** (the "Agreement") made as of this 22nd day of September, 2015 by **SENECA CONSULTING GROUP, INC.**, a New York corporation having an office located at 111 Smithtown Bypass Suite 207 Hauppauge NY 11780 (hereinafter referred to as the "ADMINISTRATOR") and **CITY OF NIAGARA FALLS**, having its principal place of business at 745 Main Street, Niagara Falls, NY 14302 (hereinafter referred to as the "EMPLOYER").

**WHEREAS**, the EMPLOYER is an applicable large employer and is responsible to comply with U.S. Codes §4980H and §6055 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010) (PPACA), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (2010) (HCERA) Section 1513(d) of the PPACA, Pub. L. No. 111-148, § 1513(d) and,

**WHEREAS**, the ADMINISTRATOR, an employee benefits Administrator, provides professional fee based administrative services to assist employers comply with U.S. Codes §4980H and §6055 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010) (PPACA), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (2010) (HCERA) Under Section 1513(d) of the PPACA, Pub. L. No. 111-148, § 1513(d) and,

**WHEREAS**, EMPLOYER desires to retain ADMINISTRATOR to provide consulting services and the ADMINISTRATOR is capable and willing to provide such services to EMPLOYER.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein agreed, and for the other good and valuable consideration, the parties agree as follows:

(1) Appointment as ADMINISTRATOR. EMPLOYER hereby engages and appoints ADMINISTRATOR to provide employee benefit consulting services.

(2) The ADMINISTRATOR'S Duties. The ADMINISTRATOR agrees:

I. It will use its best efforts to support the objectives of EMPLOYER on behalf of EMPLOYER;

II. It has no authorization whatsoever from EMPLOYER to alter, modify or change any of the terms, rates and/or conditions contained in any of EMPLOYER'S documents, proposals or contracts, nor does it have authorization to change, alter or discharge participation in EMPLOYER'S benefit programs, and/or to incur any indebtedness on behalf of EMPLOYER; and,

III. It will not circumvent, or attempt to circumvent, EMPLOYER in EMPLOYER'S relationship with, other third party administrators, underwriters, vendors, insurance carriers and like organizations, regardless of whether or not EMPLOYER has a written contract with such third party administrators, underwriters, vendors and insurance carriers.

(3) EMPLOYER'S Duties. EMPLOYER agrees:

I. To provide to ADMINISTRATOR current data, reports, work history, contribution rates, plan documents related charges and the terms and conditions of EMPLOYER'S Agreements with group health plans offered to its employees and providers of benefit services as requested and needed by the ADMINISTRATOR to perform its services, and to respond in a timely manner to requests for information submitted by the ADMINISTRATOR;

II. To provide to ADMINISTRATOR EMPLOYER'S customary literature describing EMPLOYER'S Plan of benefits, as ADMINISTRATOR may from time to time need and request, including employee hours worked and EMPLOYER documents to be used to support services provided in Exhibit A attached hereto. However, EMPLOYER reserves the right to limit the

type of documents disclosed and provided to ADMINISTRATOR, to only those documents necessary for ADMINISTRATOR to perform the services set forth in Exhibit A to this Agreement; and,

III. It will not circumvent, or attempt to circumvent, the ADMINISTRATOR in the ADMINISTRATOR's relationship with its' own Clients, other third party administrators, underwriters, vendors, insurance carriers and like organizations, regardless of whether or not the ADMINISTRATOR has a written contract with such third party administrators, underwriters, vendors and insurance carriers.

IV. Errors; Review of Data. All Services provided hereunder will be based upon information provided to ADMINISTRATOR by EMPLOYER or any person who is authorized by EMPLOYER to use, access or receive the Services. EMPLOYER will promptly review all documents and reports produced by ADMINISTRATOR and provided or made available to EMPLOYER in connection with the Services and promptly notify ADMINISTRATOR of any error, omission, or discrepancy with EMPLOYER'S records. ADMINISTRATOR will promptly correct such error, omission or discrepancy and, if such error, omission or discrepancy was caused by ADMINISTRATOR, then such correction will be done at no additional charge to EMPLOYER.

V. Records. ADMINISTRATOR does not serve as EMPLOYER'S record keeper and EMPLOYER will be responsible for retaining copies of all documentation received from or provided to ADMINISTRATOR in connection with the Services to the extent required by EMPLOYER or applicable law.

VI. Transmission of Data. In the event that EMPLOYER elects not to use the Citrix Share File application provided by Seneca Consulting Group, Seneca Consulting Group is not responsible for any inadvertent release of EMPLOYER'S data. EMPLOYER must provide requested data in a timely basis, so as to provide ADMINISTRATOR with the appropriate time to produce the reporting required under this agreement.

(4) Payments to the ADMINISTRATOR. The ADMINISTRATOR shall receive compensation equal to \$2.50 Per Employee per month. The first payment equal to 1/3 of the estimated annual fee (\$9,751.50) calculated based on the number of W2 forms EMPLOYER released the previous year is due upon execution of this Agreement. The second payment of 1/3 of the estimated annual fee (\$9,751.50) calculated based on the number of W2 forms EMPLOYER released the previous year is due upon release of the compliance report. The final payment of the actual month employee count is due upon completion of all services listed in Exhibit A. Services provided by the ADMINISTRATOR not included in the scope of Exhibit A will be billed based on an hourly or project basis to EMPLOYER and subject to separate written agreement.

(5) Term and Termination.

I. The term of this Agreement shall be for one year from the date of signing this Agreement, or until the date upon which the HIPAA Business Associate Agreement attached hereto at Exhibit "B" is terminated, or upon the completion of the services set forth in Exhibit "A," whichever is earlier. The Parties may renew this Agreement for successive one (1) year periods, pursuant to a written agreement. EMPLOYER may terminate this Agreement without cause at any time, upon thirty (30) days written notice to the ADMINISTRATOR. The ADMINISTRATOR may terminate this Agreement upon ninety (90) days written notice to EMPLOYER.

II. Upon termination by either party prior to completion of the services set forth in Exhibit "A," ADMINISTRATOR shall only be entitled to retain monies paid by the EMPLOYER for the value of services actually performed and delivered by ADMINISTRATOR prior to the date of termination. ADMINISTRATOR shall return to EMPLOYER, within ten (10) days, all property of EMPLOYER, as such term is hereinafter defined, in possession of ADMINISTRATOR, including, but not limited to, payroll history, employee listing and other compensation information and data on hand, and/or other confidential materials which may have been furnished by EMPLOYER and entrusted to ADMINISTRATOR by reason of this

Agreement. If information has been provided to the ADMINISTRATOR in electronic form, the ADMINISTRATOR will commit to EMPLOYER that such information will be deleted from the ADMINISTRATOR's electronic storage media.

(6) Property of the ADMINISTRATOR.

I. Except as otherwise provided herein, EMPLOYER shall take reasonable steps necessary to hold in confidence and protect all trade secrets, which may include, but are not limited to, reports, documentation, techniques, products, ideas, concepts, output, and reports related to the Programs and Services of the ADMINISTRATOR, from disclosure to any person, firm, corporation or other entity as allowed by law without the ADMINISTRATOR's consent, to the extent that the same are protected from disclosure under the Freedom of Information Law, which EMPLOYER, as a public entity, is subject to. EMPLOYER shall ensure that all agents and any other persons with authorized access to any part of such confidential information be aware of and will observe and perform this non-disclosure covenant.

(7) Property of EMPLOYER.

I. Except as otherwise provided herein, the ADMINISTRATOR shall take all steps necessary to hold in confidence and protect all manuals, documentation, techniques, products, ideas, concepts, output, pricing, and reports related to the Programs and Services of EMPLOYER, from disclosure to any person, firm, corporation or other entity without EMPLOYER'S consent provided same shall not otherwise be available. The ADMINISTRATOR shall ensure that all agents and any other persons with authorized access to any part of such confidential information be aware of and will observe and perform this non-disclosure covenant.

II. All of the undertakings and obligations of the ADMINISTRATOR hereto relating to confidentiality and non-disclosure, whether contained in this Paragraph or elsewhere in this Agreement, shall survive the termination or expiration of this Agreement for a term of one (1) year.

(8) Expenses. ADMINISTRATOR shall be solely responsible for expenses incurred in the performance of its obligations hereunder, and in performing the duties outlined in Exhibit A. Other reasonable expenses incurred by the ADMINISTRATOR (including, but not limited to, travel) outside the scope of services in Exhibit A, performed on the behalf of EMPLOYER, is the responsibility of EMPLOYER, subject to prior written approval by the Board of Education.

(9) Independent Representative. ADMINISTRATOR acknowledges that it is an independent ADMINISTRATOR hereunder and not an employee of EMPLOYER. ADMINISTRATOR shall not have the authority to bind EMPLOYER in any manner.

(10) Assignment. This Agreement may not be assigned or otherwise transferred by either party without the express written consent of the other.

(11) Other Agreements – Entire Agreement. This Agreement constitutes the entire agreement between the parties, and any agreement, verbal or otherwise, made prior to the execution of this Agreement between EMPLOYER and the ADMINISTRATOR is hereby amended to conform to this Agreement.

(12) Modification. No change, alteration, modification or addition to this Agreement shall be binding or effective unless in writing and properly executed by both parties.

(13) Governing Law. This Agreement and all matters concerning its interpretation, performance or the enforcement hereof, shall be governed in accordance with the laws of the State of New York.

(14) **Headings.** The headings or captions in this Agreement are for convenience and reference only and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of this Agreement.

(15) **HIPAA.** The ADMINISTRATOR stipulates that the ADMINISTRATOR is and will remain in compliance with the privacy and security requirements of the Health Insurance Portability and Accountability Act and as evidence of same, has entered a HIPAA Business Associate Agreement with EMPLOYER, attached hereto as Exhibit B.

(16) **Indemnification.** The ADMINISTRATOR agrees to defend, indemnify and hold EMPLOYER, its Trustees, employees, agents and representatives harmless against all claims, damages, liabilities and expenses, including attorney fees, actually and reasonably incurred or imposed upon them in connection with any actual or threatened claim, action, suit or proceeding, settlement or compromise thereof that arises by reason of any willful or negligent act, breach of any obligation or failure to comply with any applicable law or regulation or any provision of this Agreement by ADMINISTRATOR or any of its partners, associates, employees or representatives.

(17) **Required Insurance**

- **Commercial General Liability Insurance**
  - \$1,500,000 per occurrence/ \$3,000,000 aggregate, including Personal and Advertising Injury Liability.
- **Workers' Compensation and N.Y.S. Disability**
  - Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
  - A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state.
- **Professional Errors and Omissions Insurance**
  - \$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the ADMINISTRATOR performed under the contract for the EMPLOYER. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.
- **Excess Insurance**
  - \$2,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.

The insurance is to be underwritten by a licensed and/or admitted New York State Insurer with a minimum Bests rating of A-minus.

In the event any of the aforementioned insurance policies are cancelled or not renewed, the ADMINISTRATOR shall notify the EMPLOYER in writing within thirty (30) days of such cancellation or non-renewal.

**(18) Information Returns Preparation**

a. **Authorized Agent.** An authorized agent is a person or firm that, with the EMPLOYER'S authorization, transmits specific information and/or ACA returns documents to the IRS on behalf of the firm and may match name/TIN combinations on behalf of the EMPLOYER.

b. **Engagement.** Subject to the terms and conditions as set forth in this Agreement, EMPLOYER hereby engage the services of ADMINISTRATOR to be EMPLOYER'S authorized agent to receive certain required information (data) from EMPLOYER for the purpose of providing assistance in EMPLOYER filing of information returns. Our base services include importing, conversion to PDF of the recipient copy, and converting EMPLOYER data to an acceptable format to electronically file to the IRS, and filing said file on EMPLOYER behalf. Additional services not part of our base outsource service may include Tin Matching, filing corrections, printing, and mailing services as well.

c. **Data Required for Filing.** EMPLOYER will provide to us, the data to be used to create the information and/or ACA returns, and the data used to e-file to the Internal Revenue Service as required, on EMPLOYER'S behalf. The data needs to be accurate and complete. By providing us EMPLOYER'S data, EMPLOYER represent and warrant that all such information (data) is both accurate and complete. EMPLOYER further represent and warrant that both the data, and the information and/or ACA returns to be both required and legal. All data shall be submitted using a commercially acceptable secure method of delivery which we will provide.

d. **Verification, accuracy and professional advice.** We do not give legal or tax advice. EMPLOYER should seek such advice from a competent professional. We act solely upon the information provided by EMPLOYER in our transmission. We are not responsible for late fees, errors, omissions or penalties assessed against EMPLOYER. We do not audit or make any other verification of the information (data) that EMPLOYER submit, although we may ask EMPLOYER for clarification of some data, however, we have no obligation to do so.

e. **Additional Services.** The scope of this agreement is to provide services to import EMPLOYER'S data, provide to EMPLOYER a recipient copy in pdf format for review and once reviewed for EMPLOYER to send to EMPLOYER'S recipients'. Upon approval, we will e-file EMPLOYER'S approved data on EMPLOYER'S behalf, as EMPLOYER'S agent. We will provide confirmation of acceptance by the Internal Revenue Service. Beyond the scope of this agreement, we may, upon agreement provide some or all of the following services

- i. Print and mail service to EMPLOYER'S recipients';
- ii. Tin Match Service;
- iii. File Corrected Returns on EMPLOYER'S behalf
- iv. Filing Extensions on EMPLOYER'S behalf.

f. **Important Dates and Approvals.** In order to provide our best and timely service, certain dates are important to the timely processing of EMPLOYER'S returns.

i. First, as recipient returns need to be mailed no later than January 31, 2016, if we are handling the printing and mailing of EMPLOYER'S returns, we will require EMPLOYER'S final approval of the data by close of business January 15, 2016. If we do not have EMPLOYER'S data approved to be printed and mailed by that date, we will not guarantee timely printing and delivery. We will however make our best efforts once EMPLOYER'S data is approved to expedite the mailing service. To be timely, we suggest EMPLOYER provide to us EMPLOYER'S initial data as early as possible.

ii. The required date for E-filing is March 31, 2016. In order for our office to provide accurate and timely filing of EMPLOYER'S returns, EMPLOYER'S approval of the final data must be given to us no later than March 20, 2016. If that date is not met, we may, at additional cost, with EMPLOYER'S request, at our option file an extension if necessary on EMPLOYER'S behalf.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

CITY OF NIAGARA FALLS

SENECA CONSULTING GROUP, INC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Daniel C. Opinante  
Title: President

## EXHIBIT A

### Affordable Care Act Employer Compliance Proposal and Scope of Work

#### SPECIFICATION OF SERVICES

Assist the Employer meet its "Employer Mandate" obligations under U.S. Codes §4980H of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010) (PPACA), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (2010) (HCERA). Under Section 1513(d) of the PPACA, Pub. L. No. 111-148, § 1513(d) to include:

- Identify the Employer(s) current employees who are considered "Full-time" under the act.
- Identify if the current health insurance coverage would be deemed "affordable" under ACA for its eligible employees (applying, for example, the "Form W-2" safe harbor).
- Offer strategies and help the Employer(s) apply the "Look-Back/Stability Period Safe Harbor" Measurement Method (a.k.a. "Look-Back Measurement Method") under the ACA to new and ongoing employees of the Employer(s).
- Identify and account for any applicable employment break periods and/or periods of special unpaid leave for each Employer employee who is evaluated using the Look-Back Measurement Method.
- Identify which Employer employees must be treated as new, ongoing, Variable-hour, full-time, part-time and/or seasonal employees under ACA for purposes of applying the Look-Back Measurement Method and for determining eligibility for health insurance benefits from the Employer(s).
- Review collective bargaining agreements (CBAs") and help the Employer(s) determine how each CBA affects the Employer's obligations under ACA.
- Provide the Employer(s) with penalty analysis for: (1) failing to offer health insurance benefits as required by ACA; (2) offering health insurance benefits that do not provide minimum value as required by ACA; (3) providing coverage that is not "affordable" under ACA standards; and (4) providing coverage that does not satisfy the non-discrimination rule under ACA.
- To assist and support the Employer at audits conducted by the Federal oversight agencies

Assist the Employer meet its IRS Reporting obligations under U.S. Codes § 6056(a) and § 6055, as added by PPACA, Pub. L. No. 111-148, § 1514 to include:

- Completion and electronic submission to the United State Internal Revenue service Form(s) 1094 C and 1095 C for all Full-Time employees
- Provide employer with completed 1095C forms for all employees who are considered full-time for employer to distribute as required under Code § 6056(a) and § 6055, as added by PPACA, Pub. L. No. 111-148, § 1514
-

EXHIBIT B  
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is made and entered into this day of \_\_\_\_\_, 2015 (the "Effective Date") by and between City of Niagara Falls ("Covered Entity") and Seneca Consulting Group, Inc. ("Business Associate").

**WITNESSETH:**

**WHEREAS**, Business Associate provides certain services on behalf of Covered Entity that require Covered Entity to disclose certain identifiable health information to Business Associate, pursuant to the terms of a services agreement or other contract between the parties (the "Services Agreement"); and

**WHEREAS**, the parties desire to enter into this Agreement to permit Business Associate to use or disclose such identifiable health information and to comply with the business associate requirements of the Health Insurance Portability and Accountability Act of 1996 and the privacy, security, administrative, enforcement and breach notification rules and regulations promulgated thereunder, as currently in effect or as hereafter amended (collectively, "HIPAA"); and

**WHEREAS**, Business Associate may have access to Protected Health Information ("PHI"), as defined below, in fulfilling its responsibilities under such arrangement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning for those terms as set forth in HIPAA. Where provisions of this Agreement are different than those mandated by HIPAA, but are nonetheless permitted by HIPAA, the provisions of this Agreement shall control.

1.1 **Protected Health Information.** "Protected Health Information" ("PHI") shall have the same meaning as the term "Protected Health Information" set forth at 45 C.F.R. § 160.103, limited to the information received from, or created, received maintained or transmitted by Business Associate on behalf of, Covered Entity.

1.2 **Electronic Protected Health Information.** "Electronic Protected Health Information" ("Electronic PHI") shall mean PHI transmitted by or maintained in "electronic media" (as such term is defined in 45 C.F.R. § 160.103).

1.3 **Breach.** "Breach" shall have the same meaning as codified at 45 C.F.R. § 164.402.

1.4 **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

1.5 **Unsecured Protected Health Information.** "Unsecured Protected Health Information" ("Unsecured PHI") shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published at 74 Fed. Reg. 19006 (April 27, 2009), and in annual guidance published thereafter.

## **SECTION 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

2.1 Not to Use or Disclose PHI Unless Permitted or Required. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as required by law, or as otherwise authorized by Covered Entity.

2.2 Use Safeguards. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule with respect to Electronic PHI, to prevent the use or disclosure of PHI other than as provided for by this Agreement as outlined in Section 4 of this Agreement.

2.3 Mitigate Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

2.4 Report Unpermitted Disclosures of PHI. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not permitted or required by this Agreement (an "Incident") of which Business Associate becomes aware, including breaches of Unsecured PHI as required by 45 C.F.R. § 164.410.

2.5 Compliance of Agents. Business Associate agrees to require any agents, including subcontractors, that create, receive, maintain or transmit PHI on its behalf to agree to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such PHI.

2.6 Requests for Restrictions. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522 and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding 45 C.F.R. § 164.522(a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict disclosures of PHI, of which Business Associate has been notified by Covered Entity, to a health plan for purposes of carrying out "payment" or "health care operations" (as such terms are defined in 45 C.F.R. § 164.501) if the PHI pertains solely to a health care item or service for which Covered Entity has been paid in full by the individual or the individual's representative.

2.7 Provide Access. Business Associate will make available to Covered Entity PHI to the extent requested by Covered Entity, including without limitation as required under 45 C.F.R. § 164.524, which describe the requirements applicable to an individual's request for access to PHI relating to the individual. The obligations of Business Associate in this Section apply only to PHI in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.8 Incorporate Amendments. Business Associate will make available to Covered Entity PHI requested by Covered Entity, including without limitation as required for amendment of such PHI, and shall make and incorporate any such amendments, all in accordance with 45 C.F.R. § 164.526, which describes the requirements applicable to an individual's request for an amendment to any PHI relating to the individual. The obligations of Business Associate in this Section apply only to PHI in a "Designated Record Set" in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

2.9 Document Disclosures. Business Associate will make available PHI requested by Covered Entity, including without limitation as required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528, which describe the requirements applicable to an individual's request for an accounting of disclosures of PHI relating to the individual. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.10 Disclose Practices, Books, and Records. If Business Associate receives a request, made on behalf of the Secretary, that Business Associate make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA, then Business Associate will promptly comply with the request within the time period required for such response as specified in such request.

2.11 Other. To the extent the Business Associate is to carry out the Covered Entity's obligation, Business Associate shall comply with the Privacy, Security and Breach Notification Rules that apply to the Covered Entity in the performance of such obligation.

### SECTION 3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Functions and Activities on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI only to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Services Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

3.2 Other Uses and Disclosures. Except as otherwise limited by this Agreement, Business Associate may use and disclose PHI as follows:

- a. if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
  - i. the disclosure is required by law; or
  - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
- b. for data aggregation services, if to be provided by Business Associate for the health care operations (as such term is defined in 45 C.F.R. § 164.501) of Covered Entity pursuant to any agreements between the parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of PHI by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

3.3 Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary amount of PHI to accomplish the intended purpose of such use, disclosure, or request.

### SECTION 4. SECURITY SAFEGUARD RULES

4.1 Implement Safeguards. Business Associate shall implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with 45 C.F.R. §

164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements set forth in Sections 164.308, 164.310, and 164.312.

4.2 Compliance of Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement the same safeguards required of Business Associate in Section 4.1 hereof.

4.3 Report Security Incidents. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of Electronic PHI or interference with system operations in an information system, excluding: (a) "pings" on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Electronic PHI. Business Associate agrees to mitigate, to the extent practicable, any harmful effect resulting from such Security Incident.

#### SECTION 5. BREACH NOTIFICATION

5.1 Timing of Notification. Following the discovery of an Incident, including an impermissible or unauthorized disclosure of data in a limited data set, or a confirmed Breach of Unsecured PHI, Business Associate shall notify Covered Entity of such Breach without unreasonable delay, but in no event later than five (5) business days following the discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

5.2 Law Enforcement Delay. Notwithstanding the provisions of Section 5.1, above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then Business Associate shall immediately notify Covered Entity of such a requested delay and:

- a. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
- b. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

5.3 Contents of Notification. The Breach notification provided to Covered Entity shall include, to the extent possible:

- a. the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
- b. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
- c. a description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address,

account number, diagnosis, disability code, or other types of information were involved);

- d. any steps individuals should take to protect themselves from potential harm resulting from the Breach;
- e. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breach; and
- f. contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

Business Associate shall provide the information specified in this Section to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in this Section, and shall provide such information to Covered Entity even if the information becomes available after the five (5) day period provided in Section 5.1, above.

#### **SECTION 6. TERM AND TERMINATION**

6.1 Term. The Term of this Agreement shall be effective as of the date first written above and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity hereunder and/or under the Services Agreement, is destroyed or returned to Covered Entity.

6.2 Termination for Cause. Upon Covered Entity's knowledge of a material breach or violation hereof by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate will return or destroy all PHI received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form, and shall retain no copies of such information. If such return or destruction is not feasible, as reasonably supported by competent records and other written evidence of Business Associate, Business Associate will extend the protections of this Agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

#### **SECTION 7. MISCELLANEOUS PROVISIONS**

7.1 Amendment. This Agreement cannot be amended except by the mutual written agreement of Business Associate and Covered Entity. In the event either party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, such party shall so notify the other party in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and shall amend the terms of this Agreement, if necessary, to bring it into compliance. If after such thirty (30) day period this Agreement fails to comply with HIPAA with respect to the concern(s) raised pursuant to this Section, then either party may terminate this Agreement upon written notice to the other party.

7.2 No Third Party Beneficiary Rights. This Agreement is intended for the sole benefit of Business Associate and Covered Entity and does not create any third-party beneficiary rights.

7.3 **Independent Contractor Relationship.** The parties agree that the legal relationship between Covered Entity and Business Associate is strictly an independent contractor relationship. Nothing in this Agreement shall be deemed to create a joint venture, agency, partnership, or employer-employee relationship between the parties.

7.4 **Headings.** The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.

7.5 **Survival.** The rights and obligations of Business Associate under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.6 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.

7.7 **Waiver.** Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

7.8 **Binding Effect.** The Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

7.9 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

7.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

7.11 **Integration.** Except as provided in the Services Agreement, this Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes any and all written or oral agreements heretofore made, including, but not limited to, any business associate agreements previously entered into between the parties.

7.12 **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

7.13 **Indemnification.** Business Associate will indemnify, defend and hold harmless Covered Entity and Covered Entity's affiliates, employees and agents from and against any claims, cause of action, liability, damage, cost or expense (including costs for notification and mitigation related to Business Associate's breach of Unsecured PHI and any attorneys' fees and court proceeding costs) arising out of or relating to any use or disclosure of PHI not permitted by this Agreement, or any other breach of this Agreement, by Business Associate or its subcontractors, its agents, or any other persons or entities under the control of the Business Associate. This indemnification relates only to the obligations under this Agreement and liability related to HIPAA; it is separate and apart from any indemnification to which the parties may or may not have agreed in the Services Agreement or otherwise.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written above.

**COVERED ENTITY:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agenda Item #6

**SUBJECT: LETTER OF AWARD FOR LASALLE LIBRARY ACOUSTIC AND ELECTRIC UPGRADES**

The following was the result of bids received on September 2, 2015 for the above referenced project:

<u>CONTRACTOR</u>	<u>BASE BID</u>
Walter S. Johnson Bldg. Co. Inc. 6638 Mooradian Drive Niagara Falls NY 14304	\$ 44,750.00
Sicoli Construction Svcs.	\$ 52,600.00

It is the recommendation of the undersigned that this project be awarded to the low bidder Walter S. Johnson Building Co. Inc. at their base bid of \$44,750.00. Funding is 100% reimbursable through a grant from the New York State Economic Development Association - Project ID# 4813.

Will the Council vote to so approve and authorize the Mayor to execute a contract in a form acceptable to the Corporation Counsel?

Agenda Item #7

**SUBJECT: LETTER OF AWARD FOR RECONSTRUCTION OF HISTORIC WOOD SIDE ENTRY  
DOOR AT LASALLE LIBRARY – 8728 BUFFALO AVE.**

The following is the result of bids received on September 15, 2015 for the above referenced project:

<b><u>CONTRACTOR</u></b>	<b><u>BASE BID</u></b>
Sicoli Construction Services, Inc. 4800 Hyde Park Blvd. Niagara Falls NY 14305	\$16,800.00

It is the recommendation of the undersigned that this project be awarded to the sole bidder

Sicoli Construction Services, Inc. at their total bid of \$16,800.00. Funding is available in Casino funds previously approved by Council at its June 23, 2014 meeting and through a matching grant with the New York State Education Department/ New York State Library Public Grant Program No. 0386-15-5720.

Will the Council vote to so approve and authorize the Mayor to execute a contract in a form acceptable to the Corporation Counsel?

Agenda Item #8

*RE: Request for Approval to Settle and Pay Claim of Duane Thomas Brown  
3601 Dudley Avenue, Niagara Falls, New York 14303*

Council Members:

Date Claim Filed:	December 1, 2014
Date Action Commenced:	N/A
Date of Occurrence:	November 20, 2014
Location:	433 36 <sup>th</sup> Street, Niagara Falls, New York
Nature of Claim:	Damages to automobile from collision with City vehicle.
Status of Action:	Claim stage.
Recommendation/Reason:	Best interests of City to pay claim.
Amount to be Paid:	\$1,522.69
Make Check Payable to:	Duane Thomas Brown
Conditions:	General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above claim be paid under the terms set forth above. Will the Council so approve?

Agenda Item #9

RE: Request for Approval to Settle and Pay Claim of Glen Rich  
4738 Miller Road, Niagara Falls, New York 14304

Council Members:

Date Claim Filed:	May 11, 2015
Date Action Commenced:	N/A
Date of Occurrence:	May 8, 2015
Location:	Rainbow Boulevard near Old Falls Street
Nature of Claim:	Automobile damage sustained in an accident with City vehicle
City Driver:	Todd N. Faddoul
Status of Action:	Claim stage.
Recommendation/Reason:	Best interests of City to pay claim.
Amount to be Paid:	\$2,115.28
Make Check Payable to:	Glen Rich
Conditions:	General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above claim be paid under the terms set forth above. Will the Council so approve?

Agenda Item #10

*RE: Request for Approval to Settle and Pay Claim of Zelice Caldwell*

1342 North Avenue, Niagara Falls, New York 14305

Council Members:

Date Claim Filed:	November 4, 2014
Date Action Commenced:	N/A
Date of Occurrence:	September 22, 2014
Location:	1311 Ontario Avenue, Niagara Falls, NY
Nature of Claim:	Damage to home from wire pulled down by DPW vehicle.
Status of Action:	Claim stage.
Recommendation/Reason:	Best interests of City to pay claim.
Amount to be Paid:	\$52.92
Make Check Payable to:	Zelice Caldwell
Conditions:	General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above claim be paid under the terms set forth above. Will the Council so approve?