



# **ERIE COUNTY SHERIFF'S OFFICE**

REQUEST FOR PROPOSAL (RFP)

## **Correctional and Holding Center Facilities Food Management Services**

**RFP # 2024-022VF**

**March 22, 2024**

Erie County Sheriff's Office

John C. Garcia

Sheriff

10 Delaware Avenue

Buffalo, New York 14202

## Definitions

**ECSO-** Erie County Sheriff's Office

**ECHC-** Erie County Holding Center

**ECCF-** Erie County Correctional Facility

**ECJMD-** Erie County Jail Management Division

**County-** Erie County, New York

**NCCHC-** National Commission of Correctional Health Care

**Sheriff-** Sheriff of Erie County, New York

**Vendor-** The Proposer, company responding to the Request for Proposals

**RFP-** Request for Proposal

**ACA-** American Correctional Association

**NYSCOC-** New York State Commission of Corrections

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## SECTION 1 - INTRODUCTION AND INSTRUCTIONS

### Introduction

ECSO is soliciting proposals for qualified Vendors to provide high quality nutritious meals, meeting ACA Standards for Correctional Food Services for inmates and authorized staff at the ECHC and ECCF with an onsite Kitchen Manger/Supervisor at ECHC. Prospective Vendors must offer a proposal that will meet the scope of services, qualifications and general description of work activities identified in Section 3 of the RFP.

In responding to this RFP, Proposers must follow the prescribed format as outlined. By so doing, each Proposer will be providing the ECSO comparable data submitted by other Proposers, and thus, be assured a fair and objective treatment in the ECSO review and evaluation process as it is the ECSO intent to select the Proposer that provides the best solution for the ECSO'S needs.

The ECSO reserves the right to amend this RFP, reject any or all proposals, or any part thereof, submitted in response to this RFP, and reserves the right to waive any irregularities or informalities, if such action is deemed to be in the best interest of the ECSO. The ECSO reserves the right to request additional information from any Proposer, and to award negotiated contracts to one or more Proposers.

This RFP is not intended and shall not be construed to commit the ECSO to pay any costs incurred in connection with any proposal or to procure or contract with any firm.

The ECSO will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, citizenship status or any other status protected by New York State or Federal Laws.

#### **Contract Period**

After selection of the successful Proposer, a formal written contract will be prepared by the ECSO and will not be binding until signed by both parties and, if necessary, approved by the Erie County Legislature and the Erie County Fiscal Stability Authority. **The approval of said legislature and/or authority may be necessary before a valid and binding contract may be executed by the ECSO.**

The contract will include the submitted proposal and any subsequent agreement with ECSO to service provision. The contract period is for one (1) year beginning upon the signature of the final contract, with the option to renew for additional terms, subject to annual contract renewal, contingent upon the Vendor's successful implementation of the program, data collection, monitoring, goal attainment, and compliance with required reporting. Initial award and renewals are subject to inclusion of funding in the County Executive Recommended Budget and as adopted by the Erie County Legislature, as well as, contingent upon availability of New York State funds appropriated for this purpose.

#### **Single Point of Contact**

From the date that this RFP is issued until a Vendor is selected and announced by the Evaluation Officer, Proposers shall not communicate with any official regarding this procurement, except at the direction of Chief Timothy Donovan, the Procurement Officer in charge of the solicitation. Any unauthorized contact may disqualify the Proposer from further consideration. Contact information for the single point of contact:

Evaluation Officer: Elizabeth Hall  
Telephone Number: 716-858-8879  
E-mail Address: [Elizabeth.Hall3@erie.gov](mailto:Elizabeth.Hall3@erie.gov)

## **REQUIRED REVIEW**

#### **Review of RFP / Form of Questions**

Proposers will carefully review the entire RFP and shall promptly notify the evaluation officer identified above VIA E-MAIL of any ambiguity, inconsistency or error they discover. Additionally, any questions requiring clarification or interpretation of any section in this RFP must be addressed **VIA EMAIL** to the Evaluation Officer listed above on or before March 29, 2024. Reference to the section, page and item in question must be included in the email. Questions received after March 29, 2024 will not be considered. There will be a pre-bid conference on site at both locations, date to be determined upon request.

#### **Response**

The Evaluation Officer will provide a written response to questions on April 5, 2024 via blind-copy email to all parties. Proposers shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.

# GENERAL REQUIREMENTS

## **Resulting Contract**

This RFP and any Addenda, the Vendor's proposal, including any amendments, a final offer, and any clarification question responses will be incorporated by reference in any resulting contract.

## **Mandatory Requirements**

To be eligible for consideration a Proposer must meet all mandatory requirements as identified in the RFP. ECSO will determine whether a Vendor's proposal complies with the requirements, and those that fail to meet any of the mandatory requirements may be disqualified.

## **Understanding of Specifications and Requirements**

By submitting a response to this RFP, the Proposer acknowledges it understands and will comply with the specifications and requirements.

## **Proposer's Signature**

The proposal must be signed in ink by an individual authorized to legally bind the Vendor. The signature guarantees that the offer has been established without collusion. The Vendor will provide proof of authority of the person signing the RFP upon ECSO's request. Unsigned proposals will be rejected.

## **Proposal Requirements**

To be considered for an award, the terms, conditions, and instructions contained in this RFP and attachments must be met. Any proposals which do not meet these criteria may be considered non-responsive. Currently funded programs must re-apply to be considered for continued funding.

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional materials beyond what is sufficient to provide a complete, accurate and reliable presentation.

Applications are expected to comply with stated guidelines including but not limited to desired program outcomes identified in the RFP. It will be the responsibility of the applicant to submit proposals consistent with the RFP requirements. By applying, your agency asserts that the RFP document has been reviewed in its entirety and that, if selected, the agency will abide by the conditions for funding set forth therein. See Section 3 for specific proposal requirements.

## **Copies Required and Deadline for Receipt of Proposal**

Proposers must submit one (1) original proposal and three (3) copies to ECSO. ECSO reserves the right to request an electronic copy of the RFP response. Each proposal must be sealed and labeled on the outside of the package indicating it is a response to RFP#2024-022VF. Proposals must be received at the desk of Elizabeth Hall by 2:00 PM on April 10, 2024 at 10 Delaware Buffalo NY 14202. Proposer is solely responsible for assuring delivery by the designated time. Fax/email responses will not be accepted.

## **Late Proposals**

Regardless of cause, ECSO will not accept late proposals. Requests for extension will not be granted. Proposers mailing proposals should allow ample delivery time to assure timely receipt of their proposals.

## **Costs / Ownership of Materials**

ECSCO is not responsible for preparation costs. The Proposer is solely responsible for all costs it incurs prior to contract execution.

**Administrative Costs**

All potential contract holders with ECSCO shall agree that administrative cost may not exceed 15% of the requested funds

**Proposer Debt**

Proposals will not be accepted from, nor any agreement awarded to any Proposer that is in arrear upon any debt or in default of any obligation owed to Erie County. Agreements will not be awarded to any Proposer that has failed to satisfactorily perform pursuant to any prior agreement with Erie County.

**Insurance**

Information on the Standard Insurance Provisions required of agencies selected as a contractor of this service is included in this RFP. This document is for the informational purposes only and is not to be submitted by the Proposer for the purposes of the RFP.

**Executive Order #013**

All potential contract holders with ECSCO shall agree to comply with Executive Order #013 (2014), and the Agency shall make such records available, upon request, to Erie County's Division of Equal Employment Opportunity for review. (See attachment). All contract holders will be required to sign the Erie County Equal Pay Certification (also attached). ECSCO shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Agency, its offices, and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Agency's compliance with Erie County Executive Order #013 (2014). Violation of the provisions of Executive Order #013 (2014), which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of a contract, and may constitute grounds for determining that a bidder is not qualified to participate in future Erie County contracts.

**MBE/WBE**

Certified Minority Business Enterprise/Women's Business Enterprise proposers shall include the Erie County MBE/WBE Certification letter with their proposal.

**SDVOB**

A business that is a certified Service Disabled Veteran Owned Business under the New York State Service Disabled Veteran Owned Business Act shall include the letter indicating their company is 51% or more veteran owned with their proposal.

**Miscellaneous**

- 1- All proposers must disclose the name, title, and department of any employee or officer who is or was an employee or officer of Erie County within the twelve (12) months immediately prior to the proposal.
- 2- All proposers must provide a list of all prime contractors and subcontractors that their agency does business with related to the service in this RFP.
- 3- All proposers must include the name of their Language Access Coordinator. A copy of your Language Access Policy is required at contracting.

4- All proposers must include the name of their Americans with Disabilities Act (ADA) Coordinator. A copy of a written ADA policy is required at contracting.

## **RFP STANDARD INFORMATION**

### **Proposer Competition**

ECSO encourages free and open competition to obtain quality, cost-effective services and supplies. ECSO designs specifications, proposal requests, and conditions to accomplish this objective.

### **Evaluation of Proposals**

An evaluation committee will evaluate all qualified proposals based on stated criteria and MAY recommend award to the highest scoring Proposer; yet reserves the right to make the award on subjective criteria in which ECSO determines a proposal that best serves the needs and requirements. The evaluation committee may initiate discussion, negotiation, or best and final offer if additional information is required to make a final decision. Proposers may be required to give an oral presentation and/or product demonstration to ECSO to clarify or elaborate on the written proposal at the Proposer's expense. Presentations will be by invitation only and are intended to provide an opportunity for the Proposer to clarify their proposal and ensure a thorough mutual understanding. At the same time, ECSO is under no obligation to offer any Proposer the opportunity to make such a presentation.

### **Request for Documents Notice**

ECSO, upon selection of a Proposer after the evaluation process, will request required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material and any other requested documents. This does not constitute a contract and work may not begin until a contract signed by all parties is in place. ECSO will notify all other Proposers of its selection.

### **Contract Execution**

Upon receipt of all required materials, a contract incorporating the selected Vendor's proposal will be provided to the Proposer selected. If the selected Proposer does not accept all material requirements ECSO may move to the next Proposer or cancel the RFP. Work under the contract may not begin until all parties have signed the contract.

### **ECSO Rights Reserved**

While the ECSO has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by ECSO to award and execute a contract. Upon determination such actions would be in its best interest, ECSO, in its sole discretion, reserves the right to:

- Cancel or terminate the RFP
- Reject any or all proposals received in response to this RFP
- Waive any provision of this RFP
- Not award a contract
- Terminate a contract if ECSO determines that adequate funds are not available

### **An Overview of the Organization**

The Erie County Holding Center is located at 40 Delaware Avenue Buffalo, New York 14202, a pretrial, maximum security detention facility; the second largest detention facility in New York State, outside of Long Island and New York City. The ECHC has a capacity of housing **638** inmates remanded to the custody of the Sheriff of Erie County. It processes more than **4,400** inmates annually. The facility is a combination of pods and open bay construction and traditional linear type cells.

The Erie County Correctional Facility is located at 11581 Walden Avenue Alden, New York 14004. The ECCF presently can hold approximately **746** inmates of various classifications. The facility is a combination of "New Generation Jail" pods and open bay construction.

The populations housed at the ECHC and ECCF include: non-arraigned, non-sentenced, and sentenced inmates consisting of males, females and adolescents (those adolescents adjudicated as adults).

## **SECTION 2 – DETAILED SCOPE OF PROFESSIONAL SERVICES**

### **Scope of Professional Services Required**

The qualified food service Vendor is being sought to provide a food service management program for the estimated 800 inmates and eligible staff of the ECHC and ECCF, divisions of the ECSO with services to commence at 10 Delaware Buffalo, NY 14202 and 11581 Walden Ave Alden, NY 14004. The program must meet the constitutional and nationally recognized standards for nutritious and sanitized food service operations and, at a minimum, meet the NYSCOC Standards for Local Correctional Facilities, NCCHC and ACA Standards; and all memorandums issued by the Chairman for the Commissioner of NYSCOC regarding the provision of food service operations in local correctional facilities. Furthermore, the Proposer must ensure that food service operations be provided by competent, credentialed food service practitioners, under the direction of a professional administrator; and that such services are provided in a manner that ensures cost-effective results.

It is the intent of the ECSO that the Vendor provide food services in a manner which best fulfills the following program objectives:

- To provide an appealing and nutritionally sound program as economically as possible;
- To maintain reasonable, competitive prices in the program while utilizing local vendors where possible;
- To demonstrate environmental and energy awareness and responsibility by minimizing waste in any form;
- To maintain a stable, well-trained, and supportive food service manager(s);
- The Proposer is to include purchasing of food and supplies for kitchen;
- The Proposer is to provide menus in four (4) week rotations that are approved/signed by a Registered Licensed Dietician to ensure menus satisfy all federal/state requirements.

All food preparation, sanitation and staffing will be conducted by ECSO personnel.

All inmates at ECHC and ECCF are provided at least three (3) well-balanced meals daily. Meals are to be nutritionally adequate, palatable, attractive, and produced under sanitary conditions. All food items shall be of name brand quality.

The Vendor will be responsible for providing management, supervision, supplies, materials, and additional equipment (except built-in fixtures currently in place) necessary to provide food services as specified herein and in the proposal response. Kitchen equipment (freezers, fryers, ovens, sinks, etc.) as well as utensils, silverware, food trays, tumblers, pots, pans, etc. are provided by ECSO. Electricity, gas, space, light, heat, power, water and other utilities that are reasonably needed and necessary for the operation of the food services as well as sanitary toilet facilities for the staff are also provided by ECSO.

The successful proposer shall:

- Provide all food, supplies, and equipment as outlined in the proposal and will be responsible for the storage of all food and related stores in the dry storage room, walk-in coolers, and walk-in freezers provided by the ECSO and located within the ECHC.
- Be responsible to purchase, properly handle and store all food safely.
- Provide flavorful, visually appetizing, wholesome, nutritious, quality meals with correct portion sizes and must appear similar in size/shape/consistency.
- Accommodate special diets for those whose religious beliefs require adherence to religious dietary laws or are prescribed by appropriate medical or dental staff.
- Be responsible for inside deliveries of products to the proper designated storage area within the facility. Any and all equipment, materials, supplies, products, etc. purchased by the Vendor must be approved by the ECSO designee prior to use.
- Provide all cleaning products and supplies, including trash liners, necessary to ensure sanitation and cleanliness of the kitchen area, storerooms, coolers/freezers and equipment at vendor's expense.
- Efficient food management operations at all times.
- List and obtain approval by ECSO management prior to bringing in any equipment.
- Provide paper, foil, plastic products used in the daily routine of food service operations, including but not limited to: aluminum foil, plastic wrap, paper bags, wax paper sandwich bags, trays/containers, plates, bowls with lids, cups with lids, bun rack covers (oven covers), labels and parchment paper. **Styrofoam is prohibited.**
- Provide condiments as needed.
- Have a Registered Licensed Dietician review menu for compliance with applicable regulations and provide a menu of breakfast, lunch and dinner for each four (4)-week cycle to the designee for approval. Food service shall not deviate from the approved menu for the convenience or preference of the food service provider. Any changes must equal or exceed the choice selection, quality, grades, and specifications contained in the original menu.
- The District Manager of the food service provider shall monitor, supervise, and train their food service staff personnel, visit the facilities at least once annually and provide a written summary report to ECSO within fourteen (14) days of their visit.
- Provide food service in the event of lockdowns, severe weather conditions, power failure or other events that would impact normal operations of the facilities. Emergency meals shall be planned so that no additional cost will be borne by ECSO.
- Comply with all health and sanitation codes.
- Be responsible for additional costs incurred by the ECSO due to the Vendor's failure to comply with any permits, laws, rules or regulations.

**General Requirements:**

- Comply with ECSO facility protocols.



- Ensure that all inspections are fulfilled and posted in a timely manner in accordance with established guidelines established by the New York State and Erie County Health Departments.
- Adhere to documentation standards as set forth by Federal, State and ECSO regulations/policies.
- Manage and retain a skilled and appropriately educated workforce providing ongoing in-service training covering such areas as: safety, sanitation, and food handling including proper tray assembly and ensure all portion sizes are controlled and equally distributed for all inmates.
- Provide internal quality assurance audits on a regular basis.
- Maintain regular communication with ECSO in a timely manner.
- Manage funds from a government funding source and maintain billing systems.
- Maintain records of food services and categorical meal counting for three (3) years plus the current year.
- Submit required data and abide by designated documentation regulations in a timely manner, as instructed, by ECSO to claim reimbursement for services.

**Proposer Experience and Qualifications:**

- Demonstrate knowledge, experience and understanding of the needs, risks, challenges, and opportunities faced by the target population.
- All personnel shall meet the professional standard requirements and be trained by the food service company on the use of all meal preparation/service equipment, emergency valves, switches, fire and safety devices in the kitchen area.
- Be properly licensed to do business in NYS and have all applicable federal, state or local licenses required.
- Have a successful record of providing food services to comparable institutions.
- An annual physical examination, including a tuberculin skin test with a chest x-ray where such test is positive and serological tests as indicated, shall be required of staff who are providing services at the ECHC.
- Conduct a criminal history check for all prospective employees and periodically throughout the course of their employment, at a minimum of every twelve (12) months. Any applicant or employee found to be a registered sex offender will be immediately removed from all work on this contract.

**Performance Measures and Data Collection:**

Data and benchmarks to be tracked by the Vendor:

- Number of meals served
- Information on waste
- Nutritional accounting
- Food expenditures that identify per capita costs per meal
- Standard rations compliance
- Menu plans four (4) week cycles and to include two (2) hot meals per day
- Report of annual training conducted and attendees during the preceding year to the Sheriff/designee

# Food Services

## **Use of County Facility and Equipment**

The Food Service Area includes office space for one individual with storage space and bathroom facilities.

The facility kitchen, together with kitchen equipment and utensils located therein, will be made available for use by the Vendor under this Agreement. The physical plant and equipment are only an accommodation to the Vendor, ECSO makes no warranties, expressed or implied as to the availability, fitness, or use. A joint inventory of ECSO-owned equipment will be conducted at the earliest possible date by the Vendor and ECSO to determine quantity and serviceability of equipment on hand. Repairs of ECSO-owned equipment will be at the expenses of ECSO unless determined by ECSO to be caused by abuse or neglect of the Vendor. All ECSO owned equipment will remain the property of ECSO.

## **Menu (Portions for all meals will be equal in both size and appearance).**

All menus and special diets must meet the standards for both facilities as established by the NCCHC, NYS Minimum Standards Part 7009 and Correction Law 45. The Vendor will have all menus approved and signed annually by a Registered Licensed Dietitian.

All meals served will follow current Recommended Daily Allowance for adult males as established by the National Academy of Sciences, as prescribed for inmates under New York State Department of Corrections Law 45(6), Part 7009 of NYS Minimum Standards, and will provide an average of 2,900 calories per day and a minimum of seventy-five (75) grams of protein, in addition to all required nutrients. The Vendor shall institute revisions to the program when updates are issued by the aforementioned authorities.

## **Special Diets (Medical/Religious)**

In addition to the regular four (4) week cycle meal plan, the Vendor will provide, a special menu for inmates on special, modified, medical and/or religious diets (i.e.: Kosher meals, Ramadan, allergies, diabetic, etc.) The Vendor will provide therapeutic diet meals upon ECSO's request. Specific therapeutic diets will be prepared and served to inmates in accordance with order of ECSO's attending physician, dentist, or responsible health authority. Medical diets will be specific and complete and will be furnished in writing by the Vendor.

The Vendor will provide a minimum of four (4) holiday meals at Thanksgiving, Christmas, New Year's Day and Easter; and others as requested by ECSO for inmates and staff.

The Vendor will provide, at the request of ECSO, "finger foods" served with no utensils on a specialized tray for inmates housed in Special Housing Units, including medical/mental health watches, including Nutra-loaf.

The Vendor will maintain a sample meal of each meal served for seventy-two (72) hours. ECSO reserves the right to review and change the menu at its discretion.

## **Meat Portions**

All meat portions will be no less than four (4) ounces and no more than six (6) ounces cooked weight. Beef Graded USDA good will be used for pot roast or stews. Otherwise, only first quality foods, such as Grade A eggs, Grade A or B poultry, U. S. Choice Grades of Beef, Grade A or B fancy fresh or frozen

vegetables and fruits, and Grade A or B canned goods will be used. **No pork products or pork derivatives including gelatin, will be used.** At the request of the ECSO, the Vendor will provide a manufacturer's statement of ingredients for the requested items. Ground beef and ground beef patties will be provided with a minimum lean-to fat ratio of 80/20. **Ground beef will not contain any: gland meat, bull meat, stag meat, or head meat.** Only USDA inspected meat will be used. During grinding, meat should remain below 40F, but not less than 30F. Meat should be double ground. Soy or other extenders are acceptable up to 6%.

### **Cereal, Condiments, Sample Meals**

**Cereal** - Cereal on menus designates one (1) cup. One (1) cup is measured to be either eight (8) ounces by volume or one and one half (1 ½) ounces by weight. Only bulk cereal is to be used.

**Condiments** - Condiments such as ketchup, mustard, mayo-type dressing, margarine, salad dressing, syrup, and jelly will be provided in prepackaged, portion control packages. **Salt and pepper will not be served to inmates.**

### **Staff Meals**

The Proposer will provide three (3) meals to ECHC staff who are assigned to work during regularly scheduled meal times. Meals provided will be the same as those served to inmates, and will be served at a time to be determined by the Jail Administrator.

The Proposer shall provide an enhanced menu program for staff. Menu options and pricing shall be included on an enhanced menu list.

Additional staff food will be provided by the Vendor upon request of the Sheriff/designee. Staff meals will be counted in the total numbers of meals served to determine the price per the sliding scale.

### **Missed Meals**

The Vendor will provide meals, in paper bags or other temporary food storage container, for inmates that miss the meals because they are out of the facility at the time of meal service.

At a minimum, these "bagged/boxed" meals shall be composed of the following: Four (4) slices of bread, two (2) ounces of meat (e.g. turkey, turkey bologna, turkey, salami, etc.), two (2) ounces of cheese, one (1) serving of fruit of consistent size/shape and weight (e.g., apple, orange, and pear), beverage and packaged condiments (e.g., mustard, mayo-type dressing, ketchup).

### **Food Quality**

The Vendor will use the following standards for purchase of raw food products: All food and beverage products used in the performance of this Agreement must be served prior to the expiration date, when so dated.

The Vendor will provide, at their expense, natural fruit juice (may be reconstituted) for special diets. A stock (minimum of one (1) quart) of the aforementioned natural fruit juice will be kept in the Jail's Medical Office for their use during emergencies.

### **Supplies and Equipment**

**Cost** - The Vendor is responsible for the cost of all supplies and equipment needed to provide food service.

**Telephone Service** – The Vendor shall be responsible for all telephone, fax lines and photocopying fees and/or machines relating to its ability to perform services under this agreement. ECSO will provide telephone service within the facilities for communication.

**Office and Work Facilities** – ECSO shall provide the Vendor with office space and utilities.

**Program Support Services**

**Administrative Meetings and Reports** – The Vendor shall coordinate monthly Medical Administrative Meetings to discuss food services. Minutes or summaries shall be maintained and distributed to all attendees with copies retained for future reference.

**Staff Meetings** – The Vendor shall conduct monthly staff meetings and maintain minutes of such meetings. Staff meetings shall include and be attended by assigned ECSO staff.

**External Reviews** – The Vendor shall prepare and participate in external reviews, inspections and audits as requested and shall participate in the preparation of responses to critiques. The Vendor shall develop and implement plans to address/correct identified deficiencies.

**Statistical Data** – The Vendor shall describe its management information system. The Vendor shall be required to keep statistical data related to the inmate food service program which shall include utilization of service statistics and other areas that the Vendor and ECSO agree would be useful to evaluate the food service program and anticipate future needs.

The Vendor shall prepare statistical reports on a monthly basis. The Vendor shall provide a narrative monthly report delineating the status of the food service program, which also identifies potential problems and discusses their resolution.

**Inmate Grievance – Complaint Policy** – The Vendor shall specify the policies and procedures to be followed in dealing with inmate complaints regarding any aspect of the food service program. This Policy must comply with the ECSO’s legal requirements for maintaining an Inmate Grievance Program pursuant to NYSCOC Standards for local correctional facilities.

The Vendor shall maintain monthly statistics of grievances filed including complaints with and without merits.

All grievance procedures shall be in accordance with the ECSO guidelines, ACA and NYSCOC regulations.

All grievances will be responded to in writing within 24 hours of its receipt. The ECSO and/or County reserve the right to review inmate grievances and the Vendor’s actions. The Vendor must implement the ECSO and/or County’s recommendations in disputed cases.

**Policies and Procedures** – The Vendor shall be responsible for the development, maintenance and annual review of administrative and operational policies and procedures. ECSO reserves the right to approve policies and procedures of the Vendor. The policies and procedures shall be designed to meet NCCHC, ACA and New York Statutes. Policies should also be congruent with the NYSCOC requirements for local correctional facilities. The policies should be site specific. The policies shall be signed and reviewed annually by the Food Service Manager, Sheriff, Jail Administrator, and Compliance Officer with additional review and congruence by the contract monitor.

**Strategic Planning and Consultation** – The Vendor shall indicate its capability for strategic operational planning and administrative consultation. The Vendor shall be involved in the planning and programming of future renovations. The Vendor shall assign a member of its staff to attend all relevant meetings pertaining to future jail construction, or renovations and the subsequent transition.

**Safety and Sanitation Inspections** – The Vendor shall coordinate monthly safety and sanitation inspections of the ECHC food service areas with designated ECSO personnel. The Vendor shall make appropriate recommendations for corrections on discrepancies or citations noted.

**Cost Containment Program** – The Vendor shall specify a detailed plan for the implementation and operation of a cost containment program. Addressed in this section shall be the mechanism(s) by which the Vendor plans to control costs, areas in which cost savings can be achieved and evidence of the success of such programs at other Vendor sites.

**Compensation**- unit of service-per meal (total actual cost includes delivery, administrative, management overhead, and the vendor's anticipated profit). Price should be based on serving 365 days a year to 450 adults at ECCF and 350 adults at ECHC.

**Reimbursement method**- fee for service **paid monthly**, based on actual meals provided. The amount can fluctuate day to day based on census.

**Funding source**: State and County Funds.

**Records and Documentation Upon Termination of Contract** – All manuals, policies and procedures, food service related records, and other records and documentation developed, purchased or maintained by the Vendor for the ECJMD, a division of the ECSO, shall remain the property of and in the custody of the ECSO without further obligation.

## **STAFFING**

The Vendor will provide a Food Service Manager to be in attendance whenever the kitchen is in operation, to assure quality performance. Either the resident Food Service Manager or the Assistant Food Service Manager will be on duty each day. Additionally, either the Food Service Manager or the Assistant Food Service Manager will be on-call twenty-four (24) hours per day in order to provide administrative backup for on-duty Vendor staff and for the purpose of contact by ECSO.

**Plan**- Vendors may submit an alternate staffing plan as an alternate bid. The expectation is that the staffing plan that is submitted by the Vendors should be sufficient to carry out the food services required to fulfill the obligations of this contract according to NCCHC, ACA and NYSCOC standards.

## **Recruitment and Credentialing**

**Recruitment** – The Vendor shall recruit and interview candidates. Priority should be given to qualified candidates that reside locally. The Vendor shall interview each candidate with a special focus on technical expertise, emotional stability, and motivation. The Superintendent or designee shall be involved in the interviewing process and final selection of the Food Service Manager candidates. Current qualified employees are to be given priority in any hiring process by the Vendor. In this regard, those current employees who wish to be considered for employment with the Vendor are to be interviewed

and considered for employment prior to the public posting or advertising for personnel to fill the open positions.

The Vendor should address the retention of current staff in its response. In order to maximize the retention of current staff that are deemed qualified and wish to continue in their current or equivalent positions, the Vendor is required by the Sheriff to carry over all leave benefits including accumulated vacation, compensatory, personal leave and sick time.

**Credentialing** – The Vendor shall specify its credentialing procedures for professional staff employed at the facility.

**Personnel Files** – Personnel files of all sub Vendors and Vendor employees shall be kept at the facility. The files shall be made available to the facility administrator, contract monitor or designee. These files shall include, but not be limited to malpractice insurance certificates, evaluations and position responsibilities.

**Turnover of Staff** – The Vendor shall describe its current food service employee turnover ratio in other contracts and shall additionally indicate specific turnover for Food Service Managers.

**On-Site Visit to Facility** – All screened candidates shall make an on-site visit to the facility prior to employment.

**Approval by County of Company's Employees** – The final selection of all employees or sub Vendors shall be subject to approval by the Vendor. Initial and continued employment of staff and sub Vendors shall be subject to approval of ECSO. ECSO reserves the right to prohibit any of the Vendor's employees and/or independent Vendors from performing service with regard to this contract.

The Vendor shall provide the names of corporate or regional management personnel assigned to this contract. A resume of the regional manager shall be included with this proposal. Any replacement personnel shall be subject to approval of ECSO.

The Vendor shall notify and consult with the Superintendent prior to discharging, removing, or failing to renew the contract of a professional staff member.

**Rejection of Vendor's Personnel** – The ECSO shall have the right to reject for use or service the employment by the Vendor of any person or firm. The Sheriff /designee reserves the right to remove from the site any person or firm employed or engaged by the Vendor when the Sheriff /designee deems it to be in its best interest of the successful implementation of its correctional food service program. The privilege of entering and/or remaining on the premises of any secured facility under the jurisdiction of the Sheriff may be revoked at any time.

**Employment Processing** – All personnel shall be required by the ECSO to pass a criminal record review conducted by the ECSO for initial and/or continued employment. Additionally, all personnel performing on-site services are required to undergo a pre-employment drug screening the cost of which is paid for by the Vendor. All candidates successfully cleared through this process may be considered eligible for hire. In addition, the Vendor will detail in its proposal the hiring process to be utilized and a method to provide information regarding the individuals previous work history and credentials required to fulfill the duties of the position to be filled.

**Facility Security** – The Vendor and its personnel shall be subject to and shall comply with all security regulations and procedures of the County and ECSO. Violations of regulations may result in the employee being denied access to the ECHC.

In this event, the Vendor shall provide alternate personnel to supply services, described herein, subject to the ECSO's approval. The ECSO shall provide security for the Vendor's employees and agents consistent with security provided to other ECSO employees and/or visitors.

**Compliance with State and Federal Statutes** – All personnel shall comply with current and future state, federal, and local laws and regulations, court orders, administrative directives, ECSO directives, ACA standards, NCCHC standards, NYSCOC standards, Chairman's Memorandums, and policies and procedures of the ECJMD.

**Employee Training and Orientation** – The Vendor shall describe the orientation program for its staff. The Vendor shall be responsible for ensuring that all new food service personnel are provided with orientation and appropriate training regarding food service practices on-site at the ECHC. An outline of the orientation and in-service program shall be submitted with the proposal. Orientation regarding other ECSO operations shall be the responsibility of the ECSO.

**Staff Security Orientation** – The Vendor's new employees are required to attend an orientation program conducted by the ECSO consisting of security, classification, blood borne pathogen, CPR and First Aid before their first job assignment. The Vendor shall be responsible for the employee compensation during this training.

**Non-Compete Agreements** – The Vendor is prohibited from entering into covenants with "Not to Compete" or "Non-Competition" clauses with either employees or independent vendors, or any party specifically related to the performance of any obligation required under this agreement, which would prohibit said independent Vendor or employee from competing, directly or indirectly, in any way with the Vendor. For the purpose of this paragraph, the term "competing directly or indirectly in any way with the Vendor" shall mean the entering into or attempting to enter into any similar business with that carried on by the Vendor with any individual, partnership, corporation, or association that was or is the same or related business as the Vendor.

**Staffing and Schedules** – All hours shall be spent on-site at the ECHC, except as otherwise expressly agreed to by the Superintendent and the Vendor. ECHC staffing work schedules may be modified upon the parties' mutual agreement and written consent. Copies of staff schedules will be provided to the Superintendent on a monthly basis, one (1) week prior to the start of the month. An accounting of actual days/hours worked by staff will be provided to the Superintendent on a monthly basis at the end of each month. Approved automated systems may be utilized for the purpose of these required reports.

A full-time contractual staff compliment shall be on-site for at least forty (40) hours per week. A forty (40)-hour, on-site week shall consist of a forty (40)-hour work schedule and an additional one-half (1/2) hour unpaid meal period for each shift.

The Vendor's staff shall administer the food service management at the ECHC. The staff shall not be reassigned to assist with problems associated with any other contracts. The Food Service Manager shall be responsible for overseeing the maintenance of food service records, scheduling of off-site appointments, ordering of food, supplies, and equipment.

All staff (employees, contractual and those employed by the Vendor) shall be required to comply with sign-in and sign-out procedures on a mutually agreed upon timekeeping form. The Vendor shall be permitted to substitute an automated time clock system or other method, which is subject to the approval of the ECSO.

**Employee Benefits** – The Vendor shall specify how they intend to cover periods of absences caused by vacations, holidays, and sick leave, and shall state what relief factor (if any) was computed into their staffing ratio. The Vendor should state whether positions in their proposal are to be covered by full or part time personnel.

The Vendor shall include a synopsis of their benefit programs as an appendix to this proposal. The Vendor should describe its vacation, sick time, and leave policy and information regarding medical insurance coverage.

**Staffing Shortage Penalties** – The Vendor shall agree to issue the ECSO the appropriate financial credit consisting of an hourly salary and fringe benefits for all hours relating to each incidence that a position is not covered or remains vacant. Adjustments shall be made on a monthly basis. If the position of Food Service Manager is left vacant for a period of greater than thirty (30) days, the Vendor shall pay one and a half (1.5) times the salary rate per hour times the number of hours the position was left vacant after thirty (30) days.

**Staff Leave Time** – The Vendor shall also make provisions in their staffing plan to cover periods of vacation, staff training and education or sick time by including appropriate relief factors and per diem staff. The Vendor shall specify in their staffing plan what relief factors and how many staff shall be included in their staffing plan. Deductions for vacation, sick time or education leave shall occur after three (3) consecutive days of absence of staff.

## **OPERATIONS**

### **Meal Times**

Inmate meals will be provided three (3) times per day, seven (7) days per week, fifty-two (52) weeks per year, including leap years. Meals will generally be served during the following times, and will be served in compliance with Part 7009.6 of the NYS Minimum Standards and Regulations for Management of County Jails and Penitentiaries:

Breakfast: 0500 – 0600 hrs.

Lunch: 1100 – 1200 hrs.

Dinner: 1630 – 1730 hrs.

No more than fourteen (14) hours are permitted between the evening meal and breakfast meal on the following day.

### **Meal Service**

There is no inmate dining area at the ECHC. All meals are delivered to the housing unit at the respective meal times for consumption. The Vendor will provide insulated meal carts for the transportation of meals to the housing units.

Facility security staff will verify meal counts, inspect all carts for contraband, and supervise the timely and sanitary distribution of meal carts to inmate housing units for consumption. The Vendor is



responsible for supervision of the physical delivery and retrieval of meal carts from all Housing Areas (or any other area of the facility where meals are served) within ECHC.

Upon completion of meal service, facility security staff will receive meal carts returned from housing units, inspect/count trays & utensils to ensure all trays/utensils are returned to the kitchen and no contraband is present.

The Vendor will ensure all used trays are emptied, washed, sanitized, and stored in proper location by ECSO staff.

The Vendor will ensure that food service equipment, counters, and floors are cleaned and sanitized following meal service by ECSO staff.

### **Advertising**

The Vendor will follow all ECSO and County regulations, rules, and standards.

The Vendor will obtain prior approval from the ECSO for the use of any item with any logo, design, lettering, or advertising of any type on items such as papers plates, cups, or portion-controlled packets of any kind.

### **Use of Signs**

No signs, advertisements, notices, or pictures of any kind will be painted, inscribed, or affixed to any part of the premises, or any part of the buildings, without prior approval of the Sheriff. The Vendor vehicles may have the Vendor's name and address painted on the doors.

### **Procedures for Processing Complaints**

The Vendor will make note of any and all complaints and report them immediately to the Sheriff/designee. The Sheriff/designee will determine if they are to be initially investigated by the ECSO or the Vendor. Should the Sheriff/designee determine the initial investigation is to be handled by the Vendor; the Vendor will follow their policies as outlined in the Vendor's proposal.

The Vendor's Food Service Manager will act upon all complaints.

The Vendor agrees that if any litigation, claim or audit involving these records begins before the above period expires, and the Vendor will keep the records and documents for not less than six (6) years and ninety (90) days and/or until litigation claims or findings are resolved. The case is considered resolved when there is a final order issued in litigation, or a written Agreement is entered into.

### **Emergency Contingency Plan**

The Vendor will continue to provide services under the Emergency Contingency Plan outlined in the Vendor's proposal should an event occur that may curtail or impact the normal operation of the facility, including but not limited to lockdowns, strikes by the Vendor's employees, natural disasters, riots, fire, power failure or kitchen shut down.

The Vendor will continue to provide three (3) meals per day at the regular times. All meals will continue to meet the health and dietary requirements outlined in this Agreement.

Any facility outside of ECHC used by the Vendor to prepare meals, will maintain its health certification, while operating under this Agreement. Additional costs incurred by the Vendor during an emergency (as determined by the Sheriff) will be charged to the ECSO at the Vendor's cost.

The Vendor will have on site, at all times, sufficient commodities to provide for, not less than fourteen (14) days of three (3) complete meals, in case of emergency for both inmates and staff.

### **Surplus Commodities**

Erie County may qualify to receive Surplus Commodities from the U.S. Department of Agriculture. There is no guarantee as to what, if any, commodities will be available during the life of this Agreement. The Vendor will utilize USDA commodities available to Erie County.

Federal regulations permit a Vendor's use of Surplus Commodities in providing food service in prisons, jails, and detention centers. However, the Vendor will assume all costs, both direct and indirect, in procuring such commodities and in complying with the rules and regulations of the U.S. Department of Agriculture, specifically:

- The Vendor agrees that any USDA commodities received on behalf of Erie County will only benefit Erie County and will be utilized only in the performance of the Agreement. The Vendor will maintain all financial and supporting documents, statistical records, and any other records pertinent to the use of the USDA surplus commodities program. The records and documents will be available for the duration of this Agreement and for a minimum of six (6) years and ninety (90) days after the termination of this Agreement.
- Any Surplus Commodity or food provided for the facility will be credited on the next month's invoices. Credit will be separately stated on the invoice and will be calculated on the fair market value of the commodities received less shipping expenses.

### **Energy Conservation**

The Vendor's work force will perform services in such a manner as to conserve electricity, gas, and water as part of the scope of operations under the Agreement.

### **Sanitation**

The Vendor will ensure ECSO staff sanitizes the entire food service department (kitchen, storeroom, and break room area) and maintains in a clean and sanitary condition in complete compliance with Federal, State, and local standards, including but not limited to the regulations promulgated and enforced by the ECSO.

The Vendor will successfully pass all required health and sanitation inspections whether by County, State, or Federal officials with a Grade "A" or "equivalent" numerical score. Any costs incurred by ECSO due to Vendor's failure to pass any required health and sanitation inspections will be the responsibility of the Vendor.

ECSO will collect and dispose of all rubbish, garbage, litter, or other waste in accordance with ECSO & ECJMD policies.

ECSO will be responsible for proper removal of trash and garbage within a reasonable amount of time after completion of each meal from the premises.

ECSO will provide dumpsters and will be responsible for having them emptied. The Vendor's Food Service Manager will participate in periodic facility inspections with the Sheriff/designee. The Vendor will establish hazardous chemical logs and comply with all applicable laws and standards concerning the use, storage and handling of hazardous substances and chemicals. This includes MSDS regulations.

The Vendor agrees to submit to inspections by the Sheriff/designee and by County Health Department, State Health Department or other similar County, State, or Federal agencies upon the request of the Sheriff/designee.

The Vendor will require all employees on all shifts to have Federal, State, or County Food Service Sanitation Certification when required by any such agency.

The Vendor will not allow disposal of grease in drains. Grease will be disposed of in accordance with local health codes and the collection and removal of grease will be accomplished by an independent hauler, at the Vendor's expense.

All chemicals, supplies, and other materials required for the proper sanitation will be provided by the Vendor. The use of any chemical will be subject to prior approval by the Sheriff/designee.

### **Reports and Records**

The Vendor will provide a weekly report indicating the number of daily meals served to inmates and ECSO staff. The report will be broken down into categories by the three meal times, by housing locations, regular meal, and facility staff meals.

The Vendor will provide training reports when applicable.

### **Management Meetings**

At the end of each quarter during the term of this agreement, the Vendor will send the Vendor's Regional Manager to the facility to meet with the Sheriff/designee to discuss the following areas to include but not be limited to:

- Food portion sizes
- Menu compliance (amount and product, completeness)
- Food temperature and other health and safety issues
- Complaints/concerns

A written report will be submitted within two (2) weeks of the above referenced meeting by the Vendor.

## **PERFORMANCE ADJUSTMENTS**

### **Failure to Pay Invoices**

Repeated failure to pay invoices within sixty (60) days of receipt or to have an agreement with a subcontracted company for payment may result in termination of the contract.

### **General Requirements for Proposed Vendors**

The Vendor will return to ECSO, at the expiration of this Agreement, the food service premises and all equipment furnished by ECSO in the condition in which received except for ordinary wear and tear and except to the extent that said premises and equipment may have been lost or damaged by fire, flood, or unavoidable occurrences and except to the extent that said equipment may have been stolen by persons other than employees of the Vendor without negligence on the part of the Vendor or its employees and providing that all damages and losses are reported to the Sheriff/designee, in a timely manner, for all items covered by this paragraph.

### **Stock of Food on Hand**

The Vendor may purchase all useable and wholesome food products and all supplies, chemicals, and miscellaneous items used by ECSO in the operation of the Food Service Department. ECSO and Vendor will inventory all products prior to beginning service. Said value will be mutually agreed upon by both parties.

Thirty (30) days prior to the termination of this Agreement, Vendor will notify the Sheriff/designee of its intent to sell the remaining inventory, which at the ECSO's option, may be purchased at fair market value.

### **Transition and Continuity of Service of Expiration of Contract**

Continuity of service is critical to ECSO. The successful Vendor must agree to this philosophy and upon expiration of the Agreement agree to:

- Exercise best efforts and cooperation for an orderly and efficient transition of the food service to a new Vendor or to ECSO. There will be no interruption of service.
- Negotiate a plan in good faith, with the successor to determine the nature and extent of the phase-in, phase-out services required. The plan will specify a date for service transition as described in the plan and shall be subject to the Sheriff's approval. The Vendor will provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for in this Agreement are maintained at the required level of proficiency.
- There will be a ninety (90) day termination clause whereas either ECSO or the awarded Vendor can cancel the contract with ninety (90) days prior written notice. Written notice should be directed to the Sheriff and to a designated representative of the Vendor.

### **ECSO Supplied Services**

ECSO will provide, install, maintain, repair, replace if necessary and permit the Vendor to use all mechanical food service equipment. Repairs required as a result of misuse or abuse or negligence by Vendor's personnel will be paid by the Vendor. In the event repairs are required, the Vendor will immediately notify the appropriate ECSO personnel.

ECSO will provide general maintenance to the building structure including but not limited to, the maintenance of, water, sewer, ventilation, lighting, air conditioning, refrigeration, duct work, floor coverings, and wall and ceiling surfaces.

The Vendor will not make any alterations to, additions to, or removal of any walls, windows, floors, ceilings, doors, equipment, or fixtures, without the prior written approval of the Sheriff/designee. Windows and other openings will not be covered with any blinds or drapes without prior written approval of the Sheriff/designee.

The Vendor will call to the Sheriff/designee's attention any equipment or items that need repair or replacement. The Vendor will ensure all employees exercise due care in the use of such equipment.

### **Security**

The Vendor and the ECSO understand that security services are necessary for the safety of the agents and employees, as well as for the security of inmates and facility staff. The Sheriff/designee will provide security services sufficient to enable the Vendor and its personnel to safely provide the food services as outlined in the Agreement.

The Sheriff/designee reserves the right to observe the Vendor's operations and inspect the kitchen and laundry related areas at any time without notice to the Vendor. The Vendor will abide by any and all of the ECSO rules and regulations, procedures and General Orders, as well as any directive by the Sheriff/designee regarding the Vendor's performance under this Agreement.

ECSO will have the sole right, at any time, to reject any such employee who, in the ECSO judgment, poses a risk or potential risk to the security or operations of the facility. ECSO reserves the right to require all of the Vendor's employees, Vendors, and sub Vendors to submit to photographing, fingerprinting, and urinalysis testing, at the Vendor's sole expense. Persons not previously screened for admittance will not be admitted to the facility without proper notification by the Vendor and authorization from the ECSO.

Any unusual occurrences will be reported immediately by the Vendor's supervisors to the ECSO's staff. It will be the responsibility of the Vendor to secure its assigned areas and lock all doors before exiting the facility, unless directed by the ECSO's staff.

The Vendor will abide by the ECSO policies that individuals with outstanding felony or misdemeanor warrants will be denied access to the facility and will be reported to Law Enforcement. The Vendor will immediately bring to the attention of the Sheriff any employees with outstanding felony or misdemeanor warrants.

The Vendor and ECSO agree to provide for its employees, and cause its sub Vendors to provide for their employees, a drug free workplace. The Sheriff/designee will possess the sole discretion to deny any person access to the facility.

The Sheriff/designee will have control of all perimeter keys, locks, and security. The Vendor will have keys and access to those areas where food and supplies are stored and processed to be determined by ECSO.

The Vendor will have control of and access to the kitchen, storeroom and break area except for matters related to security, fire protection, and building repair; in these specific instances, the Sheriff/designee will have absolute control and will maintain a master set of all keys.

### **Working Within Secured Areas**

#### **Security**

Six (6) weeks prior to the commencement of work, the Vendor will supply a completed ECSO background investigation packet for all employees and sub Vendors assigned to work at the ECHC. Background investigations will be performed by ECSO for the purpose of obtaining security clearance for entrance into the ECHC.

#### **Notice Warning**

Any person who takes or attempts to take into, or out of the ECHC, including the grounds, belonging to or adjacent to each facility, any item not specifically authorized by either facility, will be prosecuted under the provisions thereof.

All persons, including employees and visitors, entering upon these confines are subject to routine searches of their persons, vehicles, property, and packages.

## **Contraband**

Contraband will mean any dangerous drug, narcotic drug, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive, cell phones, tobacco or tobacco products, or any other article whose use of or possession would endanger the safety, security, or preservation of order in a correctional facility or any person therein. (Any article includes any substance that could cause abnormal behavior, i.e., marijuana, nonprescription medication, etc.) Punishable under NYS Penal Law 205.20, 205.25. Cell phones are considered contraband and are not permitted in the facility. The jail security personnel may conduct searches of the Vendor's personnel, equipment, tools, and supplies at any time. Use of cameras and recording devices by the Vendor's personnel is strictly prohibited

A person, not otherwise authorized by law, commits promoting contraband in the ECHC:

- By knowingly taking contraband into facility;
- Or by knowingly conveying contraband to any person confined in a facility;
- Or by knowingly making, obtaining, or possessing contraband while being confined in a facility.

The Vendor will provide the Superintendent with a complete list of all persons duly authorized to work under this Agreement. Only those persons will be allowed to work within the facility. All personnel that are employed by the Vendor and authorized to work within the facility will be subject to a criminal security check performed by the ECSO.

ECSO may issue temporary identification cards to Vendor's employees which they will be required to wear at all times while on facility property. Cards will be returned to the Central Control area at both facilities and reissued to Vendor's employees each day.

Certain areas of both facilities where work needs to be performed within certain areas may require an officer escort. These areas will not be entered into without an officer escort. Work within these areas may also be restricted to spaces that can be observed by an officer escort.

There are no designated parking areas outside the ECHC for personal vehicles owned by Vendor's staff.

Delivery trucks will be admitted to receiving areas only by the request of the Vendor, and under the supervision of the facility staff. The Vendor will immediately load or unload trucks and remove them from secured areas. Delivery hours are from 7:00 am – 2:00 pm, Monday – Friday only.

The Vendor's staff will not talk to, signal, whistle, or in any way attract the attention of inmates outside of the kitchen area and will restrict their movements to the food service area other than entering for or leaving upon completion of work (restricted to main hallway to exit). Nothing will be taken from or given to an inmate. The Vendor's staff will promptly notify their supervisor and the jail's security personnel of all unusual happenings pertaining to the inmates.

## **Accounting**

Vendor shall be responsible for the collection, retention and accounting of all monies for sales of the selected customer services.

Vendor shall maintain financial procedures and record keeping in accordance with generally accepted accounting principles, and shall make said financial records and supporting documents available for inspection, reproduction and audit by ECSO or its auditors upon request.

Vendor shall provide a quarterly electronic report of all key sales/service activities (i.e., sales by category of products & services).

Vendor shall be able to accept electronic funds transfer (ACH) and ECSO standard payment terms of Net 30 (N30).

#### **CONTRACT PERIOD & OPTION TO EXTEND**

ECSO intends to enter into a contract agreement with the successful proposer for a one (1) year period with the option to renew in one (1)- year increments.

All pricing must remain firm for a period of one (1) year (twelve (12) consecutive months) from the ratification of the contract document. New and replacement items will be at fair market pricing.

## **SECTION 3 – SPECIFIC PROPOSAL REQUIREMENTS**

### **PROPOSAL SUBMISSION DOCUMENTATION REQUIRED**

Please address the following areas of inquiry in your written response. You may include additional information at your discretion. Your proposal MUST include the following four (4) sections tabbed with dividers separating each section in the following order:

**1. Proposal to Provide Service Cover Letter**

**2. Company Profile**

- a. Company's information.
  - i. Name, title, and email address of the primary contact for your RFP submission.
  - ii. List full-service offices/addresses, leading with the primary office that would serve ECSO account.
  - iii. If applicable, list affiliates. Explain in detail the services provided.
  - iv. State if your company is public or private.
- b. Experience/Company History
  - i. List three (3) clients having a similar scope of work as ECSO demonstrating the agency's ability to:
    1. Review outcomes and meet performance measures;
    2. Maintain adequate staffing levels with trained staff;
    3. Meet required timeframes;
    4. Demonstrate leadership and proactive involvement in planning procedures;
    5. Communicate within the agency and with ECSO;
    6. Understand laws and meet regulatory expectations;
    7. Include contact information and tenure of each similar client. ECSO may elect to contact and/or visit these clients at their discretion.
  - ii. List major accounts having a similar scope of work as ECSO that your company has lost or resigned over the past two (2) years. Comment on why your company lost or resigned these accounts.
  - iii. Indicate if your company is currently or has ever done business with ECSO in the past. If yes, list the dates of service, location and contacts.
  - iv. State how many micro markets your Company currently operates.

- c. Listing of Officers and Board of Directors
  - i. Including regional and county representation
  - ii. Provide brief biographies/resumes of your senior management team, executives and managers who would be assigned to the ECSO on a day-to-day basis.
  - iii. Describe your proposed team structure, including an organizational chart of your regional and local operations team servicing ECSO micro market.
- d. Most recent Management Letter
- e. Most recent Audit report prepared by an independent CPA<sup>1</sup>
- f. Litigation history of the Company. Provide a list of any claims brought or judgments rendered against the company as a result of litigation involving inmate medical care within the last three (3) years. At a minimum, provide the amount of the judgments and a brief description of the circumstances regarding the judgments.

### **3. Scope of Services**

- a. Describe your company's client implementation process. Include process steps and suggested time frames for each step as well as a sample transition timeline used to move current properties and assets from their respective supplier(s) to your company.
- b. Describe in detail how your company provides each one of the following services, and note if the service is outsourced to a 3rd party if so, provide name and location of facility currently providing the service for your company:
  - i. Account Management
  - ii. Customer Service (i.e., call center and hours of operation)
  - iii. Technology solutions (i.e., surveillance cameras, POS kiosks)
  - iv. Health and Wellness Programs
  - v. Marketing/Promotional Programs
  - vi. Sustainability and Social Responsibility Programs
  - vii. Reporting Capabilities
  - viii. Current Certifications that apply to this RFP event- Insurance Certificates: Each Proposer must supply a copy of their current Certificate of Insurance showing the insurance coverage at or above those described in Section 4 of this RFP.
  - ix. Food safety initiatives
  - x. Food production capabilities:
    - 1. Do you produce your own food items?
    - 2. What percentage is in-house produced versus purchased from outside suppliers?
  - xi. What sets you apart from your competition?

### **4. Cost Proposal**

- a. Signed Fiscal Form
- b. Budget Form
  - i. All prices and notations shall be written in ink or typed.
- c. For all exceptions to the Standard Erie County Contract, the Proposer must indicate on a separate sheet labeled "Exceptions Taken to the Standard Erie County Contract", the section number of any requirement to which an exception is being taken and an explanation of their position. It is not intended that new contract wording be proposed by the Proposer, but rather that the Proposer explain their position so that the conflict



can be evaluated. If no exceptions are noted, the Proposer is presumed to have agreed with all sections of the standard contract.

<sup>1</sup>The latest tax return may be submitted in lieu of the audit report and/or management letter.

### **Items of Note**

1. Proposals submitted to the ECSO must be valid for a period of at least one hundred eighty (180) days from submission date.
2. The individual signing the Proposal must initial changes or corrections made to the Proposal.
3. Corrections and/or changes will not be permitted after the proposals have been opened.

### **Withdrawal Notification**

Proposers receiving this RFP who do not wish to submit a proposal should reply with the “No Response” form provided to be received by the indicated contact person on the form no later than the proposal submission date. This RFP is the property of the ECSO and may not be reproduced or distributed for purposes other than proposal submissions without the written consent of the Erie County Attorney.

### **Method of Evaluation**

The following criteria, not necessarily listed in order of importance, will be used to review the proposals. Erie County reserves the right to weigh its evaluation criteria in any manner it deems appropriate:

- A determination that the Proposer has submitted a complete and responsive proposal as required by this RFP.
- Proposers MUST sign the Proposal Certification attached hereto as Schedule “A”. Unsigned proposals will be rejected.
- The Proposer’s demonstrated capability to provide the services.
- Evaluation of the professional qualifications and experience of program staff.
- The Proposer’s experience in performing the proposed services.
- The Proposer’s financial ability to provide the services.
- Evaluation of the Proposer’s fee submission. It should be noted that while price is not the only consideration, it is an important one.
- Evaluation of the Proposer’s projected approach and plans to meet the requirements of this RFP.
- Proposers may be required to give an oral presentation to ECSO to clarify or elaborate on the written proposal. Any information shared by the Proposer’s presentation will be considered while scoring.
- No proposal will be accepted from, nor any agreement awarded to any Proposer that is in arrears upon any debt or in default of any obligation owed to Erie County. Additionally, no agreement will be awarded to any Proposer that has failed to satisfactorily perform pursuant to any prior agreement with Erie County.

Each proposal will undergo an initial administrative review for completeness. For a proposal to be evaluated, it must include all required documents. Upon completion of the administrative review, and at the sole discretion of the Commissioner, the Department will request any missing documentation from the Proposer and will review all documents for completeness upon receipt of the missing documents. All required documents for a complete proposal, as set forth in this RFP, must be submitted

and be completed to the satisfaction of the Department within forty-eight (48) hours of request for the proposal to be deemed responsive and eligible for Contract award.

Complete proposals will be judged by a scoring committee. The scoring committee will consist of ECSO employees. The proposal should be written so as to clearly describe the services provided to someone not familiar with service delivery.

The proposals will be scored based on the overall proposal, population and goals, program plan, performance measurement, program staffing, accessibility plans, infrastructure, collaboration, experience, MWBE/SDVOB participation, compliance with RFP requirements and fiscal components.

## EVALUATION CRITERIA

| <b>Evaluated Proposal Section</b> | <b>Weight %</b> |
|-----------------------------------|-----------------|
| Kitchen Management Services       | 20 %            |
| Nutritional Services              | 15 %            |
| Reporting Services                | 15 %            |
| Client Reference Forms            | 5 %             |
| Company Profile and Experience    | 15 %            |
| Resumes                           | 5 %             |
| Cost                              | 25 %            |

**Contract Approval Process-** Proposers must be aware that any contract resulting from this RFP is subject to prior approval by the Erie County Legislature and the Erie County District Attorney. Erie County anticipates awarding this contract on or about May 15, 2024 with services anticipated to begin June 26, 2024.

After selection of the successful Proposer, a formal written contract will be prepared by the ECSO and will not be binding until signed by both parties and, if necessary, approved by the Erie County Legislature, the Erie County Fiscal Stability Authority, and the Office of the County Attorney. **No rights shall accrue to any proposer by the fact that a proposal has been selected by ECSO for submission to the Erie County Legislature and/or if necessary, the Erie county fiscal stability authority for approval. The approval of said legislature and/or authority may be necessary before a valid and binding contract may be executed by the ECSO.**

The contract will include the submitted proposal and any subsequent agreement with the ECSO to service provision. The award period will be for a one (1)-year term, with the option to renew for additional terms, subject to annual contract renewal, contingent upon the Proposer’s successful implementation of the program, data collection, monitoring, goal attainment, and compliance with required reporting. Initial award and renewals are subject to inclusion of funding in the County Executive Recommended Budget and as adopted by the Erie County Legislature, as well as, contingent upon availability of New York State funds appropriated for this purpose.

### **Investigations**

ECSO reserves the right to conduct any investigations necessary to verify information submitted by the Proposer and/or to determine the Proposer’s capability to fulfill the terms and conditions of the

submitted proposal documents and the anticipated contract. ECSO reserves the right to visit a prospective Vendor's place of business to determine the existence of the company and the management capabilities required to administer this agreement. ECSO will not consider Proposers that are in bankruptcy or in the hands of a receiver at this time of tendering a proposal or at the time of entering into a contract.

## **SECTION 4 - GENERAL INFORMATION**

### **RESERVATION OF RIGHTS**

ECSO reserves the right to refuse any and all proposals, in part, or in their entirety, or select certain products from various Vendor proposals, or to waive any informality or defect in any proposal should it be deemed to be in the best interest of the ECSO. The ECSO is not committed, by virtue of this RFP, to award a contract, or to procure or contract for services. The proposals submitted in response to this request become the property of ECSO. If it is in its best interest to do so, ECSO reserves the right to:

- Make selections based solely on the proposals or negotiate further with one or more Proposers.
- The Proposer selected will be chosen on the basis of greatest benefit to the ECSO as determined by an evaluation committee.
- Negotiate contracts with the selected Proposers.
- Award a contract to more than one Proposer for any portion of this specification.

### **Understandings**

By submission of a proposal in response to this RFP, the Proposer agrees to and understands:

- That any proposal, attachments, additional information, etc., submitted pursuant to the RFP constitute merely a suggestion to negotiate with ECSO and is not a bid under Section 103 of the New York State Municipal Law;
- Submission of a proposal, attachments, and additional information shall not entitle the Proposer to enter into an agreement with ECSO for the required services;
- By submitting a proposal, the Proposer agrees and understands that ECSO is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission;
- That any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents, shall not be binding against ECSO, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Erie County Legislature and the Erie County Attorney.

### **Contract Negotiation**

Negotiations may be undertaken with those Vendors whose proposals prove them to be qualified, responsible, and capable of fulfilling the requirements of this RFP. The contract that may be entered into will be the most advantageous to the ECSO, as determined by price and other factors considered. The ECSO reserves the right to consider proposals or modifications thereof received at any time before a contract is awarded, if such action is in the best interest of the ECSO. Attached to this RFP and listed as "Appendix A" is a copy of Erie County's standard agreement which contains mandatory provisions.

### **Acceptance of Proposal Content**

The contents of the proposal of the successful Vendor may become contractual obligations, should a contract ensue. Failure of a Proposer to accept these obligations may result in cancellation of the award.

### **Prime Responsibilities**

The selected Vendor will be required to assume responsibility for all services offered in its proposal whether or not provided by them. The selected Vendor will be liable, both individually and severally, for the performance of all obligations under the awarded contract and will not be relieved of non-performance of any of its sub Vendors.

Further, ECSO shall approve all sub Vendors and will consider the selected Vendor to be the sole point of contact with regard to the contractual matters, including payment of any and all charges resulting from the contract.

### **Property Rights**

For purposes of this RFP and for the contract, the term “work” is defined as all data, records, files, information, and work products generated in connection with the services to be provided by the Vendor. ECSO and the Vendor intend that the contract is for services and each considers the work and any and all documentation/other products and results of the services to be rendered by the Vendor to be work made for hire. In submitting a proposal in response to the RFP, the Vendor acknowledges and agrees that the work (and all rights therein) belongs to and shall be the sole and exclusive property of the ECSO.

The Vendor and their employees shall have no rights in or ownership of the work and any and all documentation or other products and results of the services or any other property of the ECSO. Any property or work not specifically scheduled in the contract, as property of the Vendor shall constitute property of the ECSO.

In addition to compliance with the right to audit provisions of the contract, the Vendor must deliver to the ECSO, no later than the twenty-four (24) hours after receipt of the ECSO’s written request for same; all completed, or partially completed work and any and all documentation or other products and results of the services under such contract. The Vendor’s failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of the contract. With the prior written approval of ECSO, this twenty-four (24) hour period may be extended for delivery of certain completed or partially completed work or other such information, if such extension is in the best interest of the ECSO.

The Vendor will not make or retain any copies of the work or any and all documentation/other products and results of the services provided under such contract without the prior written consent of the ECSO.

### **Contract Payment**

Actual terms of payment will be the result of agreements reached between ECSO and the Vendor selected.

### **News Release**

News releases pertaining to this RFP or the services to which it relates will not be made without prior approval by the ECSO and then only in coordination with the ECSO Public Information Officer.

### **Independent Price Determination**

By submission of a proposal, the Vendor certifies, and in case of a joint proposal, each party thereto certifies as to its own organization, that in connection with the proposal:

- The process in the proposal has been arrived at independently without consultation, communication, or agreement, with any other Proposer or competitor for the purpose of restricting competition; and
- No attempt has been made or will be made by the Vendor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Each person signing the proposal certifies that:

- He/she is the person in the Vendor's organization responsible within that organization for the decision as to prices being offered in the proposal.

### **Incurring Costs**

ECSO is not liable for any costs incurred by Proposers prior to the effective date of the contract.

### **Material Submitted**

All rights, titles and interests in the material submitted by the Vendor as part of the proposal shall vest in ECSO upon submission of the Vendor's proposal to ECSO without any obligation or liability by ECSO to the Vendor. ECSO has the right to use any or all ideas presented by a Vendor.

ECSO reserves the right to ownership, without limitation, of all proposals submitted, however, because ECSO could be required to disclose proposals under the New York Freedom of Information Law (Public Officers Law 84-90), ECSO will, to the extent permitted by law; seek to protect the Proposer's interest with respect to any trade secret information submitted as follows:

- Pursuant to Public Officers Law 87, ECSO will deny public access to Proposer's proposal to the extent the information constitutes a trade secret, and explains how disclosure would cause harm to the Proposer's competitive position.

However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the Proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall: a) insert the following notice in the front of the proposal:

"Notice: The data on pages XX of this proposal identified by an asterisk (\*) contains technical or financial information constituting trade secrets or information, the disclosure of which would result in substantial injury to the Proposer's competitive position.

The Proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that ECSO considers proper under the law. If ECSO enters into an agreement with this Proposer, ECSO shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law."

And b) Clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page **"\*THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW."**

ECSO assumes no liability for disclosure of information so identified, provided that ECSO has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal, which is accepted by the ECSO, except portions “Protected from Disclosure”, may become part of any agreement resulting from this RFP.

### **INSURANCE REQUIREMENTS**

The Vendor shall procure and maintain at this own expense until final completion of the work covered by the contract, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided, issued by insurance companies authorized to do a business in the State of New York, covering all operations under the Contract whether performed by the Vendor or by sub Vendors.

The successful Proposer shall furnish to ECSO a certificate(s) of insurance in a form satisfactory to the Erie County Attorney showing that has complied with all insurance requirements set forth in the contract for services, that certificate(s) shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to ECSO. Except for Worker’s Compensation Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the Contract resulting from this proposal solicitation.

### **The types and amounts of insurance are as follows:**

CLASSIFICATION C:  
PROFESSIONAL SERVICES  
COUNTY OF ERIE  
STANDARD INSURANCE REQUIREMENTS

#### **Proposer Insurance Classification C: Contracts Involving Professional Services**

A. Commercial General Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$2,000,000 Products – Completed Operation Aggregate. The coverage shall include:

- Premises and Operations
- Products and Completed Operations
- Independent Contractors
- Contractual Liability (sufficient to cover all liability assumed under contracts with Erie County)

B. Automobile Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 each occurrence. The coverage shall include Owned, Hired, and Non-Owned Autos (Symbol "1" should be designated for Liability coverage on the Business Auto Policy).

C. Excess "Umbrella" Liability - with a minimum limit of \$1,000,000 each occurrence / \$1,000,000 aggregate.

D. Worker's Compensation and Employer's Liability - providing statutory coverage in compliance with the Worker's Compensation Law of the State of New York (Forms C-105.2; SI-12; GSI-105.2; or U-26.3).

E. Disability Benefits - providing statutory coverage in compliance with the New York State Disability Benefits Law (Forms DB-120.1 or DB-155).

F. Professional Liability (Errors and Omissions or Malpractice) – with a minimum limit of \$5,000,000.

**Failure to maintain coverage herein shall constitute a material breach of this contract and the Contractor shall suspend all work immediately upon such lapse in coverage.**

Commercial General Liability, Automobile Liability and Excess "Umbrella" Liability shall name the County of Erie and any Board, Bureau, Commission or Agency thereof as additional insureds on ISO Form CG 2010 1185 Edition. Coverage should be provided on primary and non-contributory bases. Waiver of Subrogation is required on all lines in favor of Erie County.

All policies in which the ECSO is named as an additional insured shall provide that:

A. The insurance company or companies issuing the policies shall have no recourse against ECSO for payment of any premiums or for assessments under any form of policy.

B. The insurance shall apply separately to each insured (except with respect to the limit of the liability).

Prior to cancellation, non-renewal or material change of the above policies, at least forty-five (45) days advance written notice shall be given to the County of Erie, Department of Law, 95 Franklin Street, Room 1634, Buffalo, N.Y. 14202, and the Agency requesting the certificate.

All certificates of insurance shall be approved by the Erie County Department of Law prior to the inception of any work.

The "ACCORD" form certificate may be used in place of the Erie County Standard Insurance Certificate, provided that all of the requirements set forth in the instructions for the Erie County Standard Insurance Certificate are incorporated into the "ACCORD" form certificate.

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COUNTY OF ERIE

STANDARD INSURANCE REQUIREMENTS

PROPOSER INSURANCE CLASSIFICATION D:

Contracts Involving the Leasing of County Property to Others or the Use of County Facilities or Grounds

1. The Lessee shall obtain, at its own cost and expense, the following insurance coverages with insurance companies licensed in the State of New York and shall provide a certificate of insurance as evidence of such coverages on the County of Erie Standard Insurance Certificate.

A. Commercial General Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$2,000,000 Products – Completed Operation Aggregate. The coverage shall include:

- Premises and Operations
- Products and Completed Operations
- Independent Contractors

- Contractual Liability (sufficient to cover all liability assumed under contracts with the County of Erie)
- Liquor Law Liability

B. Automobile Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 each occurrence. The coverage shall include Owned, Hired, and Non-Owned Autos (Symbol "1" should be designated for Liability coverage on the Business Auto Policy).

C. Excess "Umbrella" Liability - with a minimum limit of \$5,000,000 each occurrence / \$5,000,000 aggregate.

D. Worker's Compensation and Employer's Liability - providing statutory coverage in compliance with the Worker's Compensation Law of the State of New York (Forms C-105.2; SI-12; GSI-105.2; or U-26.3).

E. Disability Benefits - providing statutory coverage in compliance with the New York State Disability Benefits Law (Forms DB-120.1 or DB-155).

**Failure to maintain coverage herein shall constitute a material breach of this contract and the Contractor shall suspend all work immediately upon such lapse in coverage.**

2. Commercial General Liability, Automobile Liability and Excess "Umbrella" Liability shall name the County of Erie and any Board, Bureau, Commission or Agency thereof as additional insureds on ISO Form CG 2010 1185 Edition. Coverage should be provided on primary and non-contributory bases. Waiver of Subrogation is required on all lines in favor of Erie County.

3. All policies in which ECSO is named as an additional insured shall provide that:

A. The insurance company or companies issuing the policies shall have no recourse against the County of Erie for payment of any premiums or for assessments under any form of policy.

B. The insurance shall apply separately to each insured (except with respect to the limit of the liability).

4. Prior to cancellation, non-renewal or material change of the above policies, at least forty-five (45) days advance written notice shall be given to the County of Erie, Department of Law, 95 Franklin Street, Room 1634, Buffalo, N.Y. 14202, and the Agency requesting the certificate.

5. All certificates of insurance shall be approved by the Erie County Department of Law prior to the inception of any work.

6. The "ACCORD" form certificate may be used in place of the Erie County Standard Insurance Certificate, provided that all of the requirements set forth in the instructions for the Erie County Standard Insurance Certificate are incorporated into the "ACCORD" form certificate.

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 COUNTY OF ERIE  
 STANDARD INSURANCE REQUIREMENTS  
 PROPOSER INSURANCE CLASSIFICATION E: CONTRACTS WITH CONCESSIONAIRES



1. The Concessionaire shall obtain, at its own cost and expense, the following insurance coverage with insurance companies licensed in the State of New York and shall provide a certificate of insurance as evidence of such coverages on the County of Erie Standard Insurance Certificate.

A. Commercial General Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$2,000,000 Products – Completed Operation Aggregate. The coverage shall include:

- Premises and Operations
- Products and Completed Operations
- Independent Contractors
- Contractual Liability (sufficient to cover all liability assumed under contracts with the County of Erie)
- Liquor Law Liability

B. Automobile Liability - with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 each occurrence. The coverage shall include Owned, Hired, and Non-Owned Autos (Symbol "1" should be designated for Liability coverage on the Business Auto Policy).

C. Excess "Umbrella" Liability - with a minimum limit of \$5,000,000 each occurrence / \$5,000,000 aggregate.

D. Worker's Compensation and Employer's Liability - providing statutory coverage in compliance with the Worker's Compensation Law of the State of New York (Forms C-105.2; SI-12; GSI-105.2; or U-26.3).

E. Disability Benefits - providing statutory coverage in compliance with the New York State Disability Benefits Law (Forms DB-120.1 or DB-155).

**Failure to maintain coverage herein shall constitute a material breach of this contract and the Contractor shall suspend all work immediately upon such lapse in coverage.**

2. Commercial General Liability, Automobile Liability and Excess "Umbrella" Liability shall name the County of Erie and any Board, Bureau, Commission or Agency thereof as additional insureds on ISO Form CG 2010 1185 Edition. Coverage should be provided on primary and non-contributory bases. Waiver of Subrogation is required on all lines in favor of Erie County.

3. All policies in which the County of Erie is named as an additional insured shall provide that:

A. The insurance company or companies issuing the policies shall have no recourse against the County of Erie for payment of any premiums or for assessments under any form of policy.

B. The insurance shall apply separately to each insured (except with respect to the limit of the liability).

4. Prior to cancellation, non-renewal or material change of the above policies, at least forty-five (45) days advance written notice shall be given to the County of Erie, Department of Law, 95 Franklin Street, Room 1634, Buffalo, N.Y. 14202, and the Agency requesting the certificate.

5. All certificates of insurance shall be approved by the Erie County Department of Law prior to the inception of any work.

6. The "ACCORD" form certificate may be used in place of the Erie County Standard Insurance Certificate, provided that all of the requirements set forth in the instructions for the Erie County Standard Insurance Certificate are incorporated into the "ACCORD" form certificate.

**PROPOSAL CERTIFICATION**

The Proposer must certify that all material, supervision, and personnel will be provided as proposed, at no additional cost above the proposal price. Any costs not identified and subsequently incurred by ECSO must be borne by the Vendor. This certification is accomplished by having the Proposal signed by an individual who has the authority to bind the Vendor.

**ALL PROPOSALS SHALL BE CONSIDERED FINAL WHEN RECEIVED.**

## APPENDIX A – STANDARD ERIE COUNTY CONTRACT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by and between ERIE COUNTY, a municipal corporation, with offices at 10 & 40 Delaware Avenue, Buffalo, NY 14202, herein referred to as the “COUNTY”, and \_\_\_\_\_, with officers at \_\_\_\_\_, hereinafter referred to as the ‘PROPOSER’.

WITNESSETH:

WHEREAS, the County is desirous of obtaining the services of the PROPOSER to perform the scope of work set forth in Section 3 of the Request for Proposal (RFP) hereof, and

WHEREAS, the COUNTY issued a Request for Proposal (RFP), attached hereto as Contract Attachment “A”, and

WHEREAS, the PROPOSER has submitted a proposal, attached hereto as Contract Attachment “B” date, \_\_\_\_\_ to perform the requested services, and

WHEREAS, The County Legislature of the County of Erie by Resolution No. \_\_\_\_\_ of 2024, authorized the County Executive, or his designee, to enter into a contract for services as hereinafter described, and

WHEREAS, the PROPOSER is willing, able, and qualified to perform such services,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth the parties hereto mutually agree as follows:

### I. SCOPE OF SERVICES

The Proposer shall provide the following services for the County:

A. Provide a Food Service Management Program with onsite supervisor at the ECHC to only include purchasing of food and supplies for kitchen and to provide menus approved/signed by a Registered Dietitian licensed in the State of New York.

B. Provide a Food Service Management Program at ECCF to only include purchasing of food and supplies for kitchen and to provide menus approved/signed by a Registered Dietitian licensed in the State of New York.

### II. TERM OF CONTRACT

The term of this Agreement shall be for the period of \_\_\_\_\_ through \_\_\_\_\_. This Agreement shall remain in effect for the period specified above, unless it is terminated by either party hereto, upon 60 day’s prior written notice sent by registered or certified mail to the Erie County Executive and the Sheriff of Erie County. This notice shall be sent to the respective party at the addresses first above set forth or at such other address as specified in writing by either party. Upon termination of this Agreement, the Proposer shall have no further responsibility to the County or to any other person with respect to those services specified in this Agreement. Upon termination of this Agreement, the County shall be obligated to pay the Proposer for services only performed through the date of termination. Following such payment, the County shall have no further obligations to the Proposer under this Agreement.

### III. PAYMENT FOR SERVICES

The County agrees to pay the Proposer, and the Proposer agrees to be paid, a sum in full satisfaction of all expenses and compensation due the Proposer not to exceed

\_\_\_\_\_ (\$\_\_\_\_\_).

Payment by the County for the sum(s) herein contracted for shall be made upon the submission of properly executed Erie County claim vouchers, supported with such information and documentation necessary to substantiate the voucher, approved by the Erie County Executive, or by his/her designee, and audited by the Erie County Comptroller.

The County may audit records relating to expenses for services provided by the Proposer pursuant to this Agreement at any time during this Agreement and through and including twelve (12) months following this Agreement. The Proposer shall prepare and make available such statistical and financial service and other records requested by the County. These records shall be subject at all reasonable times to inspection, review or audit by the County, the State of New York and other personnel duly authorized by the County. These records shall be maintained for the period set forth in the State regulations.

### IV. AMENDMENTS

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

### V. INSURANCE

The Proposer will at its own expense, procure and maintain a policy or policies of insurance during the term of this Agreement. The policy or policies of insurance required are standard Worker's Compensation and Disability Insurance, if required by law; professional liability and general liability insurance (including, without limitation, contractual liability) with single limits of liability in the amount of \$1,000,000 per occurrence, and \$3,000,000 aggregate coverage; automobile liability insurance in the amount of \$1,000,000 with a minimum of \$1,000,000 each occurrence, bodily injury, and property damage. Original certificates evidencing such coverage and indicating that such coverage will not be cancelled or amended in any way without thirty (30) days prior written notice to the County, shall be delivered to the County before final execution of this Agreement and original renewal certificates conforming to the requirements of this section shall be delivered to the County at least thirty (30) days prior to the expiration of such policy or policies of insurance. The Proposer's general liability insurance shall provide for and name Erie County as an additional insured.

All policies shall insure the County for all claims arising out of the standing duly and fully qualified and licensed to do business in New York State or otherwise acceptable to the County.

If any required insurance coverage contains aggregate limits or apply to other operations of the Proposer, outside of those required by this Agreement, the Proposer shall provide Erie County with prompt written notice of any incident, protection of such insurance affords Erie County. The Proposer

shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

All policies shall insure the County for all claims arising out of the standing duly and fully qualified and licensed to do business in New York State or otherwise acceptable to the County.

If any required insurance coverage contains aggregate limits or apply to other operations of the Proposer, outside of those required by this Agreement, the Proposer shall provide Erie County with prompt written notice of any incident, protection of such insurance affords Erie County. The Proposer shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

#### Intellectual Property Rights

The Proposer accepts and agrees that language in substantially the following form will be included in the contract between the Proposer and the County:

All deliverables created under this Agreement by the Proposer are to be considered “works made for hire. If any of the deliverables do not qualify as “works made for hire”, the Proposer hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Proposer agrees to assist the County, if required, in perfecting these rights. The Proposer shall provide the County with at least one copy of each deliverable.

The Proposer agrees to defend, indemnify, and hold harmless the County for all damages, liabilities, losses, and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Proposer agrees to enable the County’s continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonable available, the deliverable will be returned.

All records compiled by the Proposer in completing the work described in this Agreement, including but not limited to written reports, source codes, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications, and all other similar recorded data, shall become and remain the property of the County. The Proposer may retain copies of such records for its own use.

#### VI. INDEMNIFICATION

The Proposer shall defend, indemnify and save harmless the County, its officers, agents, servants and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys’ fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the provision of any products by the Proposer, its agents or employees, arising for any act, omission or negligence of the Proposer, its agents or employees, or arising from any breach or default by the Proposer, its agents or employees, or arising from any breach or default by the Proposer, its agents or employees under the Agreement resulting from this RFP. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Proposer.

The Proposer accepts and agrees that language in substantially the following form will be included in the contact between the Proposer and the ECSO:

“In addition to, and not in limitation of the insurance requirements contained herein the Proposer agrees:

(a) That except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the ECSO, the Proposer shall indemnify and hold harmless the ECSO, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys’ fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Proposer or third parties under the direction or control of the Proposer; and

(b) To provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the Agreement and to bear all other costs and expenses related thereto.

Upon execution of any contract between the Proposer and the County, the Proposer will be required to provide proof of the applicable insurance coverage.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the County Attorney.

The Proposer shall defend, indemnify and save harmless the County, its Officers, agents, servants and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys’ fees and disbursements, brought against the County which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by the Proposer, its agents or employees, arising from any act, omission or negligence of the Proposer, its agency or employees, or arising from any breach or default by the Proposer, its agents or employees under the Agreement resulting from this RFP. Nothing herein is intended to relieve the County from its own negligence or misfeasance or to assume any such liability for the County by the Proposer.

#### VII. INDEPENDENT PROPOSER

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

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

#### VIII. TITLE TO WORK

A. The title to all work performed by the Proposer and any unused materials or machinery purchased by the Proposer with funds provided by the County in order to accomplish the work hereunder shall become legally vested to the County upon the completion of the work required under this Agreement.

The Proposer shall obtain from any sub Proposers and shall transfer, assign and/or convey to Erie County all exclusive, irrevocable, or other rights to all work performed under this Agreement, including, but not limited to trademark and/or service mark right, copyrights, publication rights, distribution rights, rights of reproduction, and royalties.

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

#### IX. EXECUTORY NATURE OF CONTRACT

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

#### X. NO ASSIGNMENT WITHOUT CONSENT

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

#### XI. FEDERAL SINGLE AUDIT ACT

In the event the Proposer is a recipient through this Agreement, directly or indirectly, of any funds of or from the United States Government, Proposer agrees to comply fully with the terms and requirements of the Federal Single Audit Act [Title 31 United States Code, Chapter 75], as amended from time to time. The Proposer shall comply with all requirements stated in Federal Officer of Management and Budget Circulars A-110 and A-133, and such other circulars, interpretations, opinions, rules or regulations that may be issued in connection with the Federal Single Audit Act.

Of the amount specified in Section \_\_\_\_\_ of this Agreement, \_\_\_\_\_ (for-----) of such amount or from the United States Government under the following:

Award Name:

Award Number:

Award Year:

Name of Federal Agency:

Catalog of Federal Domestic Assistance (CFDA) Number:

The Award [ ] is [ ] is not related to Research and Development.

If on a cumulative basis the Proposer expends Five Hundred Thousand and no/100 Dollars (\$500,000.00) or more in federal funds in any fiscal year, it shall retain all documents relation to the federal programs for three (3) years after the close of the Proposer's fiscal year in which any payment was received from such federal programs.

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

Erie County Comptroller  
Rath Building 11th Floor  
95 Franklin Street  
Buffalo, NY 14202

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

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

## XII. RIGHT TO INSPECT

Designated representative of the County shall have the right to monitor the provision of services under this Agreement which includes having access at reasonable times and places to the Proposer's employees, reports, books, records, audits and any other material relating to the delivery of such services. The Proposer agrees to maintain and retain all pertinent records related to this Agreement for a period of ten (10) years after final payment.

## XIII JOB OPENINGS

The Proposer recognizes the continuing commitment on the part of Erie County to assist those receiving temporary assistance to become employed in jobs for which they are qualified, and the County's need to know when jobs become available in the community. The Proposer agrees to notify the County when the Proposer has or is about to have a job opening within Erie County. Such notice shall be given as soon as practical after the Proposer has knowledge that a job opening will occur. The notice shall contain information that will facilitate the identification and referral of appropriate candidates in a form and as required by the Commission of Personnel. This would include at least a description of conditions for employment, including the job title, job description, and information concerning wages, hours per work week, location and qualifications (education and experience).

Notice shall be given in writing to:



Erie County Commissioner of Personnel  
Rath Building 6th Floor  
95 Franklin Street  
Buffalo, NY 14202

The Proposer recognizes that this is an opportunity to make a good faith effort to work with Erie County for the benefit of the community. Noting contained in this provision, however, shall be interpreted as an obligation on the part of the Proposer to employ any individual who may be referred by or through the County for job openings as a result of the above notice. Any decisions made by the Proposer to hire any individual referred by or through the County shall be voluntary and based solely upon the Proposer's job requirements and the individual's qualifications for the job, as determined by the Proposer.

#### XIV. NON-DISCRIMINATION

The Proposer agrees that in carrying out its activities under the terms of the Agreement that it shall not discriminate against any person due to such person's age, marital status, disability, genetic predisposition or carrier status, race, color, creed, sexual orientation, sex or national origin, and that at all times it will abide by the applicable provisions of the Human Rights law of the State of New York as set forth in Section 290 – 301 of the Executive Law of the State of New York.

#### XV. PROPOSER QUALIFIED, LICENSED, ETC.

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

#### XVI. CONFIDENTIAL INFORMATION

A. For the purpose of this Agreement, "Confidential Information" shall mean information or material proprietary to the County or designed as "Confidential Information" by the County, and not generally known by non-County personnel, which Proposer may obtain knowledge of or access to as a result of a contract for services within the County. The Confidential Information includes, but is not limited to, the following types of information or other information of a similar nature (whether or not reduced to writing): methods of doing business, computer programs, computer network operations and security, finances and other confidential and proprietary information belonging to the County. Confidential Information also includes any information as described above which the County obtained from another party which the County treats as proprietary or designates as Confidential Information, whether or not owned or developed by the County. Information publicly known and that is generally employed to the trade at the time that Proposer learns of such information or knowledge shall not be deemed part of the Confidential Information.

##### 1. Scope of Use

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

## 2. Nature of Obligation

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

## XVII. GENERAL PROVISIONS

This Agreement, including any attachments, amendments, addendums, or appendices attached hereto, constitutes the entire Agreement between the County and the Proposer and cancels and supersedes any and all prior Agreements, whether written or oral, with respect to the subject matter of this Agreement between the parties hereto for the services herein to be provided. No waiver, alterations or modifications of any provisions of the Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound. The Agreement shall be governed by and construed in accordance with the Laws of New York State without regard or reference to its conflict of law principles.

## XVIII. FEDERAL, STATE AND LOCAL LAW AND REGULATIONS COMPLIANCE

Notwithstanding any other provision in this Agreement, the Proposer remains responsible for ensuring that any service(s) provided pursuant to this Agreement complies with all pertinent provisions of Federal, State and local statutes, rules and regulations and will conform to said laws and regulations. The preparation of proposals, selection of Proposers and the award of contracts are subject to provisions of all Federal, State, and County laws, rules and regulations.

## XIX. USAGE OF COMPUTER AND ELECTRONIC EQUIPMENT

The Proposer acknowledges and agrees that usage of any computer hardware, computer software and/or electronic equipment used in the course of carrying out duties under this Agreement will be governed by all applicable laws, rules and regulations, including County policies and procedures.

## X. MISCELLANEOUS

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the last day and year written below.

COUNTY OF ERIE

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

Mark C. Poloncarz.

County Executive

PROPOSER

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

Name:

Title:

\_\_\_\_\_

Proposer's Federal ID Number or Social

Security Number State of New York)) so: County of Erie)

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

\_\_\_\_\_

Notary Public State of New York

so:

County of Erie

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose

name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

## CONTRACT APPENDIX A

### ADDEMDUM

THIS APPENDIX, entered into on this \_\_\_ day of \_\_\_\_\_, between the County of Erie, hereinafter known as COUNTY, and a Proposer, sub Proposer, Proposer, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as PROPOSER.

WHEREAS, COUNTY and PROPOSER have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Erie County Attorney and the Erie County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which COUNTY is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

#### 1. Executor or Non-Appropriation Clause.

The County shall have no liability or obligation under this Contract to the Proposer or to anyone else beyond the annual funds being appropriated and available for this Contract.

#### 2. Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements.

A. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Proposer certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal Grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Proposer shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Proposer shall require that the language of this certification be included in the award documents for all subcontracts and that all sub Proposers shall certify and disclose accordingly.

B. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,

1. The Proposer certifies that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contracts under a public transaction, violation of federal or

State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicated or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and

d. Have not within a three-year period preceding this Contract had one or more public transactions (Federal, State, or local) for cause or default; and 2. Where the Proposer is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.<sup>3</sup>

C. Drug-Free Workplace (Proposers other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Proposers, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. The Proposer will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Proposer's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an on-going drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The Proposer's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance program; and

4. The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);

d. Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the Contract, the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

e. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

f. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the Requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a),(b),(c),(d),(e),(f).

2. The Proposer may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract. Place of Performance (street, address, city, County, state, zip code).

D. Drug-Free Workplace (Proposers who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F. for Proposers, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

1. As a condition of the contract, the Proposer certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and

2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Proposer will report the conviction, in writing, within ten (10) calendar days of the conviction, to: Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. Health Insurance Portability and Accountability Act (HIPAA).

When applicable to the services provided pursuant to the Contract:

A. The Proposer, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Proposer and the County. In order to assure such privacy and security, the Proposer agrees to enact the following safeguards for protected health information:

1. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Proposer, to comply with the

Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;

2. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and

3. Utilize an adequate amount of physical hardware, including but not limited to filing cabinets, and locks on drawers, cabinets, and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.

B. This agreement does not authorize the Proposer to use or further disclose the protected health information that the Proposer handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

1. The Proposer may use and disclose protected health information for the Proposer's own proper management and administration; and

2. The Proposer may provide data aggregation services relating to the health care operations of the County.

C. The Proposer shall:

1. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;

2. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;

3. Report to the County any use or disclosure of the information not provided for by this Contract of which the Proposer becomes aware;

4. Ensure that any agents, including a sub Proposer, to whom the Proposer provides protected health information received from, or created or received by the Proposer on behalf of, the County agrees to the same restrictions and conditions that apply to the Proposer with respect to such protected health information;

5. Make available protected health information in accordance with 45 CFR §164.524;

6. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;

7. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

8. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the Proposer on behalf of, the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and



9. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by the Proposer on behalf of, the County that the Proposer still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of this Contract to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

D. The Proposer agrees that this contract may be amended if any of the following events occurs:

1. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
2. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
3. There is a material change in the business practices and procedures of the County.
4. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Proposer has violated a material term of this Contract.

#### 5. Non-Assignment Clause

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Proposer or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and attempts to do so are null and void. The Proposer may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

#### 6. Worker's Compensation Benefits

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Proposer shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

#### 7. Non-Discrimination Requirements

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Proposer will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Proposer agrees that neither it nor its sub Proposers shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract

as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Proposer agrees that neither it nor its sub Proposers shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Proposer is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### 8. Wage and Hours Provisions

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Proposer's employees nor the employees of its sub Proposers may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Proposer and its sub Proposers must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Proposer understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County approved sums due and owing for work done upon the project.

#### 9. Non-Collusive Bidding Certification

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Proposer affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Proposer further affirms that, at the time the Proposer submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Proposer's behalf. (form)

The Proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Erie, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

#### 10. Records

The Proposer shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails and attachments, rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.

The County Comptroller, the County Attorney and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Proposer within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (a) the Proposer shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

#### 11. Identifying Information and Privacy Notification

a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Proposer Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payees, on its invoice or claim for payment, must give the reason or reasons why the payee does not have such number or numbers.

b. Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

#### 12. Conflicting Terms

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

#### 13. Governing Law

This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

#### 14. Prohibition on Purchase of Tropical Hardwoods

The Proposer certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Proposer to establish to meet with the approval of the County. In addition, when any portion of this Contract involving the use of woods, whether supply or installation, is to be performed by any sub Proposer, the prime Proposer will indicate and certify in the submitted bid proposal that the sub Proposer has been informed and complies with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Proposer to meet with the approval of the County.

#### 15. Compliance with New York State Information Security Breach and Notification Act

The Proposer shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

#### 16. Gratuities and Kickbacks

a. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

b. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a sub Proposer under a contract to the prime Proposer or higher tier sub Proposer or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. Audit

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Proposer shall comply with any demands made by the County to provide information with respect to the payment of monies hereunder during the period covered by this paragraph. The Proposer shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Proposer in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented.

Expenditures or claims for payment which are not fully documented may be disallowed. The Proposer agrees to provide to or permit the County to examine or obtain copies of any documents relating to the payment of money to the Proposer or expenditures made by the Proposer for which reimbursement is made to the Proposer by the County. The Proposer shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Proposer has expended, in any fiscal year, \$300,000.00 or more in funds provided by a Federal financial assistance program from a Federal agency pursuant to this agreement and all other contracts with the County, the Proposer shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. Certification of compliance with the Iran Divestment Act

Pursuant Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Proposer, any person signing on behalf of any Bidder/Proposer and any assignee or sub Proposer and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (OGS) website, that to the best of its knowledge and belief, that each Bidder/Proposer and any sub Proposer or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the Bidder/Proposer is advised that once the Prohibited Entities List is posted on the OGS website, any Bidder/Proposer seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a Bidder/Proposer is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within 90 days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Proposer in default.

The County reserves the right to reject any bid or request for assignment for a Bidder/Proposer that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any Bidder/Proposer that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. County of Erie Conflict of Interest Disclosure Statement

The purpose of this conflict of interest disclosure statement (hereinafter "Disclosure") is to protect the interests of the County of Erie (hereinafter "County") when conducting evaluations regarding potential County projects, funding and/or contractual arrangements. The process whereby outside applicants are evaluated for County projects and/or funding must be conducted in a manner that insures against any bias or even the perception of a conflict of interest. Therefore, prior to taking part in the selection process, those serving as evaluators must complete the attached Disclosure.

Attached to each Disclosure will be a list of the organizations, as well as their subcontractors, subject to evaluation. The chair of the selection committee will prepare the list and attach same to the Disclosure prior to distribution. Once the Disclosure has been completed, each evaluator is asked to return the form to the chair of the selection committee. Evaluations shall not commence until all Disclosures have been returned.

All Proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County. Further, all Proposers must disclose the name of any County employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the firm or any of its subsidiaries or affiliates.

There shall be no conflicts in existence during the term of any contract with the County. The existence of a conflict shall be grounds for termination of a contract.

20. Equal Pay Act (EPA)

The EPA, which is part of the Fair Labor Standards Act of 1938, as amended (FLSA), and which is administered and enforced by the EEOC, prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions. Cross references to the EPA as enacted appear in italics following the section heading. Additional provisions of the Equal Pay Act of 1963, as amended, are included as they appear in volume 29 of the United States Code.

IN WITNESS WHEREOF, the parties hereto have signed this document on the day and year first above written.

County of Erie

Proposer

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

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

Erie County Executive

Name

Approved as to Form only

\_\_\_\_\_

Erie County Attorney

(For Informational Purposes Only)

**County of Erie Equal Pay Certification**

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Equal Pay Law. We certify that we have not been the subject of an adverse finding under the Equal Pay Law within the previous five years and, in the alternative, if we were the subject of an adverse finding under the Equal Pay Law within the previous five years, we have annexed a detailed description of the finding(s). In addition, we have annexed a detailed description of any currently pending claims under the Equal Pay Law in which we are involved.

\_\_\_\_\_  
Signature of Owner/Partner OR Corporate Officer

**VERIFICATION**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

**A)**

\_\_\_\_\_, being duly sworn, states he or she is the owner of or a partner in  
Name of Owner or Partner  
\_\_\_\_\_, and is making the foregoing  
Name of Corporation

Certification and that the statements and representations made in the Certification are true to his/or her own knowledge.

**OR**

**B)**

\_\_\_\_\_, being duly sworn, states that he or she is the  
Name of Corporate Officer  
\_\_\_\_\_ of \_\_\_\_\_,  
Title of Corporate Officer Name of Corporation/Organization

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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