AGENDA

HEALTH COMMITTEE

MARCH 27, 2019

PREVIOUS BUSINESS:

APPROVING PREVIOUS MEETING MINUTES

1. LOCAL LAW NO. “S” FOR 2018: A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY

2. RESOLUTION NO. 494 FOR 2018: PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “S” FOR 2018

3. RESOLUTION NO. 524 FOR 2018: REAFFIRMING THE TERMS OF LOCAL LAW “L” FOR 2018

CURRENT BUSINESS:

4. RESOLUTION NO. 121: PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “E” FOR 2019

5. LOCAL LAW NO. “E” FOR 2019: A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, RESTRICTING THE SALE OF FLAVORED TOBACCO PRODUCTS
6. AMENDING RESOLUTION 255 FOR 2018 REGARDING MORGUE SERVICES AT ELLIS HOSPITAL
Honorable Andrew Joyce and Members of the Albany County Legislature:

LADIES AND GENTLEMEN:

The Health Committee of the Albany County Legislature met on February 27, 2019. Chairman R. Joyce, Mesers. Cahill, Domalewicz, Ward, Drake, Hogan and Ms. Lekakis were present. Mss. McLean Lane and Willingham were excused. The following items were discussed and/or acted upon:

Approving Previous Meeting Minutes: Unanimously Approved.

1. **Local Law No. “S” For 2018:** A Local Law to require Hospitals to post their policies on Reproductive Healthcare, Non-discrimination, Charity Care and Admissions in Albany County: Tabled at the request of the sponsor.

2. **Resolution No. 494 For 2018:** Public Hearing on proposed Local Law No. “S” for 2018: Tabled at the request of the sponsor.

3. **Resolution No. 524 For 2018:** Reaffirming the terms of Local Law “L” for 2018: Tabled at the Request of the Sponsor.

4. Authorizing an Agreement with NMS Labs Regarding Forensic Toxicology Laboratory Services: The Albany County Coroner has indicated that Albany Medical Center is no longer providing forensic toxicology services to Albany County. The Coroner after an RFP process has requested authorization to enter into an agreement with National Medical Services for forensic toxicology services in an amount not to exceed $10,000 for a term commencing January 1, 2019 and ending December 31, 2019. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

5. Authorizing the submission of a grant application to the New York State Office of Alcoholism and Substance Abuse Services regarding the Opioid Response Grant: The Director of the Department of Mental Health has been notified by the NYS Office of Alcoholism and Substance Abuse Services that funds are available for an Opioid Response Grant. The Director has requested authorization to submit an application to the NYS Office of Alcoholism and Substance Abuse Services regarding an Opioid Response Grant in an amount up to $150,000. The Director indicated that the grant funding will support access to resources for individuals with opioid addictions in rural communities. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.
6. Authorizing the submission of a grant application to Blueshield of Northeastern New York regarding grant funding related to increasing the availability of Diabetes Awareness Programs in Albany County: The Commissioner of the Albany County Department of Health has been notified by Blueshield of Northeastern New York that funding is available for the National Diabetes Prevention Program. The Commissioner has requested authorization to submit an application to Blueshield of Northeastern New York in an amount up to $150,000. The Commissioner indicated that the grant funding will used to coordinate six National Diabetes Prevention Programs, increasing prediabetes awareness among community providers, promoting prediabetes screening, testing and referrals. After a brief discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

Respectfully Submitted,
THE HEALTH COMMITTEE

RAYMOND F. JOYCE, Chairperson
TODD A. DRAKE
CHARLES CAHILL JR.
GARY DOMAŁEWCZ
LYNNE LEKAKIS

WANDA F. WILLINGHAM
ALISON MCLEAN LANE
SEAN WARD
BRIAN HOGAN
LOCAL LAW NO. "S" FOR 2018

A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY

Introduced: 9/12/18
By Mr. Cahill:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Legislative Intent.

The Legislature finds that hospitals should post their policies on reproductive healthcare, end-of-life care, non-discrimination, charity care and admissions so that patients are informed whether the medical service they are seeking will be provided to them.

Section 2. Definitions

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

(a) "Hospital" shall have the same meaning as provided in the relevant section of the New York State Law.

Section 3. Requirements.

A hospital located in Albany County shall publicly post on their web site their policies on reproductive healthcare, end-of-life care, non-discrimination, charity care and admissions.

Section 4. Rules and Regulations.

The Albany County Department of Health may promulgate such rules and regulations as it deems necessary to implement and enforce the provisions of this Local Law.

Section 5. Applicability.

This article shall apply to all actions occurring on or after the effective date of this Local Law.

Section 6. Severability.

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

Section 7. Effective Date.

This Local Law shall take effect within ninety (90) days of its filing with the Secretary of State.

Referred to Law and Health Committees—9/12/18
RESOLUTION NO. 494

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. "S" FOR 2018

Introduced: 10/9/18
By Mr. Cahill:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. "S" for 2018, "A LOCAL LAW TO REQUIRE HOSPITALS TO POST THEIR POLICIES ON REPRODUCTIVE HEALTHCARE, NON-DISCRIMINATION, CHARITY CARE AND ADMISSIONS IN ALBANY COUNTY" be held by the County Legislature in the William J. Conboy II Legislative Chambers, Albany County Courthouse, Albany, New York at 7:15 p.m. on Tuesday, October 23, 2018, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Health Committee - 10/9/18
RESOLUTION NO. 524

Reaffirming the Terms of Local Law "L" for 2018

Introduced: 11/13/18
By: Burgdorf

WHEREAS, The Albany County Legislature enacted Local Law No. "L" for 2018 entitled "A Local Law of the County of Albany, New York Regulating the Use of Polystyrene Foam Disposable Food Service Ware and Requiring the Use of Compostable or Recyclable Food Service Ware by Food Service Establishments in Albany County by Amending Local Law No. 4 for 2013", and

WHEREAS, Said legislation was signed by the County Executive, filed with the Office of the Secretary of State, and has thereby been enacted and will take effect six months subsequent to filing in the Office of Secretary of State, and

WHEREAS, The Legislature was concerned with the potential negative impacts of the aforementioned legislation, including impacts on not-for-profit entities, and therefore included Section 6 entitled "Waiver" in the legislation which authorized the Albany County Department of Health to grant a waiver from the application of specific provisions of the legislation if there is undue financial hardship or other factors which would render compliance unreasonable, and

WHEREAS, The Commissioner of Health has stated that the regulatory structure and the waiver - which "shall not be unreasonably denied" - has not yet been drafted and approved, and

WHEREAS, Albany County Legislators specifically identified the financial impact on not-for-profit entities who service senior citizens and other frail communities in the County by providing them congregate meals and home delivered meals as likely applicants for Section 6 waivers, and

WHEREAS, The Legislature never intended to reduce the nutritional food volume and value of congregate and home delivered meal programs in order to make up for increases in pricing for temperature retaining packaging costs, and

WHEREAS, The County of Albany has contracts with various not-for-profit entities to provide congregate and home delivered meals to senior citizens and others who may qualify, and

WHEREAS, Many of the aforementioned, as well as additional county associated entities use polystyrene products, especially in the delivery of hot and cold items to citizens, and
WHEREAS, Based upon the information received, the contracts for these services do not permit the not-for-profit entities to increase their contract price if their costs rise, and

WHEREAS, The aforesaid contracts, upon information and belief, do not permit unilateral modifications by either side, including the County of Albany, and

WHEREAS, The County Executive has issued a press release indicating he has signed an executive order that mandates all county agencies and vendors immediately end the use of polystyrene for food, now, therefore be it

RESOLVED, That the Albany County Legislature reaffirms the terms of Local Law “L” for 2018, including Section 6 permitting the Department of Health to issue waivers in certain circumstances, which includes congregate and home delivered meal providers or any County vendor, and, be it further

RESOLVED, That Albany County must have a hardship waiver process in place prior to the effective date of Local Law “L” of 2018, as not having the waiver process in place would deny vendors and businesses who are required to comply with the law their right to appeal to the Albany County Department of Health for a waiver to such law’s provisions, and, be it further

RESOLVED, That the Albany County Legislature hereby indicates to any outside vendor which may experience increased costs because of the elimination of polystyrene containers that the Legislature affirms its support to amend existing contracts, upon proof of such increased costs, and requests that any outside vendor so situated contact the County Attorney to re-negotiate their contract as the County Legislature does not wish Local Law “L” of 2018 to adversely impact its delivery of important constituent programs, and, be it further

RESOLVED, That not-for-profit vendors of the County asserting such increased costs to comply with pre-existing contracts shall be granted an immediate, temporary, automatic waiver from the provisions of Local Law “L” while they negotiate with the County Attorney for additional compensation for compliance with the law.

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Referred to Law and Health Committees – 11/13/18
RESOLUTION NO. 121

PUBLIC HEARING ON PROPOSED LOCAL LAW NO. “E” FOR 2019

Introduced: 3/11/19
By Mr. Miller:

RESOLVED, By the County Legislature of the County of Albany that a public hearing on proposed Local Law No. “E” for 2019, “A Local Law Of The County Of Albany, New York Restricting The Sale Of Flavored Tobacco Products” be held by the County Legislature in the William J. Conboy II Legislative Chambers, Albany County Courthouse, Albany, New York at 7:15 p.m. on Tuesday, March 26, 2019, and the Clerk of the County Legislature is directed to cause notice of such hearing to be published containing the necessary information in accordance with the applicable provisions of law.

Referred to Law and Health Committees - 3/11/19
LOCAL LAW NO. “E” FOR 2019

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK, RESTRICTING
THE SALE OF FLAVORED TOBACCO PRODUCTS

Introduced: 3/11/19
By Messrs. Miller, Clay, Ms. Cunningham, Messrs. Ethier, A. Joyce, Beston,
Cahill, Fairmanier, Mss. McKnight, Willingham, Messrs. Mayo, Domalewicz,
Mss. Lekakis, McLean Lane, Plotkey and Mr. Reinhardt:

BE IT ENACTED by the Legislature of the County of Albany as follows:

The Legislature of Albany County hereby finds and declares that:

Section 1: Findings and Intent

This Legislature finds that 81% of youth who have ever used a tobacco product report
that the first tobacco product they used was flavored. Flavored tobacco products
promote youth initiation of tobacco use and help young occasional smokers to become
daily smokers by reducing or masking the natural harshness and taste of tobacco
smoke and thereby increasing the appeal of tobacco products. As tobacco companies
well know, menthol, in particular, cools and numbs the throat to reduce throat
irritation and make the smoke feel smoother, making menthol cigarettes an
appealing option for youth who are initiating tobacco use. Tobacco companies have
used flavorings such as mint and wintergreen in smokeless tobacco products as part
of a “graduation strategy” to encourage new users to start with tobacco products with
lower levels of nicotine and progress to products with higher levels of nicotine. It is
therefore unsurprising that young people are much more likely than adults to use
menthol-, candy- and fruit-flavored tobacco products, including not just cigarettes but
also cigars, cigarillos, and hookah.

Tobacco use causes death and disease and continues to be an urgent public health
threat as evidenced by the fact that every year 480,000 people die prematurely in the
United States from smoking-related diseases and 28,000 people die prematurely from
second hand smoke making tobacco use the leading cause of preventable death.
Tobacco use can cause disease in nearly all organ systems and is responsible for 87
percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease
deaths, and 32 percent of coronary heart disease deaths.

The 2018 National Youth Tobacco Survey cites research showing that youth and
young adults identify flavors as a primary reason for e-cigarette use. Given the highly
addictive nature of nicotine, it is not surprising that high school students who were
current flavored e-cigarette users reported an increase in their frequency of vaping.
Some brands have particularly high levels of nicotine in that one single e-cigarette
may contain as much nicotine as a pack of 20 cigarettes.
Much as youths disproportionately use flavored tobacco products, the same can be said of certain minority groups. According to the Food and Drug Administration (FDA), 85% of African American smokers, 44% of Hispanic smokers, 38% of Asian smokers and 28% of White smokers smoke menthol cigarettes. Native Americans, people who identify as LGBT, and young adults with mental health problems also have disproportionately high rates of smoking menthol cigarettes. Menthol products are more addictive, and both youth and racial/ethnic minorities find it harder to quit smoking menthol cigarettes.

According to the NAACP, “for decades, data has shown that the tobacco industry has successfully and intentionally marketed mentholated cigarettes to African Americans and particularly African American women as “replacement smokers”. The recognition of this harsh reality led the NAACP to adopt a unanimous resolution at their 2016 National Convention supporting state and local efforts to restrict the sale of menthol cigarettes and other flavored tobacco products.

Younger smokers are more likely than older smokers to try these products. When Congress enacted the FSPTCA, it found that the use of tobacco products by the nation's children is a “pediatric disease of considerable proportions” that results in new generations of tobacco dependent children and adults.

Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor New York State law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah, electronic smoking devices and the solutions used in these devices.

According to the 2018 Surgeon General’s Advisory Regarding the E-cigarette Epidemic Among Youth, e-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth. E-cigarette use among U.S. middle and high school students increased 900% during 2011-2015. During the past year, current e-cigarette use increased 78% among high school students from 12% in 2017 to 21% in 2018. More than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students currently use e-cigarettes.

Also according to the Surgeon General, nicotine exposure during adolescence can harm the developing brain that continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase the risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances.
including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.

Since the industry will not reveal what chemicals are in the flavorings in the vapor products, it may be years before we know the full negative impact of the explosive increase the in use of e-cigarettes. Scientists have discovered that cinnamon, vanilla, and cherry flavors react with propylene glycol, a main ingredient in many vape juices, to create entirely new chemicals, according to a study published in the journal Nicotine & Tobacco Research. Oct 18, 2018.

The federal government’s National Institute on Drug Abuse reported that teen use of e-cigarettes soared in 2018. The survey, which polled 8th, 10th and 12th graders across the country, found the rise in nicotine vaping was the largest spike for any substance recorded by the study in 44 years.

Flavors appeal to youth and drive youth experimentation with tobacco products:

- Beyond improving palatability, perceptible flavor provides an avenue for youth marketing;
- Youth tobacco users typically begin with flavored products and, overall, use flavored products at higher rates than their older peers;

Flavored tobacco products promote youth tobacco initiation and drive young occasional smokers to daily smoking; Consumers incorrectly perceive flavored tobacco products to be less harmful:

- The presence of characterizing flavors signals product palatability, which incorrectly associated with lower relative harm, influencing consumer brand preference and use;
- Adolescents are more likely to believe that fruit and chocolate or other sweet flavors are less harmful than flavors like alcohol, tobacco, and spice flavors;
- Youth e-cigarette users perceive lower harm from flavored e-cigarettes than from unflavored e-cigarettes despite research documenting harmful constituents present in e-cigarette flavoring.
- The majority of youth who use tobacco choose flavored tobacco products;

E-cigarettes can also be used to deliver other drugs including marijuana. In 2016, one-third of U.S. middle and high school students who ever used e-cigarettes had used marijuana in e-cigarettes.

Albany County has a substantial and important interest in ensuring that existing state and local tobacco sales regulation is effectively enforced;

- Although it is unlawful to sell tobacco products to minors, 5 percent of New York retailers sold to minors between 2010 and 2012;
- A local tobacco retail licensing system will help ensure that tobacco sales comply with the Adolescent Tobacco Use Prevention Act, other tobacco control laws, and the business standards of Albany County;
- Licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors;

A local licensing system for retailers of tobacco products, electronic cigarettes, and other products regulated by Article 13-F of New York State Public Health Law is necessary and appropriate for the public health, safety, and welfare of our residents;

Neither federal nor New York law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigarillos, cigars, smokeless tobacco, shisha, e-cigarettes or e-cigarette solutions. It is the intent of Albany County to implement effective measures through this Bill to restrict access to flavored iterations of these products, and thus reduce tobacco experimentation, promote successful cessation, and narrow tobacco-related health disparities; prevent the sale or distribution of contraband tobacco products, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

**Section 2: Definitions**

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

ACCESSORY means any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product or Electronic Aerosol Delivery System; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System; or (2) is intended or reasonably expected to affect or maintain the performance, composition, Constituents, or characteristics of a Tobacco Product or Electronic Aerosol Delivery System but (a) solely controls moisture and/or temperature of a stored Tobacco Product or Electronic Aerosol Delivery System.

APPLICANT means an individual, partnership, Limited Liability Company, corporation, or other business entity seeking a Tobacco Retail License.

COMMISSIONER means the Commissioner of the Albany County Department of Health.

COMPONENT OR PART means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product’s or Electronic Aerosol Delivery System’s performance, composition, Constituents, or characteristics; or (2) to be used with or for the human consumption of a Tobacco Product or Electronic
Aerosol Delivery System. Component or Part excludes any Constituent and any Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software, rolling papers and flavorings for Tobacco Products or Electronic Aerosol Delivery Systems.

CONSTITUENT means any ingredient, substance, chemical or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a Covered Product during the processing, manufacture, or packing of the Covered Product. This term shall include smoke and aerosol constituent.

COVERED PRODUCT means a Tobacco Product, Electronic Aerosol Delivery System, or another product regulated by Article 13-F of the New York State Public Health Law.

DEPARTMENT means the Albany County Health Department.

ELECTRONIC AEROSOL DELIVERY SYSTEM means an electronic device that, when activated, produces an aerosol that may be inhaled, whether or not such aerosol contains nicotine. Electronic Aerosol Delivery System includes any Component or Part but not Accessory, and any liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

EMISSION means any substance, chemical, or compound released or produced during use of a Covered Product. This term shall include, but is not limited to, smoke, aerosol, saliva, sputum.

FLAVORED PRODUCT means any Covered Product containing a Constituent that imparts a perceptible taste or aroma different from tobacco or produces an Emission or byproduct that imparts a perceptible taste or aroma different from tobacco, either before or during use of the Covered Product. A Covered Product is presumed to be a Flavored Product if a Tobacco Retailer, manufacturer, or a manufacturer’s agent or employee has:

i. made a statement or claim directed to consumers or the public, whether expressed or implied, that the Covered Product, Emission, or byproduct of the Covered Product smells or tastes different from tobacco, or

ii. Taken action that would be reasonably expected to result in consumers receiving the message that the Covered Product, Emission, or byproduct of the Covered Product smells or tastes different from tobacco.
No product shall be determined to be a Flavored Product solely because of the use of additives or flavorings or the provision of ingredient information.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

PERCEPTIBLE means perceivable by the sense of taste or smell.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous 12 months.

TOBACCO PRODUCT means any product made or derived from tobacco or which contains nicotine, marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco Product includes any Component or Part, but not Accessory. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

TOBACCO RETAILER means a retailer licensed pursuant to this Bill.

TOBACCO RETAIL LICENSE means a license issued by the Department to a Person to engage in the retail sale in Albany County of a Covered Product.

Section 3: Requirement for Tobacco Retail License

(A)(1) No Person shall sell, offer for sale, or permit the sale of a Covered Product by retail within Albany County, without a valid Tobacco Retail License. A Tobacco Retail License is not required for a wholesale dealer who sells products to retail dealers for the purpose of resale only and does not sell a Covered Product directly to consumers.

(A)(2) Notwithstanding the requirements set forth in Section 3(A) (1), this Bill shall not apply to registered organizations pursuant to Title V-A of Article 33 of New York Public Health Law.

(B) A Tobacco Retail License issued pursuant to this Bill is nontransferable and nonassignable and valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each
address where a Covered Product is sold or offered for sale. A change in business ownership or business address requires a New Tobacco Retail License.

Section 4: License Application and Application Fee

(A) An application for a New Tobacco Retail License or Renewed Tobacco Retail License shall be submitted to the Department in writing upon a form provided by the Department and shall contain information as required by the Department. The Department may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

(B) Each application for a Tobacco Retail License shall be accompanied by a nonrefundable application fee of $50, or as determined by the Commissioner.

(C) Upon the receipt of a completed application for a Tobacco Retail License and the application fee required by Section 4(B), the Department shall inspect the location at which tobacco sales are to be permitted. The Department may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

Section 5: Issuance of Licenses

(A) No Tobacco Retail License shall be issued to any seller of a Covered Product that is not in a fixed, permanent location.

(B) The issuance of a Tobacco Retail License pursuant to this Bill is done in Albany County’s discretion and shall not confer upon licensee any property rights in the continued possession of such a license.

(C) The Department shall collect from the Applicant the Tobacco Retail License fee proscribed in Section 6 prior issuing the Tobacco Retail License.

(D) The Department may refuse to issue a Tobacco Retail License to an Applicant if it finds that one or more of the following bases for denial exists:

   (1) The information presented in the application is incomplete, inaccurate, false, or misleading;

   (2) The fee for the application has not been paid as required;

   (3) The Applicant does not possess valid certification of registration or licensure required by state or federal law for the sale of a Covered Product;
(4) The Department has previously revoked a Tobacco Retail License issued under this Bill to the Applicant;

(5) The Department has previously revoked a Tobacco Retail License issued under this Bill for the same address or location;

(6) The Applicant has been found by a court of law or administrative body to have violated any federal, state, or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on a Covered Product, (c) the display of a Covered Product or of health warnings pertaining to a Covered Product, or (d) the sale of a Covered Product;

(7) The Applicant has not paid to Albany County outstanding fees, fines, penalties, or other charges owed to Albany County, including the fee for the Tobacco Retail License required by Section 6; or

(8) The Department determines, in accordance with written criteria established to further the purposes of this Bill, that the Applicant is otherwise not fit to hold a Tobacco Retail License.

Section 6: License Term and Annual License Fee

(A) A Tobacco Retail License issued pursuant to this Bill shall be valid for no more than one year and shall expire on the thirty-first day of December of the calendar year for which it is issued. As set forth in Section 8, a Tobacco Retail License may be revoked for cause by the Department prior to its expiration for cause.

(B) The Department shall charge an annual Tobacco Retail License fee of $250 or as determined by the Commissioner.

(C) The Commissioner may discount the Tobacco Retail License fee required by Section 6(B) for an application received within ten (10) months of the expiration date.

(D) Beginning two years from the effective date of this Bill, the Department may, on an annual basis, modify the Tobacco Retail License fee required pursuant to Section 6(B). The Tobacco Retail License fee shall be calculated so as to recover the cost of administration and enforcement of this Bill, including, for example, issuing a license, administering the license program, hiring and training staff, identifying Flavored Products, retailer and community education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Bill. All fees and interest upon
proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Section 7: License Display

(A) A Tobacco Retail License issued pursuant to this Bill shall be conspicuously displayed at the location where a Covered Product is sold so that it is readily visible to customers.

(B) Selling, offering for sale, or permitting the sale of any Covered Product without a valid Tobacco Retail License displayed in accordance with Section 7(A) constitutes a violation of this Bill.

Section 8: Sale of Flavored Products Restricted

(A)(1) Except as specified in Section 8(A) (2), no Tobacco Retailer shall distribute without charge, sell, offer for sale, or possess with intent to sell, offer for sale, or distribute without charge a Flavored Product. This applies to remote transactions, including but not limited to internet or mail-order sale, by a Tobacco Retailer licensed pursuant to this Bill.

(A)(2) Section 8(A) (1) shall not apply to a Tobacco Retailer that:
   i. is also a retail tobacco business or retail electronic cigarette store, as defined by N.Y. Public Health Law §§ 1399-n (7 and 11), and
   ii. does not permit entry to persons below age 21 years or Albany County minimum legal sales age for a Tobacco Product, whichever is higher, and
   iii. Sells, offers for sale, or distributes a Covered Product exclusively for use on the premises of the Tobacco Retailer.

Section 9: Revocation of Licenses

(A) The Department may suspend or revoke a Tobacco Retail License issued pursuant to this Bill for violations of the terms and conditions of this Bill or for violation of any federal, state, or local law or regulation pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs, (b) the payment or collection of taxes on Covered Products, (c) the display of Covered Products or of health warnings pertaining to Covered Products, or (d) the sale of a Covered Product.

(B) The Department may revoke a Tobacco Retail License if the Department finds that one or more of the bases for denial of a license under Section 5 existed at the time application was made or at any time before the license issued.

Section 10: Violations and Enforcement
(A) The Department or its authorized designee(s) shall enforce the provisions of this Bill. The Department may conduct periodic inspections to ensure compliance with this Bill.

(B) In addition to the penalties provided for in Section 8, any Person found to be in violation of this Bill shall be liable for civil penalty of not more than $500 for the first violation, not more than $1000 for the second violation within a two-year period, and not more than $5000 but no less than $1500 for the third and each subsequent violation within a two-year period, or as determined by the Commissioner. Each day on which a violation occurs shall be considered a separate and distinct violation. These fines will be used for County anti-smoking/anti-vaping public health efforts.

Section 11: Rules and Regulations

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Bill.

Section 12: Severability

The provisions of this Bill are declared to be severable, and if any section of this Bill is held to be invalid, such invalidity shall not affect the other provisions of this Bill that can be given effect without the invalidated provision.

Section 13: Effective Date

The effective date of this ordinance shall be 120 days subsequent to its filing with the Office of the Secretary of State.

Referred to Law and Health Committees - 3/11/19
February 28, 2019

Hon. Andrew Joyce, Chairman
Albany County Legislature
Albany, New York 12207

Hon. Dennis Feeney
Majority Leader
Albany, New York 12207

Hon. Frank Mauriello
Minority Leader
Albany, New York 12207

Re: Request for Legislative Action

Dear Chairman Joyce,

Attached please find the Albany County Coroner’s request for Legislative Action regarding contract amendment for Ellis Hospital.

The Coroner’s office is requesting a contract amendment to the original agreement with Ellis hospital in regards to the funds appropriated.

More funds will be needed due to the changes with Albany Medical Center.
Ellis hospital will be providing morgue services two weeks out of the month.
Albany Medical Center will be providing morgue services the other two weeks of the month.
Ellis provides morgue services for $815.00 per case. To amend the existing contract up to $125,000.
Albany Medical Center morgue services $2000.00 per case.

If you have any further questions, please do not hesitate to contact me at 445-7604.

Sincerely,
Timothy J. Cavanaugh-Senior Coroner
REQUEST FOR LEGISLATIVE ACTION
RLA #2984: Ellis Hospital Contract Amendment

DATE: Thursday, January 24, 2019

DEPARTMENT: Coroners
Contact Person: Helen Budka, Confidential Secretary
Telephone: 518-447-3069
Dept. Representative Attending Committee Meeting:
Helen Budka, Timothy Cavanaugh, Senior Coroner

PURPOSE OF REQUEST:
Adopting of Local Law
X Amendment of Prior Legislation
Approval/Adoption of Plan/Procedure
Bond Approval
Budget Amendment (see below)
Contract Authorization (see below)
X Environmental Impact
Home Rule Request
Property Conveyance
Other: (State briefly if not listed above)

CONCERNING BUDGET AMENDMENTS
STATE THE FOLLOWING:
Increase Account/Line No.
Source of Funds:
Title Change:

CONCERNING CONTRACT AUTHORIZATION
STATE THE FOLLOWING:
TYPE OF CONTRACT:
Change Order/Contract Amendment X
Purchase (Equipment/Supplies)
Lease (Equipment/Supplies)
Requirements Professional Services
Education/Training
Grant:
New
Renewal
Submission Deadline Date
Settlement of a Claim
Release of Liability
Other: (State briefly)
CONCERNING CONTRACT AUTHORIZATION (Cont'd)

STATE THE FOLLOWING:

Contract Terms/Conditions:
Party (Name/Address)          Ellis Hospital
                                    1101 Nott Street
                                    Schenectady, NY 12308
Amount/Raise Schedule/Fee       $125,000.00
Scope of Services               Ellis Hospital will be providing additional morgue services,
                                increasing from one week per month to two weeks per month.

Contract Funding:
Bond Res. No.:                  ____________________________________________
Date of Adoption:               ____________________________________________

CONCERNING ALL REQUESTS:

Mandated Program/Service:       Yes
If Mandated Cite: Authority     ____________________________________________
Anticipated in Current Adopted Budget Yes

County Budget Accounts:
Revenue                        ____________________________________________
Appropriation                  ____________________________________________
                                Account Code  Line  Amount
                                AA1185      44048  $125,000.00

Fiscal Impact - Funding: (Dollars or Percentages)
Federal                        0%
State                          0%
County                        100%
Local                          0%

Term/Length of Funding:        24 Months (1/1/2019 - 1/1/2021)
Impact on Pending Litigation  No
If yes, please explain:        ____________________________________________

Previous Requests for Identical or Similar Action
Resolution/Law Number          ____________________________________________
Date of Adoption               ____________________________________________

Justification: (State briefly why legislative action is requested)

Ellis hospital morgue will be providing autopsies more often than previously. They will be providing services two weeks out of the month. Therefore more funds will be needed than previously.

Back-up Material Submitted: (i.e., application/approval notices from funding source, bid tabulation sheet, civil service approval notice, program announcement, contracts and/or any materials which explain or support the request for legislative action.)


Submitted by:                  Helen Budka
Title:                        Timothy Cavanaugh, Senior Coroner
AGREEMENT
between
THE COUNTY OF ALBANY
and
ELLIS HOSPITAL

Resolution No. 255 of 2018, adopted on June 11, 2018

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with its principal place of business located at the Albany County Office Building 112 State Street, Albany, New York 12207 (hereafter referred to as "County") and Ellis Hospital, with its principal office located at 1101 Nott Street, Schenectady, New York 12308 (hereafter referred to as the "Contractor," County and Contractor may hereafter be referred to as the "Parties," or either, as the "Party.")

WITNESSETH

WHEREAS, the County has issued a request for proposals for morgue and laboratory services as requested by the Albany County Coroner, said request having been denominated RFP#2016-064R (hereinafter the "RFP") and having been issued by the Albany County Purchasing Division (hereinafter called the "Purchasing Division") on May, 19, 2016

WHEREAS, the Contractor submitted a Proposal on May 17, 2016, to provide the aforesaid morgue and laboratory services for the Coroner (hereinafter called the "Proposal"); and

WHEREAS, the County has accepted the Proposal of the Contractor to provide the aforesaid morgue and laboratory services; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an agreement with the Contractor to provide the aforementioned morgue and laboratory services; and

WHEREAS, this Agreement sets for the understanding reached by the parties herein,

NOW, THEREFORE, for good and valuable consideration and in consideration of the terms and conditions of this agreement, the Parties hereto do mutually covenant and agree as follows:

ARTICLE 1. ENTIRE AGREEMENT; INTERPRETATION

1.1 The Contract Documents consist of the following: 1) This Agreement; 2) The RFP, which is incorporated by reference and made a part hereof; and 3) the Contractor's Proposal, incorporated herein and made a part hereof in entirety by reference (collectively called "the Agreement" hereinafter).
1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement, or ambiguity: 1) this Agreement; 2) the RFP; 3) the Proposal.

ARTICLE 2. SCOPE OF SERVICES

2.1 Contractor shall provide comprehensive morgue services, including facility space, staffing and services as defined herein.

2.2 Contractor will provide a morgue facility staffed by a minimum of two (2) full time morgue attendants/assistants
   a) To receive deceased persons on a twenty-four (24) hours per day basis;
   b) To release deceased persons to funeral homes;
   c) To assist pathologist with autopsies;
   d) At least one (1) assistant must have forensic training or background.

2.3 Contractor will provide instruments including, but not limited to: scalpels, scissors, clamps, hoses, and knives.

2.4 Contractor will provide specimen holders; assume responsibility for labeling and storing specimens and proper maintenance of chain of custody.

2.5 Contractor will provide uniforms to include: mask, caps, shoe covers, special full face masks with hepa filter for isolation cases of TB as specified in OSHA guidelines.

2.6 Contractor will provide an office space with a telephone for the Coroner, Law Enforcement personnel and pathologists.

2.7 Contractor will provide an isolation areas with showers for doctors and attendants/assistants.

2.8 Contractor will provide stock storage of autopsy tissues, blocks and microscopic slides, and incineration of waste materials.

2.9 Contractor will provide at least two (2) autopsy tables.

2.10 Contractor will provide morgue cooler capable of holding twelve (12) bodies on stretchers or twenty-four (24) bodies on the floor in the event of an emergency.

2.11 Contractor will provide refrigerator for storing blood and organs for Medical/Legal examinations.

2.12 Contractor shall provide X-ray services.

2.13 Contractor will provide weighing machines.
2.14 Contractor will provide adequate lighting.

2.15 Contractor will provide preparation of routine H & E slides as may be requested by the County, and special stains as required for autopsy material, for which every effort shall be made available within three (3) days of the post-mortem examination and transportation by the courier service to the pathologist.

2.16 Contractor will provide transportation to lab testing facilities, log specimens, obtain receipt from organs and specimens while maintain patient confidentiality, and proper maintenance of chain of custody, if necessary.

2.17 Contractor will make every effort to provide forensic toxicology services with 28-day turnaround times for cases in which there are not requests for extensive confirmation or quantitation of results or where outside referral lab work request by the forensic pathologist is. Contractor will be in communication with the forensic pathologist within 28 days for all cases where forensic toxicology has been requested. Contractor will have available twenty-four (24)/seven (7) days per week consultation by a trained chemical toxicologist.

2.18 Contractor will provide for disposal of organs and specimens in accordance with New York State Department of Health Rules and Regulations for disposal of pathological waste.

2.19 Contractor must provide security personnel for proper handling of deceased persons while on hospital property.

2.20 Contractor, when necessary, provide human immunodeficiency virus (HIV) testing and serology testing for blood disorders as requested by the forensic pathologist in each case.

2.21 Contractor will assist in decedent viewing for identification or other purposes with consistent authorization by the Coroner and/or the Coroner’s Pathologist.

ARTICLE 3. CONSIDERATION AND PAYMENT

In consideration of the terms and obligations of this Agreement, the County agrees to pay and the Contractor agrees to accept a per-case morgue facility use fee (includes onsite toxicology, histology and microbiology) of EIGHT HUNDRED FIFTEEN AND 00/100 ($815.00) DOLLARS per autopsy. In no event shall the amount paid by the County to the Contractor exceed TEN THOUSAND AND 00/100 ($10,000.00).

Compensation shall be made upon Contractor’s submission to the Albany County Claim Form to the Office of the Albany County District Attorney, which shall detail services rendered including disbursements and parking fees, and which shall be supported by receipts when applicable. Upon acceptance of the Contractor’s Claim Form, it shall be submitted to the Albany County Comptroller and payment rendered.
ARTICLE 4. AVAILABLE DATA

All technical or other data relative to this Agreement shall be shared between the Parties without expense.

ARTICLE 5. COOPERATION

The Parties shall cooperate with each other, their representatives, agents, and employees such that the work may proceed expeditiously and economically. Contractor shall observe all County security requirements.

ARTICLE 6. EXTRA WORK

If the Contractor is of the opinion that any work Contractor has been directed to perform is beyond the scope of this Agreement and constitutes extra work, Contractor shall promptly notify the County. The Parties shall mutually determine whether such work is in fact beyond the scope of this Agreement. In the event that it is determined that such work does constitute extra work, the County shall provide additional compensation to Contractor on a negotiated basis for work authorized by the County and performed.

ARTICLE 7. ASSIGNMENT

Pursuant to New York State General Municipal Law, Sec. 109, Contractor is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this Agreement, or of Contractor’s right, title or interest therein without the prior written consent of the County.

ARTICLE 8. SCHEDULE

The Contractor shall complete the work in a timely manner to protect the interests and rights of the County to the fullest extent reasonably possible. Contractor shall cooperate with County staff to ensure that the work performed is coordinated with, and not disruptive of, ongoing County operations.

ARTICLE 9. ACCOUNTING RECORDS

Proper and full accounting records shall be maintained by the Contractor. The records shall clearly identify the costs of the work performed. The records shall be subject to periodic and final audit by the County upon request. The records shall be accessible to the County for a period of six (6) years following the date of final payment. The County shall not have access to Contractor records containing trade secrets or proprietary information, or other records, the content of which, if disclosed, would compromise Contractor’s competitive position.

ARTICLE 10. RELATIONSHIP

The Contractor, and all subcontractors, are and will function as, independent contractors under the terms of this Agreement and shall not be considered agents or employees of the County
for any purpose. The employees and agents of Contractor and all subcontractors shall not in any
manner be, or be held out to be, agents or employees of the County.

ARTICLE 11. AUDITS

The County shall have the right to perform both “pre” and “post” audits of Contractor’s
records relating to billing under this Agreement. Contractor’s records shall be available for
inspection at such places and times as may be agreed between the Parties. Contractor shall retain
all financial records pertaining to this Agreement for a period of six (6) years after complete
performance.

ARTICLE 12. INDEMNIFICATION

The Contractor shall defend, indemnify and save harmless the County, its employees and
agents, from and against all claims, damages, losses and expenses (including without limitation,
reasonable attorney’s fees) arising out of, or in consequence of, any negligent or intentional act or
omission of the Contractor, its employees, agents, and subcontractors, to the extent of its or their
responsibility for such claims, damages, losses and expenses. This section specifically includes the
defense and indemnification of any claim and/or loss, cost or expense the County has filed against
it or incurs due to a claim that use of the subject system compromises or infringes in any way the
intellectual property rights of others.

ARTICLE 13. PRIVACY OF PERSONAL HEALTH INFORMATION (HIPAA)

To the extent that the Contractor, by its delivery of services under the terms of this
Agreement, comes into possession of Protected Health Information, as defined by the Health
Insurance Portability and Accountability Act of 1996, it agrees to comply with the terms of
Schedule A attached hereto and made a part hereof.

ARTICLE 14. NON-APPROPRIATION

Notwithstanding anything contained herein to the contrary, no default shall be deemed to
occur in the event that no funds or insufficient funds are appropriated and budgeted by or are
otherwise unavailable to the County for payment. The County shall immediately notify Contractor
in the event of such occurrence and this Agreement shall terminate on the last day of the fiscal
period for which appropriations were received without penalty or expense to the County of any
kind, except as to those portions herein agreed upon for which funds shall have been appropriated
and budgeted.

ARTICLE 16. TERM AND TERMINATION

This agreement shall take effect upon April 30, 2018 and continue until April 30, 2020.
ARTICLE 17. INVALID PROVISIONS

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid, or ineffective, in whole or in part, that determination shall not invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs thereof.

ARTICLE 18. INSURANCE

18.1 Contractor agrees to procure and maintain, without additional expense to the County, insurance of the kinds and in the amounts provided under Schedule B attached hereto and made a part hereof.

18.2 Each policy of insurance required shall be of form and content satisfactory to the Albany County Attorney:

(a) Albany County shall be named as an additional insured on all liability policies.

(b) The policy shall not be changed or canceled until the expiration of thirty (30) days after written notice to Albany County. It shall be automatically renewed upon expiration and continued in force unless Albany County is given at least thirty (30) days written notice to the contrary.

18.3 No work shall be commenced under the contract until the Contractor has delivered to the County Purchasing Agent or his designee proof of issuance of all policies of insurance required by the Contract to be procured by the Contractor. If at any time, any of said policies shall expire or become unsatisfactory to the County, the Contractor shall promptly obtain a new policy and submit proof of insurance of the same to the County for approval. Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, the contract may, at the election of the County, be forthwith declared suspended, discontinued or terminated. Failure of the Contractor to procure and maintain any required insurance shall not relieve the Contractor from any liability under the contract nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.

ARTICLE 19. APPLICABLE LAW

This Agreement shall be governed for all purposes by the laws of New York State.

ARTICLE 20. LICENSES

Contractor and its subcontractors shall at all times obtain and maintain all licenses required, if at all, by New York State and/or other responsible authority to perform the services required under this Agreement.
ARTICLE 21. CHANGE IN LEGAL STATUS OR DISSOLUTION

In the event of a change in legal status or dissolution of Contractor as a corporation, partnership or other legal entity, during the term of this Agreement, Contractor shall give thirty (30) days prior written notice to the County of such change.

ARTICLE 22. MACBRIDE PRINCIPLES

Contractor represents that Contractor is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 of 1993, in that Contractor either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law 3 of 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring Contractor in default and/or seeking debarment or suspension of the Contractor.

ARTICLE 23. MODIFICATION

This Agreement may only be modified by a written amendment executed by the Parties.

ARTICLE 24. REMEDY FOR BREACH

In the event of a breach by Contractor, and/or its subcontractors, Contractor shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute contractor to satisfactorily complete the contract work, together with the County's costs incurred in procuring a substitute contractor.

ARTICLE 25. NON-DISCRIMINATION

Pursuant to NYS Executive Law, Article 15 (Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor and its subcontractors, shall not discriminate by reason of race, creed, color, national origin, age, gender, sexual orientation, military status, marital status, or disability in any manner with respect to the performance of the work associated with this Agreement.
IN WITNESS WHEREOF, this Agreement has been executed by the County, acting by and through the Albany County Executive, and by the Contractor, by and through a duly authorized individual, effective the day and year last written below.

COUNTY OF ALBANY

DATE: 5/15/19

BY: [Signature]
Daniel P. McCoy
County Executive
or
Philip F. Calderone, Esq.
Deputy County Executive

ELLIS HOSPITAL

DATE: 

By: [Signature]

STATE OF NEW YORK
COUNTY OF ALBANY SS:

On the ___ day of __________, 20___, before me, the undersigned, a notary public in and for the state, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

__________________________
Notary Public
STATE OF NEW YORK )
COUNTY OF ALBANY ) SS:

On the 21st day of October, 2018 before me, the undersigned, a notary public in and for the state, personally appeared Philip F. Calderone, Esq. personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

__________________________
Notary Public

EUGENIA K. CONDON
Notary Public, State of New York
No. 4969817
Qualified in Albany County
Commission Expires July 23, 2016

STATE OF NEW YORK )
COUNTY OF SCHENECTADY ) SS:

On the 29th day of August, 2018, before me, the undersigned, a notary public in and for the state, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribe to the attached instrument and acknowledged to me that s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

__________________________
Notary Public

SALLY A. LENNON
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. D1LE4982173
Qualified in Schenectady County
Commission Expires Feb. 24, 2023

9
SCHEDULE A

OBLIGATIONS AND ACTIVITIES OF THE CONSULTANT AS A BUSINESS ASSOCIATE PURSUANT TO 45 CFR SECTION 164.504

The parties to the Agreement hereby agree to comply with the following provisions to ensure their compliance with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.

Pursuant to the terms of the Agreement, and in accordance with the requirements of 45 CFR Sections 160 and 164, the CONSULTANT/CONTRACTOR herein shall be considered a “Business Associate.” The following terms are hereby incorporated in this AGREEMENT and shall be binding upon the parties hereto:

A. DEFINITIONS

1. “Business Associate” – under the terms of this Agreement, the term “Business Associate” shall mean the Consultant/Contractor, Ellis Hospital.
2. “Covered Entity” – for purposes of this Agreement, the term “Covered Entity” shall mean the County of Albany and/or the Office of the District Attorney.
3. “Individual” – under the terms of this Agreement, the term “Individual” shall have the same meaning as the term “individual” in 45 CFR Section 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
4. “Privacy Rule” – shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
5. “Protected Health Information” – shall have the same meaning as the term “protected health information” in 45 CFR Section 160.103, limited to the information created, received, maintained or transmitted by the Business Associate from or on behalf of the Covered Entity.
6. “Required by Law” – shall have the same meaning as the term “required by law” in 45 CFR Section 164.103.
7. “Secretary” – shall mean the Secretary of the Department of Health and Human Services or his/her Designee.
8. “Subcontractor” – shall have the same meaning as the term “subcontractor” in 45 CFR Section 160.103.

B. OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

1. Pursuant to the terms of the Agreement, the Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, or as required by law.
2. The Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of electronic Protected Health Information other than as provided for by
this Agreement in accordance with the requirements of 45 CFR Section 164.314(a)(2)(i).

3. Pursuant to the terms of the Agreement and as more particularly described in the INDEMNIFICATION provisions of the Agreement, the Business Associate hereby agrees, and shall be required to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate which is in violation of the requirements of the Agreement.

4. The Business Associate shall immediately report to the Covered Entity any use or disclosure of unsecured Protected Health Information not provided for by the Agreement, of which it shall become aware in accordance with the provisions of 45 CFR Section 164.410.

5. The Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Protected Health Information on behalf of the Business Associate agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information pursuant to 45 CFR Section 164.502(e)(1)(ii) by entering into a contract or other arrangement in accordance with the requirements of 45 CFR Section 164.314.

6. Business Associate agrees to provide access, at the request of the Covered Entity, to Protected Health Information in a Designated Record Set, to the Covered Entity or as directed by the Covered Entity, to an Individual, in order to meet the requirements under 45 CFR Section 164.524.

7. Business Associate agrees to make any necessary amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees pursuant to 45 CFR Section 164.526, at the request of Covered Entity or an Individual, in a timely manner.

8. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Entity, available to the Secretary for purposes of the Secretary determining the Covered Entity’s compliance with the Privacy Rule.

9. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with the requirements of 45 CFR Section 164.528.

10. Business Associate agrees to provide to the Covered Entity or an Individual, upon request, information which may be collected by the Business Associate during the term of this Agreement, for purposes of permitting the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information, in accordance with the provisions of 45 CFR Section 164.528.

11. To the extent that the Business Associate is to carry out an obligation of the Covered Entity as a term of this Agreement, Business Associate agrees to comply with the requirements of the Privacy Rule under 45 CFR Section 164.504 that apply to the Covered Entity in the performance of such obligation.
C. PERMITTED USES AND DISCLOSURE

1. General Uses and Disclosure - Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform the functions, activities, or services as defined in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if said disclosure were done by the Covered Entity, or the minimum necessary policies and procedures of the Covered Entity, as well as the applicable provisions of the New York State Mental Hygiene Law.

2. Specific Uses and Disclosure - Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the services to be provided by the Business Associate in this Agreement, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law, or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

3. Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information to provide information required to the Covered Entity as permitted by 45 CFR Section 164.504 (e)(2)(i)(B).

4. Except as otherwise limited in this Agreement, the Business Associate may use Protected Health Information to carry out the legal responsibilities of the Business Associate.

5. The Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502 (j)(1).

6. Nothing within this section shall be construed as to inhibit the disclosure of information as may be required by the New York State Mental Hygiene Law, Sections 33.13 or 33.16, or other provisions, as may be Required by Law.

D. OBLIGATIONS OF COVERED ENTITY WITH REGARD TO PRIVACY PRACTICE AND RESTRICTIONS

1. The Covered Entity shall notify the Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.

2. The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.

3. The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.
E. PERMISSIBLE REQUESTS BY COVERED ENTITY

The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

F. COVERED ENTITY’S RESPONSIBILITIES UPON TERMINATION

1. The term of this Agreement shall begin upon April 30, 2018 and continue until April 30, 2020. Upon termination of this Agreement, the Covered Entity shall take such necessary precautions to ensure the confidentiality of the Protected Health Information, in accordance with the provisions of 45 CFR Section 164.

2. Termination for Cause – In the event that the Covered Entity becomes aware of a material breach by the Business Associate of the terms of this Appendix, the Covered Entity shall have the right, at its sole discretion, to proceed as follows:
   
   (a) Provide an opportunity to the Business Associate to cure the breach, and end the violation within ten (10) business days. If the Business Associate does not cure the breach and end the violation within ten (10) business days, the Covered Entity shall have the right to immediately terminate the agreement; or
   
   (b) Immediately terminate the agreement if the Business Associate has breached a material term of this Appendix, and cure is not possible; or
   
   (c) If neither termination of the agreement nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

G. EFFECT OF TERMINATION

1. Upon termination of the Agreement, the Business Associate shall take all necessary precautions and extend the protections of this Agreement to all Protected Health Information, as if the Agreement were still in force and effect.

2. At the end of all audit and other relevant periods, as more particularly described in the RECORDS provisions of the Agreement, the Business Associate shall, if feasible, return or destroy all Protected Health Information received from or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form.

H. MISCELLANEOUS

1. **Regulatory References** – A reference in this Agreement to a section in the Privacy Rule or in the Mental Hygiene Law means the section as in effect or as amended.

2. **Amendment** – The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.

3. **Survival** – The respective rights and obligations of the Business Associate with regard to this Appendix shall survive the termination of this Agreement.
4. **Interpretation** — Any ambiguity in this Agreement shall be resolved to permit the Covered Entity to comply with the Privacy Rule.

5. **Incorporation in the Agreement** — The terms of this Appendix “A” are hereby incorporated into the Agreement between the parties hereto.
SCHEDULE “B”
INSURANCE COVERAGE

1. Workers’ Compensation and Employers’ Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.

2. Automobile Liability Insurance: A policy or policies with the limits of not less than $500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.

3. General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

<table>
<thead>
<tr>
<th>Liability For:</th>
<th>Combined Single Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Damage</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Bodily Injury</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Personal Injury</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

4. Professional Liability Insurance: A policy or policies of insurance with limits of not less than $1,000,000.