

## **Professional Services Agreement**

This Agreement (the "Agreement") is entered between the COUNTY OF ONEIDA, a municipal corporation organized and existing under the laws of the State of New York, having its principal offices at 800 Park Avenue, Utica, New York 13501 (the "County"), and NORMAN J. LESSWING, Ph.D., with his principal office at 307 S. Townsend Street, Syracuse, New York 13202 (the "Consultant").

### **WITNESSETH**

**WHEREAS**, the County desires to contract for clinical psychologist consultant services for use by its Office of the Public Defender, Criminal Division ("Public Defender"); and

**WHEREAS**, the Consultant has the proper and necessary credentials as a New York State licensed clinical psychologist to act as a consultant to the Public Defender;

**NOW THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. **Scope of Services.** The Consultant shall provide consulting and related services (the "Services"). The Services shall include, but are not limited to, the following:
  - a. Complete any and all mutually agreed upon clinical psychological assessments and evaluations referred to the Consultant by the Public Defender. Such clinical psychological services may include an initial consultation; literature research and review; interview(s) or evaluation(s); interview(s) with family members, workplace colleagues, or other relevant persons; consultation with counsel; review of records; and report preparation; and
  - b. Provide testimony as a witness whenever called upon to do so, at any deposition or court proceeding, including any necessary preparation in connection thereto; to the extent practical, the County shall give the Consultant at least three (3) weeks notice of any trial or deposition at which the Consultant is expected to testify; and
  - c. Performance of all duties shall be in compliance with all appropriate statutes, rules, regulations, ordinances and local laws, as well as relevant professional standards of care.
2. **Term.** This Agreement shall commence on January 1, 2025 and continue until December 31, 2026 (the "Term").
3. **Payment.** In exchange for the Services provided, the County shall pay the Consultant at a rate of \$300.00 per hour, irrespective of the outcome of the particular matter in which the Consultant is involved. Notwithstanding the foregoing, total compensation under this Agreement shall not exceed \$45,000.00. The Consultant shall be paid upon presentation to the Public Defender of a properly completed County voucher. The County shall not be

responsible for payment of Services beyond those specified in, or reasonably contemplated by, this Agreement, unless the Public Defender has provided prior written approval regarding same to the Consultant.

4. **Termination.** This Agreement may be terminated by either party upon fifteen (15) days' prior written notice to the other party. Notwithstanding the foregoing, if the Consultant fails to comply with any legal or professional requirements governing the provision of Services covered under this Agreement, the County may terminate this Agreement effective immediately, or, at its option, effective at a later date after sending notice of such termination to the Consultant. At such time as either party may elect to terminate this Agreement, all files, documents, reports, and other papers in the possession of the Consultant under the terms of the Agreement shall be returned to the County along with a final report from the Consultant as to the then current status of services Consultant is engaged in at the time of termination. At such time as either party may elect to terminate this Agreement, the payments to the Consultant shall be made as of and to the date of termination, and prorated as necessary.
5. **Indemnification.** To the fullest extent permitted by applicable law, the Consultant shall indemnify and hold harmless, and at the County's option, defend the County and/or its officers, directors, members, agents, employees, contractors and other representatives, from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by the County caused by any negligent act or omission, or intentional misconduct of the Consultant, arising out of or in connection with the exercise by the Consultant of the rights and privileges granted by or pursuant to this Agreement, except to the extent such Damages are caused by the sole negligence, unlawful act or omission, or intentional misconduct of the County.
6. **Insurance.** The Consultant shall obtain and maintain comprehensive professional liability insurance satisfactory to the County with a minimum of \$1,000,000.00 coverage per occurrence. Proof of the same must be provided to the County at the time of execution of this contract. It is expressly understood that if during the course of this Agreement, said insurance policy is cancelled or otherwise allowed to lapse, the Consultant must provide the County with proof of insurance consistent with the stipulations listed above. Failure to comply with this provision may result in the immediate termination of this Agreement.
7. **Performance of Services.**
  - a. The Consultant represents and agrees that he has the qualifications, specialized skills, experience, and ability to properly perform the Services.
  - b. The Consultant acknowledges and agrees that he has no authority to enter into contracts that bind the County or create obligations on the part of the County

without the prior written authorization of the County.

- c. The Consultant shall inform the County, within twenty-four (24) hours of any request from the County, if he is unable or unwilling to perform Services in any newly-assigned matter. The Consultant maintains the right to refuse any such request at any time, while the County maintains the right to contract with other individuals or entities to perform the Services.
8. **Independent Contractor.** Consultant is an independent contractor performing professional services for the County and is not an employee of the County. Consultant shall not accrue leave, retirement, insurance, bonding, use of Customer vehicles, or any other benefits afforded to employees of the County as a result of this Agreement. Consultant acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
9. **Expenses.** The Consultant is solely responsible for paying all of his business expenses related to furnishing the Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services, or other general operating expenses.
10. **Training.** The Consultant shall not be required to attend or undergo any training by the County.
11. **Confidentiality.**
  - a. The Consultant agrees to maintain files in a confidential manner pursuant to all applicable statutes, including, but not limited to, New York State Mental Hygiene Law and any Federal Law regulating such files. Information contained in these files shall be released only upon the written consent of the client being served or to the Oneida County Public Defender Office as outlined below. It is expressly understood that as a Consultant for the Oneida County Public Defender Office, it may and will receive confidential information from the Oneida County Public Defender Office and this information may have been received from other independent contractors and/or licensed agencies. The Consultant agrees that all such information will be considered as being confidential and shall not be re-disclose without the written consent of the individual. Accordingly, as a condition of and in consideration of access to confidential information, the Consultant promises that he or she will use confidential information only as needed to perform the legitimate duties as outlined above for the Oneida County Public Defender Office. This means, among other things, that: (i) the Consultant will only access confidential information for which there is a need to know; (ii) the Consultant will not in any way divulge, copy, release, sell, loan review, alter or destroy and confidential information except as properly authorized; and (iii) the Consultant will not misuse confidential information or carelessly handle confidential information.

- b. The Consultant will safeguard and will not disclose any access code or any other authorization that allows access to confidential information. The Consultant accepts responsibility for all activities undertaken using any access code and other authorization.
- c. The Consultant will report activities by an individual or entity that is suspected of or may compromise the confidentiality of confidential information. Reports made in good faith about suspect activities will be held in confidence to the extent permitted by law, including the name of the individual reporting the activities.
- d. The Consultant understands that the obligations under this Agreement will continue after termination of employment and that it is further understood that any privileges hereunder are subject to periodic review, revision and, if appropriate, renewal.
- e. The Consultant understands that there is no right or ownership interest in any confidential information referred to in this Agreement. The Oneida County Public Defender Office may at any time revoke any access code, other authorization, or access to confidential information. At all times during the course of providing services under this Agreement, the Consultant will safeguard the confidentiality of all confidential information.
- f. The Consultant will be responsible for any misuse or wrongful disclosure of confidential information and for any failure to safeguard an access code or other authorization access to confidential information. It is expressly understood that any failure to comply with this Agreement may result in immediate termination of access to the information system and legal action against the Consultant and/or individual providers within the network.
- g. The Consultant agrees not to discriminate or refuse assistance to individuals diagnosed with AIDS or an HIV infection or an HIV related illness. If the Consultant is provided with any confidential HIV related information during the course of providing services and in accordance with 403 of Title 18 of the NYSDSS regulation and Section 2782 of the Public Health Law, he shall be informed of the penalties and fines for any redisclosure found to be in violation of New York State Law and/or Regulation. The Consultant shall include the following written statement when disclosing any confidential HIV related information:

*This information has been disclosed to you from confidential records, which are protected by State Law. State Law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State Law may result in fine or jail sentence or both. A*

*general authorization for the release of medical or other information is not sufficient authorization for further disclosure.*

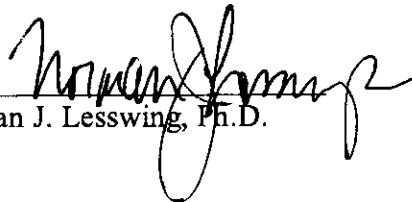
12. **Legality and Severability.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state and local laws, ordinances, rules, regulations, court orders, and applicable governmental agency orders. If any term or provision of this Agreement is held to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties agree that any court reviewing this Agreement shall reform any illegal or unenforceable provision to carry out the express intent of the parties as set forth herein to the fullest extent permitted by law.
13. **Survival.** The provisions in Paragraph Nos. 5 and 10 shall survive the expiration or termination of this Agreement.
14. **Choice of Law and Venue.** Interpretation of this Agreement shall be governed by New York State law and the parties agree that any legal action shall be filed in a court of competent jurisdiction in Oneida County, New York.
15. **Waiver.** Any failure of a Party to assert any right under this Agreement shall not constitute a waiver or a termination of that right or any provisions of this Agreement.
16. **Third-Party Beneficiary.** No person shall be a third-party beneficiary pursuant to this Agreement. No obligation of Dominion or Customer may be enforced against Dominion or Customer, as applicable, by any person not a party to this Agreement.
17. **Advice of Counsel.** Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understands all of the terms and provisions of this Agreement.
18. **Notices.** All notices required herein shall be served on or mailed to the parties at the addresses indicated above.
19. **Entire Agreement.** The terms of this Agreement, including Oneida County Standard Conditions of Contract, which is attached hereto as Exhibit A, constitutes the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. No waiver, alteration, or modification of and provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

**IN WITNESS WHEREOF** the County and the Consultant have signed this Agreement on the day and year first above written.

**Oneida County:**

**Consultant:**

By: \_\_\_\_\_  
Anthony J. Picente, Jr.  
County Executive

By:   
Norman J. Lesswing, Ph.D.

Approved

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Christopher J. Kalil, Esq.  
Assistant County Attorney