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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: February 18, 2015

RE: Agreement with the County of Erie
Lease of 2014 Ford E-450

Kindly authorize the Supervisor to execute the necessary documents to enter into the attached Agreement with the County of Erie to lease a 2014 Ford E-450 Phoenix Bus, Type 1, with a wheelchair lift. The lease shall be for a term equal to the useful life of the vehicle, approximately five (5) to seven (7) years, at an annual payment of \$1.00 per year.

Please be advised that this vehicle will be provided by the County of Erie pursuant to their participation in a Federal program for the purpose of providing transportation services to meet the special needs of elderly and disabled individuals with insufficient access to mass transit. As such, the vehicle may only be used to provide passenger transportation service for those individuals.

Further, the operation and maintenance of the vehicle shall be the responsibility of the Town.



State of New York
FTA Section 5310 Program

LEASE AND SERVICE AGREEMENT
FOR CAPITAL EQUIPMENT

THIS AGREEMENT made this day of January 21, 2015
by and between

County of Erie d/b/a Department of Senior Services

with offices at

95 Franklin Street, 13th Floor, Buffalo, New York 14202

hereinafter referred to as "Contractor" and

Town of West Seneca

with offices at

West Seneca Town Hall, 1250 Union Rd, West Seneca, New York

hereinafter referred to as "Carrier".

W I T N E S S E T H:

WHEREAS, Section 5310 of Chapter 53, Title 49, U.S. Code provides for capital grants to private nonprofit corporations for the purpose of assisting them in providing transportation services meeting the special needs of elderly individuals and/or individuals with disabilities for whom mass transportation services are unavailable, insufficient or inappropriate; and

WHEREAS, the Federal Transit Administration has an established policy of encouraging the use of Section 5310 Program vehicles by private for profit operators; and

WHEREAS, the Contractor is a grantee/subrecipient for certain Capital Equipment or facilities under said federal program pursuant to an approved Project Application and a written Agreement with the State; and

WHEREAS, the Carrier is not a public body engaged in the provision of mass transportation service for the general public; and

WHEREAS, the Contractor has agreed to lease said Capital Equipment to the Carrier for the purpose of providing certain transportation service to elderly individuals and/or individuals with disabilities pursuant to said Project Application and Agreement with the State,

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Contractor and the Carrier agree as follows:

1. Definitions. As used in this Agreement:

"Department" means the Department of Transportation of the State of New York.

"State" means the State of New York.

"FTA" means the Federal Transit Administration of the United States Department of Transportation.

"Project Application" means the federal Section 5310 capital application(s) submitted by the Contractor to, and as approved by, the Department and FTA for certain Capital Equipment described in Appendix C of this Agreement, including all project supporting information submitted therewith.

"Capital Equipment" means the vehicles obtained by the Contractor through the federal Section 5310 program administered by the State through the Department, said equipment to be that described in Appendix C.

"Service Period" means the period of time set forth in Appendix C of this Agreement.

"Transportation Service" means the authorized passenger transportation services to be provided by the Carrier during the Service Period, as described in Appendix C of this Agreement.

"Commissioner" means the Commissioner of Transportation of the State of New York or his/her duly authorized representatives.

2. Purpose of Agreement. The purpose of this Agreement is to provide for the lease of the Capital Equipment to the Carrier and the rendering of certain Transportation Service by the Carrier utilizing said Capital Equipment, and to state the terms, conditions and mutual understandings of the parties governing said lease, and the operation and maintenance of the Capital Equipment.

3. Documents Forming the Agreement. This Agreement consists of this document and the following listed attachments:

- Appendix A -- Standard Clauses for NYS Contracts
- Appendix B -- Federal Government Required Clauses (FTA)
- Appendix C -- Scope of Work and Financial Reimbursement
- Appendix D -- Contractor's Authorizing Document
- Appendix E -- Disposition of Equipment

This Agreement also consists of the following documents, which are incorporated by reference:

- (a) Contractor's approved FTA Section 5310 Project Application submitted to the Department;
- (b) Agreement(s) Between Contractor and the State (State Contract No.(s) **C034051**).

4. Title to Capital Equipment. Title to the Capital Equipment shall remain in the name of the Contractor, subject to the restrictions on use and disposition as set forth in this Agreement.

5. Use of Capital Equipment. (a) The Carrier agrees that the Capital Equipment leased from the Contractor in accordance with this Agreement will be used solely for the provision of passenger transportation service as described in Appendix C of this Agreement.

(b) Any unauthorized use of said Capital Equipment that is not in accordance with the Transportation Service as described herein shall be cause for termination of this Agreement by the Contractor or the Department. Use of the Capital Equipment to provide charter or sightseeing transportation service is permitted to the extent such use is consistent with the conditions specified in the Contractor's approved Section 5310 Project Application, except as otherwise provided in Appendix C. Use of the Capital Equipment to provide freight or emergency medical transportation is strictly prohibited.

(c) The Carrier shall submit to the Contractor such information or reports as the Contractor may from time to time request in connection with the use of the Capital Equipment. The Carrier shall immediately notify the Contractor and the Department in all cases where any of the Capital Equipment is used in a manner substantially different from that required by this Agreement.

(d) The Capital Equipment may not, at any time, be used exclusively for the personal transportation or private purposes of the employees, agents, representatives, clients or associates of the Contractor or the Carrier. Violation of this restriction shall be considered cause for the immediate termination of this Agreement by the Department or the Contractor.

6. Maintenance of Equipment. The Carrier agrees to keep the Capital Equipment in a safe and clean condition and in good working order, and to garage or store the equipment in a secure manner. The Carrier agrees to properly maintain the equipment according to the procedures described in the manufacturer's service manual and to generally accepted bus industry practices for such equipment.

Besides this normal maintenance, the equipment should be regularly inspected by trained maintenance personnel and any problems uncovered through this inspection corrected in a reasonable time. Components of equipment should be tested regularly and kept in good working order.

In addition, the Carrier agrees to comply with such other reasonable maintenance or other conditions relating to the safe and acceptable operation of the Capital Equipment, as the Contractor may require.

7. Disposition of Equipment. Upon completion of the Service Period or upon termination of this Agreement, the Capital Equipment shall be returned to the Contractor for disposition in accordance with Appendix E of this Agreement.

8. Contracts of the Carrier. The Carrier shall not execute any contract, amendment thereto or change order, or obligate itself in any manner with any successor carrier or other subcontractor with respect to the use or operation of the Capital Equipment under this Agreement without the prior written concurrence of the Contractor and the Department. The Contractor and the Department shall require the inclusion therein of such terms and conditions as they may deem necessary or desirable to effectuate the purpose of this Agreement as a pre-requisite to their approval. Such terms and conditions

shall include provision for compliance with all applicable rules, regulations and project supporting requirements of Section 5310 of Chapter 53, Title 49, U.S. Code as the latter are specified in the contractor's Project Application.

9. Termination or Suspension. (a) The parties to this Agreement may agree to terminate this Agreement at any time, according to mutually agreed upon terms and conditions which have been forwarded in writing to the Department for advance approval. Such terms and conditions shall include appropriate provision by the Contractor for the continuation of the Transportation Service to elderly individuals and/or individuals with disabilities as required in the Project application. Upon approval by the Department of such terms and conditions, this Agreement shall be terminated.

(b) If the Carrier, before completion, discontinues the Transportation Service pursuant to this Agreement or if, for any reason, the commencement, prosecution or timely completion of these services by the Carrier is rendered improbable, impossible or illegal, the Contractor, by written notice to the Carrier and the Department, may terminate any or all of the Contractor's obligations under this Agreement or may suspend any or all of its obligations under this Agreement until the event or condition resulting in such suspension has ceased or been corrected.

(c) Upon receipt of any such notice of termination or suspension, the Carrier shall promptly carry out the actions required by such notice which may include any or all of the following: (1) termination or suspension of the use of Capital Equipment and such other action as the Contractor deems necessary; (2) furnishing a status report on the physical condition of the Capital Equipment; and (3) furnishing an estimate of the fair market value of the leased Capital Equipment.

10. Records and Documentation. The Carrier shall retain all data, reports, records, logs and other materials and information relating to activities covered by this Agreement for a period of (3) years following the termination date of the Service Period under this Agreement and shall make the same available to the Commissioner, the State Comptroller, the United States Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, for audit, inspection and copying, upon request.

11. Grant Responsibilities of the Carrier. The Carrier agrees to comply with the terms and conditions contained in the Contractor's approved Section 5310 Project Application and its Agreement with the State, and with all applicable rules, regulations and project supporting information and assurances of Section 5310 of Chapter 53, Title 49, U.S. Code. The Carrier agrees to accomplish and provide, all necessary actions, reports and other documentation as required by the Department for the Section 5310 program, or for the coordinated public transportation service, including but not limited to quarterly reports, insurance records, vehicle inspections, etc. The Carrier agrees to provide the annual certification of insurance described in Section 14 of this Agreement. Also, the Carrier shall submit to the Contractor copies of any documents or reports that are forwarded by the Carrier to the Department that pertain to the use of the Capital Equipment or this Agreement.

12. Approval by Department. This Agreement shall not be effective unless approved in writing by the Department.

13. Carrier Authorization under Federal, State and Local Law. In the event that any approval, permit, action, proceeding or authorization is required by applicable law, ordinance, rule or regulation to enable the Carrier to enter into this Agreement, or to undertake the Transportation Service, or to observe, assume, or carry out any of the provisions of this Agreement, the Carrier will initiate and complete such action as is so required.

14. Carrier Liability. The Carrier will be responsible for all damage to life and property due to activities of the Carrier, his subcontractors, agents or employees in connection with the utilization of the Capital Equipment leased from the Contractor pursuant to this Agreement. The Carrier shall indemnify and hold harmless the Contractor and the State and their employees from any and all claims, actions, suits, proceedings, costs, expenses, judgments, damages and liabilities, including reasonable attorneys' fees, arising out of or resulting from acts or omissions of the Carrier, its contractors, subcontractors, agents or employees, relating to the utilization of the Capital Equipment.

15. Insurance. (a) During the entire term of this Agreement, the Carrier shall maintain insurance covering each vehicle provided to the Carrier, with an insurance company or companies authorized and qualified to do such business in the State of New York, of the Types and at least in the amounts set forth below:

Coverage	Amounts
Bodily Injury Liability Protection	A. \$100,000 per person B. \$300,000 per occurrence for 1-12 seating capacity \$500,000 per occurrence for over 12 seating capacity
Property Damage Liability Protection	\$50,000 per occurrence
Combined Single Limit	\$1,000,000 per occurrence
Basic No-Fault Benefits (Personal injury protection)	Statutory
Uninsured Motorist Insurance	Statutory

(b) During the entire term of this Agreement, the Carrier shall EITHER:

1. Maintain Physical Damage insurance covering each vehicle provided to the Carrier, with an insurance company or companies authorized and qualified to do such business in the State of New York as follows:

Coverage	Limits	Maximum Deductible
Collision	Actual Cash Value	\$1,000
Comprehensive	Actual Cash Value	\$1,000

OR

2. Maintain as a demand deposit in a bank, trust company or industrial bank chartered to conduct business in the State of New York, an amount of money at all times equal to the five year straight line depreciated cost of each vehicle provided to the Carrier. The Carrier shall certify annually to the Contractor and the Department that such an account is being maintained, the name and location of the bank, trust company or industrial bank where maintained, the total amount in such account, and the vehicles covered thereby. None of the funds required to be maintained in any such account by this Agreement shall be withdrawn from such account or expended without written approval thereof by the Department first having been obtained by the Carrier. The Department shall not authorize any such withdrawal or expenditure except in cases where the funds to be withdrawn and expended are to be applied toward the repair or replacement of the vehicles covered thereby under this provision, and the Department may impose additional requirements to assure such use.

Annual certification of coverage's under 1. and/or 2. above shall be sent to the Contractor and the Department.

16. Inspection. During the term of this Agreement, the Carrier shall permit, and require its subcontractors to permit, the Chief Executive Officer of the Contractor, the Commissioner, the State Comptroller, the Secretary of the United States Department of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect the condition of the Capital Equipment and the operation of said Capital Equipment in Transportation Service and to inspect all data, records and accounts maintained by the Carrier that are required pursuant to this Agreement, at any time during the normal business hours of the Carrier.

17. Term of Agreement. The term of this Agreement shall be the entire Service Period specified in Appendix C of this Agreement, with the provisions of Section 10 of this Agreement remaining in effect as specified therein.

In witness whereof, the Contractor and the Carrier have executed this Agreement by and through their respective authorized representatives, effective the day and year first above written:

FOR THE CONTRACTOR:

BY **Mark Poloncarz/ Maria White**

SIGNATURE _____

TITLE **County Executive / Deputy County Executive**

DATE

FOR THE CARRIER:

BY **Sheila Meegan**

SIGNATURE _____

TITLE **Supervisor**

DATE

APPENDIX C

Scope of Work and Financial Reimbursement

Capital Equipment: The Contractor agrees to lease the following Capital Equipment to the Carrier for the Service Period of this Agreement (description of equipment):

2014 FORD E-450 PHOENIX, GAS, TYPE I, with wheel chair lift

Transportation Service: The Carrier agrees to provide the passenger transportation service for elderly individuals and/or individuals with disabilities described in the Contractor's approved Project Application(s), according to the terms and conditions specified therein, for the Service Period of this Agreement. During those periods when the Capital Equipment or a portion thereof is not needed for said service to elderly and/or disabled individuals, it may be used to provide passenger transportation service to other elderly and/or disabled individuals in a frequency approved by the Contractor.

The Carrier shall notify the Contractor and the Department in writing of any substantial proposed change(s) in the Transportation Service prior to any such change(s). For this purpose, the term "service" shall include, but not be limited to schedules, operating hours, routes, timetables, marketing, equipment, fares and passenger terminals and facilities.

In addition to the restrictions on the use of the Capital Equipment stated in Section 5 of this Agreement, the Carrier shall not use the Capital Equipment in charter bus service in competition with any private bus operator outside the area within which the Carrier provides the Transportation Service.

The Carrier shall keep a record of each instance of charter use of the Capital Equipment, and the vehicle-miles incurred by the Capital Equipment for each such instance, and submit a report detailing these instances to the Contractor and the Department on a quarterly basis, for any calendar quarter during which such instances have occurred.

APPENDIX C (cont.)

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Service Period: The Service Period of this Agreement shall commence on **January 21, 2015** and continue for the useful service life of each vehicle.

Financial Reimbursement: The Contractor agrees to lease the Capital Equipment described herein to the Carrier for the Service Period described above. The Carrier agrees to pay the Contractor a fee for the use of each item of Capital Equipment according to the following schedule:

Vehicle ID# (VIN)	Amount per year
1FDEE 3FL3EDA34427	\$ 1.00
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	TOTAL AMT. \$

For a total of **\$ 1.00** per year, to be paid in monthly installments of **\$ waived**

Amendment Provision: Should one or more vehicles of the Capital Equipment become unsafe or in an otherwise unusable condition for the Transportation Service, or qualify for retirement, before the end of the Service Period, the Contractor and the Carrier may amend this Agreement to account for such conditions and to adjust the monthly fee, subject to the written approval of said Amendment by the Department.

APPENDIX D

Contractor Authorizing Document

Attach a copy of a notarized statement by the Chairman of the Board of Directors of the Contractor, authorizing this Agreement to be signed by the official of the Contractor stated therein.

APPENDIX E
DISPOSITION OF EQUIPMENT

This schedule sets forth the estimated useful life guideline targets for Section 5310 vehicles in New York State. To dispose of a Section 5310 vehicle you must notify the Department of Transportation in writing, providing the odometer reading, an appraisal of the current fair market value of the vehicle, and general information about the condition of the vehicle and why it can no longer be used for transportation purposes.

Vehicles meeting these standards can be disposed of only upon prior written approval from the Department in accordance with Section 9(d) of this Agreement. Failure to fully comply with this procedure by prematurely disposing of a vehicle will result in the grantee's payment of a sum equivalent to 80% of the vehicle's current fair market value as determined by the Department.

GENERAL USEFUL LIFE GUIDELINE TARGETS FOR PROJECT EQUIPMENT

Vehicle Type	Years of Service	Mileage to be Attained
12 to 25 Passenger	5	150,000
26 to 40 Passenger	7	200,000