

## INDEPENDENT SUBCONTRACTOR AGREEMENT (COIDA)

This Agreement ("Agreement") is made on December 1, 2016, by and between COUNTY OF OTSEGO INDUSTRIAL DEVELOPMENT AGENCY (hereinafter referred to as "COIDA" or "Client"), with its principal office located at 189 Main St., Oneonta, N.Y., and ALEXANDER MATHES JR., doing business as "Mathes Public Affairs", (hereinafter referred to herein as "Subcontractor" or "MPA"), with its principal place of business at 24 Molly White Drive, Coxsackie, N.Y. (collectively, COIDA and MPA are referred to herein as the "Parties").

**WHEREAS**, Alexander Mathes, Jr. is an Economic Development Professional Subcontractor doing business as "MPA" and as such, is an independent public affairs consulting professional who offers his services to the public at large and regularly performs such services on a contract basis for other individuals and entities.

**WHEREAS**, as an independent provider of services, Alexander Mathes, Jr, as MPA is qualified to perform consulting services, as further described in this Agreement, consistent with applicable laws, rules, and regulations and the standards reasonably expected of professional services offered by public affairs consultants ("Services").

**WHEREAS**, Alexander Mathes, Jr. as MPA and COIDA have previously entered into an Independent Subcontractor Agreement dated June 1, 2015 ("2015 Agreement") to provide Services to COIDA.

**WHEREAS**, Subcontractor and COIDA desire to enter into this Agreement in order to supersede and replace the 2015 Agreement.

**WHEREAS**, COIDA and Alexander Mathes, Jr as MPA, recognize and agree that in connection with the limited services provided by Subcontractor to COIDA hereunder, the Subcontractor will be entering into a separate independent subcontractor agreement with the Otsego County Capital Resource Corporation ("OCCRC").

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Term**. This Agreement shall commence on the date set forth above and will terminate on December 31, 2019, unless terminated earlier pursuant to Section 16 of this Agreement ("Termination Date").
2. **Non-exclusivity**. The Parties agree that this Agreement is non-exclusive to the extent that the Subcontractor may solicit and contract for Services to be rendered for other businesses on a contract basis or otherwise without input from Client.
3. **Contract Fee and Reimbursement of Expenses Incurred by Subcontractor**.
  - a. For services provided by Subcontractor in accordance with the terms of this agreement, COIDA will pay Subcontractor \$1,000.00 per month, in arrears, payable the first day of each month. The obligation of COIDA to make the monthly payment described in this Section 3(a) is subject to delivery by Subcontractor of the monthly log pursuant to Section 4(b)(1)(i) below.

b. Annual expenses for the general items described below incurred by the Subcontractor must be approved within the policies and procedures of COIDA, and within an annual budget estimate of \$40,000:

- (1) Mileage/Business Travel
- (2) State/Regional Business Memberships/Sponsorships
- (3) State/Regional Business Events/Programs
- (4) Business Recruitment & Entertainment
- (5) Contingency

c. Both parties understand budgetary support will vary with circumstances. MPA is asked to provide advance notice of the need for additional allocations or budget transfers in support of the mission. The annual budget estimate described above is a guideline only and subject to modification based on the annual budget process of COIDA and changes in the relevant Scope of Work, and is not compensation to MPA or a contractual obligation of COIDA. The Parties acknowledge and agree that the Contract Fee was individually negotiated and mutually agreed upon by the Parties.

#### 4. Scope of Work.

a. The "Scope of Work" for this contract will focus on specific deliverables related to the overall economic development structure, business recruitment and expansion atmosphere, development process and providing direct leadership advancing potential development opportunities in Otsego County with potential sites/vacant buildings. The Subcontractor will work with the board and staff of the COIDA in order to perform the Scope of Work and, further, as appropriate and necessary, with the board and staff of the OCCRC.

b. The Scope of Work consisting of certain deliverables and general obligations of the Subcontractor are described as follows:

##### (1) **DELIVERABLES** for reporting to the full board of COIDA:

**To the COIDA Board:** (i) Monthly update of activities, meetings and topics of focus and economic development work with connection to a project priority list mutually agreed upon by the Parties with direct linkage to transformational projects outlined in the strategic plan, such update to be in the form of a log of activities detailing dates and descriptions of activities, including relationships to General Obligations of the Subcontractor described in Section 4(b)(2) below. The Parties agree that the log provided for in this paragraph (i) will be satisfied by the delivery by Subcontractor of the log referred to in the agreement with the OCCRC; and

(ii) Monthly expense reporting to the COIDA Board providing detail of purpose and outcome of travel, events, meals and other expenses described in Section 3(b) above, with such report to be subject to review and approval by the Audit Committee, and then forwarded to the COIDA board for payment; and



**(2) General Obligations of the Subcontractor:**

- (a) As CEO provide administrative support to COO and FT staff;
- (b) Provide dynamic leadership to the organization and Board of Directors;
- (c) Represent the organization in county, regional and NYS economic development meetings and discussions; and
- (d) Provide monthly email to the Board of Directors as an update to related duties and organizational performance.

**5. Relationship of the Parties.** Subcontractor and COIDA are independent relatives to the other. Subcontractor is not an agent, employee, partner, co-adventurer, or legal representative of Client for any reason under any circumstance. The Subcontractor will report to the COIDA Board. The Subcontractor will enjoy the support of the COIDA staff but will not directly supervise staff. Subcontractor has no authority, actual or apparent, to enter into contracts or otherwise bind COIDA. Subcontractor represents and warrants that, in accordance with the terms of this Agreement, Alexander Mathes, Jr as MPA:

- a. is available to provide and provides services as an Economic Development Professional;
- b. will perform the Services contemplated under this Agreement;
- c. is in business and maintains a separate and independent business wholly apart from Client;
- d. is exposed to the entrepreneurial risks of profit and loss in operating his own business;
- e. is not directly supervised by Client in providing services;
- f. agrees to dedicate not less than 8 working hours a month to the exclusive service of the COIDA;
- g. will document the actual hours dedicated to service for COIDA and will not receive additional compensation for hours greater than the minimum, nor will the contract contemplate variable compensation for such services until such time when goals, objectives and milestones have been agreed upon;
- h. is not guaranteed any minimum amount of remuneration or Service-provision opportunities by COIDA beyond the term of this Agreement;
- i. is responsible for procuring and maintaining his own liability, workers' compensation, and other insurance coverages;
- j. is free to perform services for other businesses, provided that such services are not competitive with Client, during the term of this Agreement;
- k. is not required to provide services for Client exclusively or on a full-time basis;
- l. is not entitled to advances against the Contract Fee referred to herein;
- m. will not be bonded by Client;
- n. will have his Contract Fee reported on Internal Revenue Service Form 1099 and/or other appropriate tax form(s) consistent with its status as an independent contractor; and

o. is solely responsible for timely paying all taxes, including any self-employment, franchise, value added, sales and use, employment, and other taxes, consistent with its status as an independent contractor.

6. **Fringe Benefits.** Subcontractor understands that he is not eligible to participate in any employee pension, profit sharing, health, welfare, vacation, sick, or other fringe benefit plan, policy, or program of COIDA. Subcontractor represents and warrants that he has not relied upon receiving benefits of any kind for himself or any of his employees in entering into this Agreement. If Subcontractor is later classified as, or determined to be, an employee of Client, Subcontractor knowingly and voluntarily releases and forever waives his rights to any benefits to which he was, or may have become, entitled. If this general release and waiver is not enforceable, for whatever reason, Subcontractor agrees to indemnify and hold harmless Client from and against the costs of any and all benefits that become payable or due to Subcontractor or his employees.

7. **Workers' Compensation.** COIDA shall not obtain workers' compensation or any other similar insurance coverages on behalf of Subcontractor or Subcontractor's employees. If Subcontractor hires employees to perform any work under this Agreement, Subcontractor will cover them with workers' compensation insurance and provide Client with a certificate of workers' compensation insurance before the employees begin work.

8. **Unemployment Insurance Contributions.** COIDA shall make no state, federal, or other unemployment compensation payments on behalf of Subcontractor or Subcontractor's employees or contract personnel. Subcontractor will not be entitled to these benefits in connection with work performed under this Agreement.

9. **Business Permits, Certificates, and Licenses.** Subcontractor has complied with any and all laws that may be applicable with respect to requiring business permits, certificates, and licenses required to carry out the Services to be performed under this Agreement.

10. **Taxes.**

a. With respect to Subcontractor, the Parties agree that COIDA will not:

(1) withhold FICA (Social Security and Medicare) taxes from Subcontractor's Contract Fee payable under this Agreement or make FICA payments on Subcontractor's behalf;

(2) make any unemployment insurance contributions on Subcontractor's behalf; or

(3) withhold any foreign, national, federal, state, provincial, or local income tax from Subcontractor's Contract Fee under this Agreement, or pay any such taxes on Subcontractor's behalf.

b. Subcontractor represents, warrants, and agrees that he will timely and fully pay all taxes incurred while performing services under this Agreement, including, but not limited to, all income, FICA, unemployment insurance, self-employment (if Subcontractor is not a corporation), franchise, value added, employment, and other taxes.

11. **Company Identification.**



a. Except solely to the extent that Subcontractor obtains the prior written approval of COIDA and then only in the manner authorized by COIDA, Subcontractor shall not, directly or indirectly: (a) reproduce or use any service mark, trademark, copyright, logo, slogan, or derivative thereof of COIDA or any of its affiliates; or (b) utilize any facility address or telephone or fax numbers of COIDA as his or as MPA's on any documents including business cards, letterheads, advertising or in any written communications.

b. Subcontractor will not in any way dispute or do anything to impair the validity of COIDA's trademarks or names, trade dress, copyrights, trade secrets and other properties, or COIDA's sole ownership and right to use and control the use of its trademarks and names, trade dress, copyrights, trade secrets and other properties. Nothing in this Agreement or in the performance of Services shall convey any licensing rights to Subcontractor with respect to any of COIDA's intellectual property.

c. When performing Services on behalf of COIDA, Subcontractor and its employees are working on behalf of Client, not Subcontractor, and must acknowledge such throughout the performance of the Services.

**12. Subcontractor's Warranties.** Subcontractor warrants and represents that:

a. All Services rendered by Subcontractor will be carried out on a timely basis and with the skill, accuracy, experience, diligence and due care generally expected in the industry. Subcontractor will use its best efforts perform the Service subcontracted by COIDA to Subcontractor.

b. Subcontractor has the authority and power to enter into this Agreement and to perform his obligations hereunder. This Agreement constitutes the valid and binding obligation of Subcontractor enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights or by general principles of equity.

c. Subcontractor is in compliance in all material respects with all domestic, foreign and local laws, rules, and regulations applicable to this Agreement or to the performance by Subcontractor of its obligations hereunder.

d. Subcontractor will not use confidential or proprietary information from another person or entity in connection with its contract work with Client under this Agreement.

e. Subcontractor will not use contacts, sources or work generated by or related to its contract work with Client under this Agreement in connection with work performed by Subcontractor for other unrelated individuals and entities.

f. Subcontractor will not perform services for other businesses that compete with Client during the term of this Agreement and agrees to meet with the Governance Committee of COIDA to disclose any interests that may create an appearance of competition or a conflict of interest.

**13. Indemnification.** Subcontractor and COIDA agree to indemnify, defend, and hold harmless each other, their parents, affiliates, subsidiaries, officers, directors, employees, agents, consultants, assigns, and attorneys from and against any and all:

a. liability, costs, and expenses (including attorneys' fees) arising out of or in connection with Subcontractor's breach or alleged breach of any representation, agreement, and/or warranty contained in this Agreement; and

b. costs, expenses, judgments, claims, liability, and damages arising out of or in connection with any negligent act or omission or intentional tort by either party or either party's agents, officers, directors, employees, or other staff in connection with the performance of this Agreement.

**14. Subcontractor's Indemnification to COIDA:** Subcontractor agrees to defend, indemnify and hold harmless COIDA, its Officers, Directors, employees, agents consultants, assigns and attorneys from and against any claims for taxes, fines, penalties, interest, and any other liability (including attorney's fees) arising out of or in connection with a determination or finding that Subcontractor is and employee of COIDA.

**15. Insurance.** Subcontractor shall maintain, in effect, at all times during the Term of this Agreement, at Subcontractor's own expense, a policy of liability insurance in the amount of 1 million dollars per incident and 2 million dollars per aggregate naming COIDA as an additional insured..

a. Subcontractor shall, upon request of COIDA, made from time to time, provide to COIDA proof of all required insurance coverage and/or certificate(s) thereof. The insurance certificate shall provide that the coverage described therein shall not be changed in any material respect or cancelled without at least 30 days' prior written notice by registered or certified mail to COIDA.

b. Subcontractor understands and expressly agrees that Subcontractor is not entitled to participate in any of COIDA's insurance programs, including but not limited to COIDA's general liability insurance, professional liability insurance, property insurance, and motor vehicle insurance policies. Subcontractor agrees that it shall not seek any protection under COIDA's insurance policies and that the liabilities of Subcontractor to COIDA are in no way limited by the presence or amount of COIDA's insurance.

**16. Termination.** This Agreement may be terminated prior to the Termination Date as set forth below.

a. COIDA may terminate this Agreement:

(1) immediately upon Subcontractor's material breach of any of its obligations under this Agreement; or

(2) upon 90 days' advance written notice of such termination given to Subcontractor by COIDA.

b. Consistent with this Agreement, Subcontractor may terminate this Agreement:

(1) if COIDA fails on two or more occasions in any twelve-month period to pay to Subcontractor amounts due within 30 days after written notice of non-payment is given to Client;



(2) if COIDA fails or refuses to fulfill in any material respect any of its other material obligations under this Agreement and such failure or refusal continues for more than 15 days after written notice thereof given by Subcontractor to Client; or

(3) upon 90 days' advance written notice of such termination given to COIDA by Subcontractor.

**17. No Partnership.** This Agreement does not create a partnership or joint venture between the Parties, or between the officers, directors, employees, subcontractors, or other personnel of COIDA and Subcontractor.

**18. LIMITATION OF LIABILITY.** IN NO EVENT WHATSOEVER SHALL COIDA BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, LOSS OF OR DAMAGE TO PROPERTY, LOSS OF INCOME, PROFIT OR USE, OR CLAIMS OR DEMANDS MADE AGAINST SUBCONTRACTOR BY ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED BY SUBCONTRACTOR HEREUNDER OR A FAILURE TO PROVIDE SUCH SERVICES.

**19. Miscellaneous Provisions.**

a. No Discrimination. Subcontractor will not unlawfully discriminate or permit discrimination against any person or group of persons on the basis of any characteristic or classification protected by law, and Subcontractor will comply with all applicable laws pertaining to nondiscrimination that cover this Agreement.

b. Press Releases. Except as otherwise required by applicable law, the Parties shall consult with each other before issuing any press releases, public comments to the media, or otherwise making any public statement with respect to this Agreement or the transactions contemplated hereunder.

c. No Waiver. The waiver of or failure to require strict observance or performance of any provision of this Agreement shall not be construed to be a waiver of any other provision or of a Party's right to later require strict observance and performance of each of the provisions herein.


d. Governing Law. The parties irrevocably agree that this Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of law.

e. Enforceability; Validity. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity shall not invalidate the remainder of this Agreement, but rather the Agreement shall be construed as if it did not contain the invalid provision, and the rights and obligations of the Parties shall be construed and enforced accordingly.

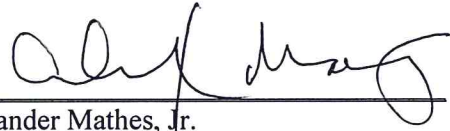
f. Facsimile. Signatures transmitted by facsimile shall have the same effect as original signatures.

g. Binding Agreement. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter contained herein, including but not limited to the 2015 Agreement. Any oral representations, prior contracts, or other agreements are hereby cancelled without further liability whatsoever on either Party. No waiver or modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both Parties.

COUNTY OF OTSEGO  
INDUSTRIAL DEVELOPMENT AGENCY

By:   
Devin Morgan, as Chairman of the  
County of Otsego Industrial Development Agency

ALEXANDER MATHES, JR.  
d/b/a MATHES PUBLIC AFFAIRS

By:   
Alexander Mathes, Jr.  
d/b/a MATHES PUBLIC AFFAIRS