

## MEMORANDUM OF UNDERSTANDING

**MEMORANDUM OF UNDERSTANDING**, (hereinafter “MOU”) by and between **SENECA TELECOMMUNICATIONS, LLC d/b/a SENECA SOLUTIONS**, a Delaware Limited Liability Company with office in Salamanca, Seneca Nation, New York (hereinafter “Seneca”); **RESOLUTE PARTNERS, LLC**, a Connecticut Limited Liability Company with offices in Southington, Connecticut (hereinafter “Resolute”); **NIAGARA COUNTY**, a municipal corporation organized and existing under the County Law of the State of New York with offices in Lockport, New York (hereinafter “Niagara”); **ORLEANS COUNTY**, a municipal corporation organized and existing under the County Law of the State of New York with offices in Albion, New York (hereinafter “Orleans”); and the **NIAGARA-ORLEANS REGIONAL ALLIANCE**, an intermunicipal collaboration between Niagara and Orleans to deliver broadband Internet services to the unserved areas of each county (hereinafter “NORA”).

### RECITALS

**WHEREAS**, Seneca and Resolute have collectively worked with Niagara and Orleans in support of the NORA Rural Broadband Initiative (hereinafter the “Project”), and

**WHEREAS**, Seneca and Resolute are particularly interested in continuing to pursue work with the New York State Broadband Program Office for the initial design and construction of Phase I (“Proof of Concept”) of the Project, and

**WHEREAS**, discussions have occurred among Seneca, Resolute, Niagara and Orleans with respect to the interest of Resolute, and

**WHEREAS**, the parties wish to set forth their mutual understanding in writing,

**NOW, THEREFORE**, in consideration of the premises, the parties agree and enter into this MOU as an extension of the 2015 MOU previously entered into by and between the parties as hereinafter set forth.

### BACKGROUND

The NYS Broadband office has been allocated \$500M in funding from the State of New York in an effort to ensure every New Yorker has access to affordable, high-speed broadband services in urban and rural communities. As part of the effort to bring high-speed broadband service to the region, NORA embarked on a multi-year effort to quantify the extent of its needs and position itself to receive funding from the NYS office. These efforts have ranked NIAGARA and ORLEANS Counties as several of the highest scoring counties out of the entire State. Further, as the NORA alliance sits in two different Regional Economic Development Councils, both Councils have made this effort a priority and are looking to get ‘quick wins’ in this area. Niagara and Orleans Counties have indicated that their grant writing teams are available to assist Seneca and Resolute in acquiring broadband funding.

As part of the coordination between NORA and the NYS Broadband Office, NORA learned of Seneca Solutions and Resolute Partners, LLC, deploying the Broadband service on the Cattaraugus Territory of the Seneca Nation of Indians. The NYS Broadband Office recommended the NORA team contact Seneca Nation and Resolute for further discussions.

After meetings with representatives of Seneca Solutions and Resolute Partners, LLC, and receiving Seneca/Resolute's unsolicited proposal to provide service, NIAGARA and ORLEANS Counties, Seneca and Resolute entered into an agreement to work together to obtain funding for, design, install, operate and maintain a Rural Broadband network for both Niagara and Orleans Counties.

## **OBJECTIVE**

This MOU is intended to solidify the parties' intent to pursue the said business opportunity between NIAGARA and ORLEANS Counties and the Seneca/Resolute Team.

1. Seneca Telecommunications, LLC, d/b/a Seneca Solutions is a tribally owned, Native American 8a Small Disadvantaged Business located on the Cattaraugus Territory of the Seneca Nation of Indians outside of Buffalo New York. Seneca is an experienced government contractor with strong credentials and past performance in broadband construction, Information Technology and Construction Management with the management expertise and resources to oversee large programs.
2. Resolute Partners, LLC, is a Connecticut based information technology company and is one of the largest wireless Internet Service Providers (WISP) in the US military. Resolute brings extensive knowledge, experience and insight in the rural broadband, network construction and network operations and management, including specific expertise with regards to the Seneca Nation's rural broadband project located on its Cattaraugus Territory.
3. Seneca Solutions and Resolute together have the ability to engineer, install, maintain and service an Internet solution as demonstrated by its efforts on the Cattaraugus rural WiFi project.

This MOU will enable each party to complement the unique capabilities of the other and will provide Niagara, Orleans and NORA (sometimes hereinafter collectively the "Client") with the best combination of expertise to achieve the Client's objective.

## **RESPONSIBILITIES**

The intention of this section is to outline the high level responsibilities of the parties if the decision is made by NIAGARA/ORLEANS Counties to engage Seneca Telecommunications, LLC d/b/a Seneca Solutions and Resolute Partners, LLC for the design, engineering and buildout of the NIAGARA/ORLEANS Rural Broadband Initiative on behalf of NORA:

**SENECA/RESOLUTE:**

1. Design and engineer a broadband solution that meets the requirements of the NYS Broadband grant guidelines
2. Develop an ongoing operations and maintenance program to support the broadband network
3. Develop a sales and marketing campaign to optimize the awareness of, and the purchase of, broadband services in the region
4. Provide all required technical and operational information necessary for grant submission to the NYS broadband office in a timely manner
5. Provide support to NIAGARA/ORLEANS Counties at meetings, conferences and various required presentations.

**NIAGARA:**

1. Provide all source information obtained from the previous analysis and consultant reports outline the resources, needs and requirements
2. Grant access to all NIAGARA owned or controlled properties required for the construction of the broadband network
3. Provide grant writing information and personnel to complete the NYSBB application
4. Ensure there is appropriate funding for the project
5. Secure permits and agreements necessary for the construction and provision of broadband service and support.

**ORLEANS:**

1. Provide all source information obtained from the previous analysis and consultant reports outline the resources, needs and requirements
2. Grant access to all ORLEANS owned or controlled properties required for the construction of the broadband network
3. Provide grant writing information and personnel to complete the NYSBB application
4. Ensure there is appropriate funding for the project
5. Secure permits and agreements necessary for the construction and provision of broadband service and support.

**TERM**

This MOU, which is effective upon the date of execution, shall automatically expire and be deemed terminated upon the date of the happening or occurrence of any one of the following events or conditions, whichever occurs first:

1. Mutual consent of the parties in writing;
2. Official announcement by the Client that the Project has been canceled or an award will not be made for "Phase 1" of the Project.
3. Failure of Parties, after negotiation in good faith, to reach agreement after a reasonable time on the terms of a contract or other business relationship that would serve to perpetuate the Parties collaboration on the project.
4. 365 days after the effective date of this Agreement, unless the Parties agreed to extend the relationship.
5. Notification by either party of the good faith decision by either party to terminate.

## **DESIGNATED REPRESENTATIVE**

Each party to this Agreement will designate in writing one or more individuals within their respective organization as their representative(s) responsible for direct performance of the parties' necessary functions. Such representative(s) will be responsible to effectuate the requirements and responsibilities of the parties.

Designated Representative  
for  
Resolute Partners, LLC

Michael Blanco  
CEO/ President  
Tel: (860) 620-8217  
Fax: (860) 628-6800  
E-Mail: MBlanco@ResolutePartners.com

Designated Representative  
for  
Seneca Solutions

Mark Baines  
President  
Tel: (703) 956 6665  
Fax: (703) 953 3247  
E-Mail: mbaines@seneca-solutions.com

Designated Contact Persons for

### **NIAGARA/ORLEANS COUNTIES**

Richard E. Updegrove  
Niagara County Manager  
Tel: (716) 439-7006  
Fax: (716) 439-7212  
E-Mail: Jeff.Glatz@niagaracounty.com

Charles H. Nesbitt, Jr.  
Orleans County Administrator  
Tel: (585) 589-7053  
Fax: (585) 589-1618  
E-Mail: cnesbitt@orleanscountyny.gov

## **CONFIDENTIALITY**

The Receiving party shall not (1) make Confidential Information available to any of its employees or consultants who do not have a "need to know" in order to carry out the purposes of this Agreement; (2) disclose any Confidential Information to any third party unless it is agreed that the third party is directly involved with the project as determined by the Disclosing Party; or (3) use Confidential Information for any purpose other than contemplated by this Agreement. The Receiving Party shall be held to the same standard of care it applies to its own information and materials of a similar nature. All such material provided to the Receiving Party shall remain the property of the Disclosing Party and shall be returned to the Disclosing Party upon demand and shall not be reproduced in any manner except as provided above or upon the prior express written consent of the Disclosing Party. The provisions of this Article shall survive the termination of this Agreement. Niagara and Orleans as governmental entities are subject to the provisions of Article 6 of the Public Officers Law, commonly referred to as the Freedom of Information Law ("FOIL"), and may be required by judicial, administrative or regulatory order to disclose certain information. Either county will notify Seneca/Resolute of any FOIL requests seeking Confidential Information.

**EXPENSES**

Each party will bear its own expenses in connection with the development and submission of any proposals submitted to the Client. Neither Party shall obligate the other Party to incur or pay any expenses without the prior written consent of the other Party.

**RELATIONSHIP OF THE PARTIES**

This MOU is not intended by the parties to constitute or create a joint venture, partnership, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein. No party shall have the right or authority to bind the other except to the extent authorized herein. The parties to this Agreement shall remain as independent contractors at all times and none shall act as an agent for the other.

**LIMITATION OF LIABILITY**

In no event shall any Party be liable to the Other for consequential, incidental or special (including multiple or punitive) damages arising out of this Agreement, including but not limited to future sales and lost profits.

**MISCELLANEOUS**

This Agreement shall be governed by the laws of the State of New York. No Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the others, which consent will not be unreasonably withheld.

**ENTIRE AGREEMENT**

This MOU contains the entire agreement between the parties hereto with respect to the matters covered herein. No other agreements, representations, warranties or other matters, oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Any changes or amendments to this Agreement may be made only in writing and signed by the parties to be bound thereby.

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding by their officer's thereunto duly authorized as of the date first written below.

**Resolute Partners, LLC**

**Seneca Solutions**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

Title \_\_\_\_\_

Title : \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Niagara County**

Signed: \_\_\_\_\_

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

Title : \_\_\_\_\_

Date: \_\_\_\_\_

**Orleans County**

Signed: David B. Callard

By : David B. Callard

Title : Chairman

Date: 4-27-16

APPROVED AS TO FORM  
David C. Schubel  
DAVID C. SCHUBEL  
Orleans County Attorney

APPROVED  
Orleans County Legislature  
Date: 4/27/16 Resolution No.: 189-416

**RESOLUTION NO. 189-416**

APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN ORLEANS COUNTY, NIAGARA COUNTY, SENECA TELECOMMUNICATIONS LLC AND RESOLUTE PARTNERS LLC FOR THE NORA RURAL BROADBAND INITIATIVE

WHEREAS, through the NIAGARA-ORLEANS REGIONAL ALLIANCE (hereinafter "NORA");, an intermunicipal collaboration between the Counties of Niagara and Orleans, an initiative has been undertaken to deliver broadband Internet services to the unserved areas of each county; and

WHEREAS, Seneca Telecommunications, LLC, d/b/a Seneca Solutions is a tribally owned, Native American 8a Small Disadvantaged Business located on the Cattaraugus Territory of the Seneca Nation of Indians outside of Buffalo New York. Seneca is an experienced government contractor with strong credentials and past performance in broadband construction, Information Technology and Construction Management with the management expertise and resources to oversee large programs; and

WHEREAS, Resolute Partners, LLC, is a Delaware based information technology company and is one of the largest wireless Internet Service Providers (WISP) in the US military. Resolute brings extensive knowledge, experience and insight in the rural broadband, network construction and network operations and management, including specific expertise with regards to the Seneca Nation's rural broadband project located on its Cattaraugus Territory; and

WHEREAS, Seneca Solutions and Resolute together have the ability to engineer, install, maintain and service an Internet solution as demonstrated by its efforts on the Cattaraugus rural WiFi project; and

WHEREAS, as part of the effort to bring high-speed broadband service to the region, NORA embarked on a multi-year effort to quantify the extent of its needs and position itself to receive funding from the New York State Broadband Office; and

WHEREAS, these efforts have ranked Niagara and Orleans Counties as several of the highest scoring counties out of the entire State; and

WHEREAS, since the NORA alliance sits in two different Regional Economic Development Councils, both Councils have made this effort a priority; Niagara and Orleans Counties have indicated that their grant writing teams are available to assist Seneca and Resolute in acquiring broadband funding; and

WHEREAS, the NYS Broadband office has been allocated \$500M in funding from the State of New York in an effort to ensure every New Yorker has access to affordable, high-speed broadband services in urban and rural communities; and

WHEREAS, pursuant to Orleans County Resolution 270-715, representatives of Seneca Solutions, Niagara and Orleans Counties, entered into an agreement to work together to obtain funding for, design, install, operate and maintain a Rural Broadband network for both Niagara and Orleans Counties; and

WHEREAS, it is necessary to extend the duration of the Memorandum of Understanding [MOU] that was entered into pursuant to Resolution 270-715 to enable each party to complement the unique capabilities of the other and provide Niagara, Orleans and NORA (sometimes hereinafter collectively the "Client") with the best combination of expertise to achieve the Client's objective; now, be it

**RESOLUTION NO. 189-416**

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RESOLVED, that this Legislature approves an extension of the Memorandum of Understanding between Orleans County, Niagara County, Seneca Telecommunications LLC, d/b/a Seneca Solutions, Salamanca, New York and Resolute Partners, LLC, Southington, Connecticut as a NORA Broadband Initiative to work together to obtain funding for, design, install and operate and maintain a Rural Broadband network for both Niagara and Orleans Counties with the term of this Memorandum to be effective for 365 days of signed agreement by all parties and all parties may extend the relationship upon mutual consent as more particularly provided in the MOU.

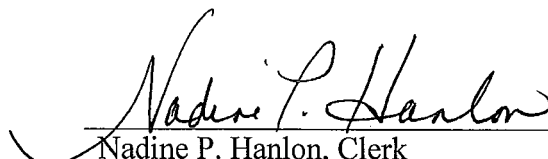
Moved, Johnson; second, DeFilippis.  
Adopted. 6 ayes; 0 nays, 1 absent, Allport.

COUNTY OF ORLEANS  
STATE OF NEW YORK

I hereby certify that the foregoing is a true and correct transcript of a resolution duly adopted by the Orleans County Legislature on the 27<sup>th</sup> day of April, 2016.

Dated at Albion, New York  
April 28, 2016



  
Nadine P. Hanlon, Clerk  
Orleans County Legislature  
County of Orleans, New York