



FINANCE, LEGAL & SAFETY COMMITTEE

November 14, 2023

10:30 a.m.

- APPROVAL OF MINUTES: October 10, 2023
  
- FINANCIAL
  - Safety
  - Law
  
- OLD BUSINESS
  - Litigation
- NEW BUSINESS
  - 2024 insurance renewal
  - PESH follow-up inspection
  - Resolutions
  - Class-action lawsuit against McKinsey & Company, Inc options
  
- PERSONNEL
  - Secretarial vacancy
  
- RESOLUTIONS
  - ENTER INTO CONTRACT WITH CATAMOUNT CONSULTING FOR AUDIOGRAMS
  - ENTER INTO CONTRACT WITH EVOLUTION CONSULTING, LLC FOR CDL DRUG AND ALCOHOL TESTING
  - AMEND EMPLOYEE HANDBOOK: SECTION IX. SAFETY RULES, SUBSECTION I. TIOGA COUNTY COMMERCIAL DRIVER LICENSE DRUG AND ALCOHOL TESTING
  - APPLY FOR INDIGENT LEGAL SERVICES GRANT
  - AUTHORIZE CONTRACT BETWEEN NYS OFFICE OF INDIGENT LEGAL SERVICES AND TIOGA COUNTY
  - ESTABLISH NEW BUDGET LINE, MODIFY 2023 BUDGET AND TRANSFER FUNDS SAFETY OFFICE
  - AUTHORIZE APPOINTMENT OF PUBLIC DEFENDER (PUBLIC DEFENDER)
  
- PROCLAMATIONS

- N/A

- EXECUTIVE SESSION

- Personnel compensation discussion

- ADJOURNMENT

# Office of the County Attorney



## FINANCE, LEGAL & SAFETY COMMITTEE

October 10, 2023

10:30 a.m.

### ATTENDANCE:

Legislators: Chair Sauerbrey, Ciotoli, Brown, Flesher, Monell, Mullen, Standinger, Roberts, and Weston

Staff: Legislative Clerk Haskell, County Attorney DeWind, Treasurer McFadden, Deputy Treasurer Chandler, Safety Officer Holbrook, Personnel Officer Parke

### • APPROVAL OF MINUTES:

- Legislator Ciotoli asked for a motion to approve the September 12, 2023, minutes. Legislator Monell made the motion seconded by Legislator Mullen and was unanimously carried.

### • FINANCIAL:

- Legal and Safety's budgets are tracking well, however the Liability Fund could potentially need monies transferred into it for the payment of insurance expenses for newly purchased vehicles.

### • OLD BUSINESS:

- Litigation: Currently there is nothing new to report; current cases are continuing and there have been no new claims.
- In Rem Closings and Appraisals have been completed for the last cycle. Legal is exploring bringing appraisals in house or using a contract services. Mr. DeWind has received several claims for previous years In Rems from a Utica law firm with some of these claims beyond the two-year cut off. The 2023 In Rem profits are being held in a trust fund while waiting for guidance from New York State. A list of sold properties, back taxes, and profits made are being compiled and it may be possible that the County will be able to claim fees under the new process.

### • NEW BUSINESS:

- CDL Drug and Alcohol Screening Contract: The current contract expires at the end of this year. The County is in a consortium with local municipalities for this service and Safety Officer Holbrook is researching

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best value to determine who would be the best fit for the Consortium. Ms. Holbrook will be presenting a resolution next month for the 2024 contract for legislative approval.

- Personnel Legal Services Contract: This contract is set to expire at the end of this year. The County is currently paying a flat fee and Roemer has offered to renew for three years. In prior negotiations Roemer indicated it does not offer an hourly rate, but the County receives value due to arbitration negotiations included in the flat monthly rate. Legislators would like a Request For Proposals (RFP) submitted to relevant firms and would like the opportunity to sit in on any interviews in conjunction with Personnel and the County Attorney's Office.
  - JUUL Settlement Agreement: NYS Attorney General's Office recently updated counties on the ongoing social media suits and the JUUL lawsuit settlement. This lawsuit was brought on account of how products were marketed to children. The total payout is two hundred and sixty-two million dollars (\$262,000,000 USD) nationwide with one hundred twelve million dollars (\$112,000,000 USD) coming to New York State over eight years and Fifty-Six Million dollars (\$56,000,000 USD) being disbursed to counties and New York City. More information will be forthcoming about the local share, how it may be used, and reporting procedures. Public Health is aware of the settlement with information coming through NYSACHO.
  - New York Municipal Insurance Reciprocal (NYMIR) recently awarded Tioga County the 2023 Risk Management Award for the successful mitigation of risks and claims. Chair Sauerbrey praised Ms. Holbrook for tightening security at the Ronald E. Dougherty Building and Legislator Mullen noted his thanks for the addition of an Automated External Deliberator (AED) machine at the Board of Elections.
  - PERSONNEL:
    - A late file resolution has been submitted for the hiring of a paralegal for the Department of Social Services Law Department. This will create an open position for the Secretary to the First Assistant County Attorney.
  - RESOLUTIONS:
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- RECOGNIZE STEPHANIE CARRIGG'S THIRTY-FIVE YEARS OF SERVICE TO TIOGA COUNTY; ESTABLISH A NEW BUDGET LINE, MODIFY 2023 BUDGET AND TRANSFER FUNDS PUBLIC DEFENDER; and APPOINT PARALEGAL LAW DEPARTMENT were moved into full Legislative Session without further questions.
- PROCLAMATIONS
  - N/A
- EXECUTIVE SESSION
  - N/A
- ADJOURNMENT:
  - Legislator Ciotoli adjourned the Legal & Safety Committee at 10:57 A.M.

Respectfully submitted,

*Christine Freyvogel*

Secretary to the County Attorney



# TIOGA COUNTY, NEW YORK

## Tioga County 2023 SAFETY BUDGET REPORT

FOR 2023 12

	ORIGINAL APPROP	TRANFRS/ ADJSTMTS	REVISED BUDGET	YTD ACTUAL	ENCUMBRANCES	AVAILABLE BUDGET	PCT USE/COL
<b>CI Liability Insurance Fund</b>							
<b>CI8042 504 Coordinator/Safety</b>							
CI8042 424010 Interest And Earn	0	0	0	-1,906.67	.00	1,906.67	100.0%
CI8042 510010 Fulltime	57,523	0	57,523	36,614.65	.00	20,908.35	63.7%
CI8042 520190 Nursing Equipment	0	1,288	1,288	1,287.89	.00	.00	100.0%
CI8042 540140 Contracting Servi	164,500	-161,000	3,500	2,784.00	190.00	526.00	85.0%
CI8042 540140 M7674 Contracting	0	161,000	161,000	70,682.67	34,317.33	56,000.00	65.2%
CI8042 540340 Literature	250	-250	0	.00	.00	.00	.0%
CI8042 540410 Nursing Supplies	2,000	325	2,325	1,630.62	.00	694.38	70.1%
CI8042 540420 Office Supplies	400	0	400	380.98	.00	19.02	95.2%
CI8042 540480 Postage	75	-75	0	.00	.00	.00	.0%
CI8042 540640 Supplies (Not Off	600	0	600	489.89	.00	110.11	81.6%
CI8042 540733 Training/All othe	3,500	-1,288	2,212	1,043.31	.00	1,168.80	47.2%
CI8042 581088 State Retirement	2,744	0	2,744	4,508.91	.00	-1,765.13	164.3%*
CI8042 583088 Social Security F	2,232	0	2,232	2,603.38	.00	-371.28	116.6%*
CI8042 584088 Workers Compensat	1,224	0	1,224	832.49	.00	391.85	68.0%
CI8042 585588 Disability Insura	0	0	0	44.37	.00	-44.37	100.0%*
CI8042 586088 Health Insurance	0	0	0	17,223.04	.00	-17,223.04	100.0%*
CI8042 588988 Eap Fringe	15	0	15	10.37	.00	4.19	71.2%
<b>TOTAL 504 Coordinator/Safety</b>	<b>235,063</b>	<b>0</b>	<b>235,063</b>	<b>138,229.90</b>	<b>34,507.33</b>	<b>62,325.55</b>	<b>73.5%</b>
<b>TOTAL Liability Insurance Fund</b>	<b>235,063</b>	<b>0</b>	<b>235,063</b>	<b>138,229.90</b>	<b>34,507.33</b>	<b>62,325.55</b>	<b>73.5%</b>
TOTAL REVENUES	0	0	0	-1,906.67	.00	1,906.67	
TOTAL EXPENSES	235,063	0	235,063	140,136.57	34,507.33	60,418.88	
<b>GRAND TOTAL</b>	<b>235,063</b>	<b>0</b>	<b>235,063</b>	<b>138,229.90</b>	<b>34,507.33</b>	<b>62,325.55</b>	<b>73.5%</b>

\*\* END OF REPORT - Generated by Freyvogel, Christine \*\*



# TIOGA COUNTY, NEW YORK

## Tioga County 2023 LEGAL BUDGET REPORT

FOR 2023 12

	ORIGINAL APPROP	TRANSFRS/ ADJSTMTS	REVISED BUDGET	YTD ACTUAL	ENCUMBRANCES	AVAILABLE BUDGET	PCT USE/COL
<b>A General Fund</b>							
<b>A1420 Law</b>							
A1420 412706 Shared Services-At	-50,079	0	-50,079	-29,807.82	.00	-20,271.18	59.5%*
A1420 510010 Full Time	212,439	0	212,439	171,584.73	.00	40,854.27	80.8%
A1420 510020 Part Time/Temporar	45,000	0	45,000	29,615.40	.00	15,384.60	65.8%
A1420 510050 All other(On call,	2,000	-2,000	0	.00	.00	.00	.0%
A1420 520200 Office Equipment	450	0	450	239.99	.00	210.01	53.3%
A1420 540010 Advertising	100	27	127	127.00	.00	.00	100.0%
A1420 540040 Books	500	528	1,028	1,027.55	.00	.00	100.0%
A1420 540180 Dues	1,200	0	1,200	1,053.00	.00	147.00	87.8%
A1420 540330 Legal Fees	65,000	0	65,000	39,051.44	17,549.66	8,398.90	87.1%
A1420 540331 Legal Fees-Adolesc	0	1,410	1,410	750.00	.00	660.00	53.2%
A1420 540390 Mileage Expense	100	0	100	100.00	.00	.00	100.0%
A1420 540420 Office Supplies	825	-260	565	331.53	.00	233.47	58.7%
A1420 540480 Postage	150	35	185	168.77	.00	16.68	91.0%
A1420 540485 Printing/Paper	400	0	400	372.14	.00	27.86	93.0%
A1420 540731 Training/State Req	200	260	460	460.00	.00	.00	100.0%
A1420 581088 State Retirement F	17,918	0	17,918	17,817.03	.00	101.39	99.4%
A1420 583088 Social Security Fr	15,182	0	15,182	14,841.82	.00	340.36	97.8%
A1420 584088 Workers Compensati	3,673	0	3,673	4,211.42	.00	-538.40	114.7%*
A1420 585588 Disability Insuran	204	0	204	172.26	.00	31.32	84.6%
A1420 586088 Health Insurance F	49,507	0	49,507	73,269.74	.00	-23,762.36	148.0%*
A1420 588988 Eap Fringe	44	0	44	52.46	.00	-8.78	120.1%*
<b>TOTAL Law</b>	<b>364,813</b>	<b>0</b>	<b>364,813</b>	<b>325,438.46</b>	<b>17,549.66</b>	<b>21,825.14</b>	<b>94.0%</b>
<b>TOTAL General Fund</b>	<b>364,813</b>	<b>0</b>	<b>364,813</b>	<b>325,438.46</b>	<b>17,549.66</b>	<b>21,825.14</b>	<b>94.0%</b>
<b>TOTAL REVENUES</b>	<b>-50,079</b>	<b>0</b>	<b>-50,079</b>	<b>-29,807.82</b>	<b>.00</b>	<b>-20,271.18</b>	
<b>TOTAL EXPENSES</b>	<b>414,892</b>	<b>0</b>	<b>414,892</b>	<b>355,246.28</b>	<b>17,549.66</b>	<b>42,096.32</b>	
<b>GRAND TOTAL</b>	<b>364,813</b>	<b>0</b>	<b>364,813</b>	<b>325,438.46</b>	<b>17,549.66</b>	<b>21,825.14</b>	<b>94.0%</b>

\*\* END OF REPORT - Generated by Freyvogel, Christine \*\*

REFERRED TO: FINANCE, LEGAL & SAFETY  
PUBLIC WORKS COMMITTEE

RESOLUTION NO. -23 ENTER INTO CONTRACT WITH  
CATAMOUNT CONSULTING FOR AUDIOGRAMS

WHEREAS: Occupational Safety and Health Administration (OSHA) requires annual audiograms and hearing conservation training for county employees whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale (slow response) or, equivalently, a dose of fifty percent; and

WHEREAS: Tioga County has obtained quotes for audiogram testing and hearing conservation trainings; and

WHEREAS: The proposal from Catamount Consulting, to perform this service, is the most cost effective and convenient option; therefore be it

RESOLVED: That the Tioga County Legislature authorizes the Chair of the Legislature to enter into a one-year contract for 2024 with Catamount Consulting to perform this service at the rates indicated:

Cost of Business Terms:

Catamount Consulting will complete the Onsite Audiometric Testing at a cost of \$1800.00 total with a deposit or PO of \$900.00. Cost includes input of prior hearing test results and new employees, and all travel costs for the technician.

Scope of Services:

- Baseline & Annual Audiogram testing for up to 40 people. Any additional employees over the contracted 40 will be charged a fee to be determined.
- Testing will take place at the Department of Public Works, 477 Rt. 96, Owego, NY 13827.
- Group testing of 6 employees every 30 minutes with hearing video.
- Test administration by computerized technology with same day results and full record-keeping package within 10 business days.
- Test performed by CADHC Certified Technicians.
- All tests verified by an Audiologist.
- All testing is OSHA/MSHA Compliant.



REFERRED TO: FINANCE, LEGAL & SAFETY COMMITTEE

RESOLUTION NO. -23 ENTER INTO CONTRACT WITH  
EVOLUTION CONSULTING, LLC FOR  
CDL DRUG AND ALCOHOL TESTING

WHEREAS: Federal law requires random drug and alcohol testing of CDL drivers performing "safety sensitive" tasks; and

WHEREAS: Tioga County has coordinated with towns and villages within Tioga County to have testing done by an outside agency; and

WHEREAS: Tioga County has obtained three quotes for random drug and alcohol testing of CDL drivers performing "safety sensitive" tasks; and

WHEREAS: The proposal from Evolution Consulting, LLC, to perform this service, is the most cost effective; therefore be it

RESOLVED: That the Tioga County Legislature authorizes the Chair of the Legislature to enter into a one-year contract for 2024 with Evolution Consulting, LLC to perform this service at the rates indicated:

Complete DOT/Non-DOT Random Testing Program:

- Random Selection of Employees Calculated Quarterly (50% for drug, 10% for alcohol)
- All Random Drug & Alcohol Tests performed quarterly on-site
- Record Management
- DOT Audit Assistance
- Regulatory Updates
- MIS Reports
- Collection Site Management
- Supervisor Training
- Laboratory and MRO Set-up with own Laboratory Account
- Online Access to Reporting 24 hours a day
- Assistance with Mediation Between MRO and DER

Additional Charges: Pre-employment, post-accident, reasonable suspicion, follow-up, or return to duty tests:

Normal Business Hours:

- |  |                               |
|--|-------------------------------|
| • 5 Panel Urine: (in office or on-site)      | \$55.00 per test              |
| • Breath alcohol test (in office or on-site) | \$32.00 per test              |
| • Scheduled On-site fee                      | \$0.70/mile to/from test site |

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- Employee No Show Fee \$40.00 after ½ hour wait
  - Training (as required) \$150.00
  - Drug and Alcohol Policy, if needed \$250.00
  - *Additional charges for clinic pass through fees will apply.*

Emergency and After Hours:

- Post Accident: \$150.00 plus \$0.70/mile

REFERRED TO: FINANCE, LEGAL AND SAFETY COMMITTEE  
PERSONNEL COMMITTEE

RESOLUTION NO. -23 AMEND EMPLOYEE HANDBOOK:  
SECTION IX. SAFETY RULES, SUBSECTION I.  
TIOGA COUNTY COMMERCIAL DRIVER LICENSE  
DRUG AND ALCOHOL TESTING

WHEREAS: Federal Law requires employers of persons who hold Commercial Driver's Licenses (CDL's) to institute a policy requiring drug and alcohol testing of safety sensitive employees as well as education and training of employees and supervisors; and

WHEREAS: Tioga County has an established policy known as Tioga County Commercial Driver License Drug and Alcohol Testing that needs to be amended in whole due to numerous updates and changes; and

WHEREAS: The County Attorney has reviewed the Employee Handbook and has identified the need to amend the policy in its entirety and replace it; therefore be it

RESOLVED: That the Tioga County Commercial Driver License Drug and Alcohol Policy be amended in its entirety and replaced as follows:

**I. TIOGA COUNTY COMMERCIAL DRIVER LICENSE DRUG AND ALCOHOL TESTING**  
**(FORMERLY POLICY #41)**

**TIOGA COUNTY COMMERCIAL DRIVER LICENSE  
DRUG AND ALCOHOL TESTING**

- I. *Introduction*
- II. *Education and Training*
- III. *Voluntary Leave of Absence*
- IV. *Testing for Prohibited Drugs and Alcohol*
- V. *Collection and Analysis*
- VI. *Alcohol Testing Procedures*
- VII. *Violations*
- VIII. *Consequences*
- IX. *Employee Rights*

I. INTRODUCTION

A. Background - Because of the particular importance of assuring that safety sensitive employees are free of the effects of drug and alcohol use, federal law requires that employers of persons who hold Commercial Driver's Licenses (CDL's)

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institute a policy requiring drug and alcohol testing of safety sensitive employees as well as education and training of employees and supervisors. It is the purpose of this Drug and Alcohol Testing Policy to comply with the requirements of regulations of the Federal Highway Administration to assure safe and healthy operations. Appendix A Drug and Alcohol Testing Job Titles subject to testing is located on the County Intranet "Employee Handbook-EH Forms".

B. Goals - This Policy is designed to:

1. Protect employees and the public from injury and economic loss caused by employees affected by drugs and alcohol.
2. Create a deterrent environment discouraging use, possession, and sale of drugs on or off County property.
3. Provide education and training on the effects and indicators of drug and alcohol use.
4. Encourage employees needing assistance to consult the Employee Assistance Program.
5. Provide for the use of rehabilitation programs so that employees who fail to pass drug and alcohol tests may qualify for return to duty in the same position.

C. Scope and Applicability - This policy is intended to:

1. Comply with all applicable laws and regulations governing drug and alcohol testing of safety sensitive employees.
  2. The Federal Highway Administration (FHWA) has adopted and published regulations at 49 C.F.R. Part 382, entitled "Controlled Substances & Alcohol Use and Testing. These apply to safety sensitive employees of the Public Works Department and all employees in other Departments holding CDL's and required to use them in their work.
  3. A CDL is required to operate a commercial vehicle. A commercial vehicle is a vehicle which:
    - a. Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds, or
    - b. Has a gross weight rating of 26,001 or more pounds, or
    - c. Is designed to carry 16 or more passengers including the driver, or
    - d. Is of any size and is used to transport hazardous waste.
  4. The regulations mandate urine drug testing and breath alcohol testing for safety sensitive positions and prevent performance of safety sensitive functions when there is a positive test result.
  5. The U.S. Department of Transportation (DOT) has also promulgated regulations at 49 C.F.R. Part 40, entitled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" setting standards for the collection and testing of urine specimens and the administration of breath alcohol tests.
  6. This policy is intended to be in full compliance with the foregoing regulations. If there is any inconsistency between those regulations and the provisions of this Policy, or if this Policy fails to cover anything contained in those regulations, the provisions of the regulations shall prevail and shall be considered to be a part of this Policy. All issues relating to implementation
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and application of this Policy shall be subject to grievance and arbitration procedures in the respective collective bargaining agreements.

D. Definitions and Discussion

1. For purposes of this Policy, "*prohibited drugs*" are defined to include the following prohibited substances:
  - a. Marijuana
  - b. Cocaine
  - c. Opiates
  - d. Amphetamines
  - e. Phencyclidine
2. *Alcohol* - As used herein, alcohol means the intoxicating agent in the beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol. References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing alcohol.
3. *Alcohol Misuse* consists of a violation of the following requirements:
  - a. No safety sensitive employee shall report for duty or remain on duty while having an alcohol concentration of 0.02 or greater.  
The provisions of this subparagraph exceed the requirements of federal regulations.
  - b. No safety sensitive employee shall be on duty or operate a vehicle while that employee possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicine containing alcohol (prescription or over-the-counter), unless the package seal is unbroken.
  - c. No employee shall use alcohol while performing a safety sensitive function.
  - d. No employee shall perform a safety sensitive function within four hours after using alcohol.
  - e. No employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first.
  - f. Refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test.
4. *Drug misuse* consists of violation of the following requirements:
  - a. Perform a safety-sensitive function when the driver uses any controlled substance, except when the use is under the instructions of a physician who has advised the driver that the substances does not adversely affect the driver's ability to safely operate a commercial vehicle.
  - b. Refuse to submit to a post-accident, random, reasonable suspicion, or follow-up drug test.
5. "*Safety sensitive function*" means any of the following on-duty functions:
  - a. All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the employee has been relieved from duty;

- b. All time inspecting equipment or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
  - c. All driving time;
  - d. All time, other than driving time, in or upon any commercial motor vehicle;
  - e. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
  - f. All time spent performing driver requirements relating to accidents;
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
  - h. All time while on active duty or voluntary standby status. The provisions of this subparagraph (h) are not required by federal regulations.
6. "Substance abuse professional" means a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor, certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## II. EDUCATION AND TRAINING

- A. The county or a contract vendor engaged by it will conduct an employee education and training program for all employees who perform safety sensitive functions, consisting of at least 60 minutes of instruction.
- B. The education component shall include display and distribution of informational material, including a hot-line telephone number for the Employee Assistance Program (EAP) and copies of this Policy.
- C. The training component for safety sensitive employees shall include information on the effects and consequences of prohibited drug use on personal health, safety, and work environment, the signs and symptoms that may indicate prohibited drug use, the effect of alcohol misuse on an individual's health, work, and personal life, signs and symptoms of an alcohol problem (the employee's or a co-worker's) and available methods of intervening when an alcohol problem exists, including confrontation, referral to EAP, and/or referral to management.
- D. Supervisory employees shall receive at least 60 minutes of additional training on the physical, behavioral, and performance indicators of probable drug use if they will be determining when an employee is subject to drug and/or alcohol testing for reasonable suspicion under this policy.
- E. Records shall be maintained of all education and training conducted. Attendance of employees being trained will be recorded.

### III. VOLUNTARY LEAVE OF ABSENCE

A. All employees who are experiencing drug or alcohol problems and have not been instructed to undergo a reasonable suspicion, post-accident, or random drug or alcohol test under this Policy shall have the right to obtain leave of absence for the purpose of participating in an authorized rehabilitation program. Such employee shall be entitled to sick leave, vacation time, and any other accrued benefits in accordance with the respective collective bargaining agreement and Section IV Personnel Rules, subsections (a) positions/leave time/vacancies, (d) personnel policies and procedures for employees, and (i) family and medical leave. If and when such benefits are exhausted, the employee shall be entitled to an unpaid leave of absence in accordance with the respective collective bargaining agreement and Section IV Personnel Rules, subsections (a) positions/leave time/vacancies, (d) personnel policies and procedures for employees, and (i) family and medical leave, not to exceed eighteen (18) months.

B. To obtain such a leave the employee shall furnish to the employee's supervisor evidence of participation in a certified drug or alcohol rehabilitation program. It is important to inform the supervisor of the drug or alcohol problem before being instructed to take one of the tests enumerated in the first sentence of this paragraph.

C. Termination and/or dismissal from participation in the certified drug or alcohol rehabilitation program shall automatically terminate the employee's voluntary leave.

### IV. TESTING FOR PROHIBITED DRUGS AND ALCOHOL

#### A. Types of Testing Allowed

1. Analytical testing of urine of safety sensitive employees for prohibited drugs and of breath for alcohol misuse shall be conducted as provided by this Policy and as required by law or regulations. The six testing categories are:

- a. Pre-Employment Testing (Appendix B Drug and Alcohol Testing Random Drug Testing Notification located on the County Intranet "Employee Handbook-EH Forms").
- b. Reasonable Suspicion Testing (Appendix C Drug and Alcohol Testing Fitness for Duty Reasonable Suspicion and Post Accident Testing located on the County Intranet "Employee Handbook-EH Forms").
- c. Post Accident Testing (Appendix C Drug and Alcohol Testing Fitness for Duty Reasonable Suspicion and Post Accident Testing located on the County Intranet "Employee Handbook-EH Forms").
- d. Random Testing (Appendix D Drug and Alcohol Testing Random Drug and Alcohol Testing Employee Notification Procedure located on the County Intranet "Employee Handbook-EH Forms").

- e. Return to Duty Testing
- f. Follow-up Testing

B. Testing

1. Pre-Employment Testing (Appendix B Drug and Alcohol Testing Random Drug Testing Notification located on the County Intranet "Employee Handbook-EH Forms").
  - a. All applicants for employment in or assignment to a safety sensitive function shall be tested for prohibited drugs.
  - b. The drug tests required by this section shall be administered only after the applicant is informed in writing that the urine sample being collected will be tested for the five classes of prohibited drugs.
  - c. An applicant who fails a drug test shall not be hired for any County position but shall not be barred from reapplying at a later date not less than one year after the date of the failed test, provided that the applicant has followed all procedures described in Article VIII of the Policy, including a return to duty test, and has agreed to be subject to follow-up testing.
2. Reasonable Suspicion Testing (Appendix C Drug and Alcohol Testing Fitness for Duty Reasonable Suspicion and Post Accident Testing located on the County Intranet "Employee Handbook-EH Forms").
  - a. An employee who performs a safety sensitive function and who is reasonably suspected by the employer of using a prohibited drug or the misuse of alcohol, or both, shall be administered a drug test (urine) or alcohol test (breath) or both, as appropriate. An employee may be reasonably suspected of using a prohibited drug or of the misuse of alcohol, or both, by a departmental supervisor, or other employer who has been trained in the detection of drug use or in the detection of alcohol misuse through observations concerning the appearance, behavior, speech or body odors of the employee. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the employee.
  - b. Alcohol testing is authorized only if the observations stated above are made during, just preceding, or just after the period of the workday that the employee is ready to perform or immediately available to perform his duties. When a reasonable suspicion alcohol test ordered, the employee shall not perform or continue to perform safety sensitive functions until (1) an alcohol test is administered and the employee's alcohol concentration measures less than 0.02, or (2) 24 hours have elapsed following the determination that there is a reasonable suspicion to believe that the employee has violated the restrictions on alcohol use.
3. Post Accident Testing (Appendix C Drug and Alcohol Testing Fitness for Duty Reasonable Suspicion and Post Accident Testing located on the County Intranet "Employee Handbook-EH Forms").



- a. For purposes of this Policy, the term "accident" means an occurrence associated with the operation of a vehicle causing (1) the death of an individual, (2) bodily injury to an individual who receives medical treatment, or (3) disabling damage to one or more vehicles requiring the vehicle to be transported away from the scene by a tow truck or other vehicle. The phrase "disabling damage" means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs.
  - b. Each employee performing safety sensitive functions with respect to a vehicle involved in an accident shall be tested for alcohol and drugs if:
    - The accident involves a human fatality;
    - The accident involves bodily injury with immediate medical treatment away from the scene and CDL operator cited for a moving violation;
    - Disabling damage to any motor vehicle requiring tow away and CDL operator cites for a moving violation.
  - c. An employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this paragraph shall be construed to require the delay of necessary medical attention for injured people following an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
  - d. A post-accident alcohol test shall be administered within 8 hours of the accident. A post-accident drug test shall be administered within 32 hours following the accident.
4. Random Testing (Appendix B Drug and Alcohol Testing Random Drug Testing Notification located on the County Intranet "Employee Handbook-EH Forms").
- a. Any employee performing a safety sensitive function shall be subject to random drug and alcohol testing.
  - b. The selection of employees for random alcohol or drug testing shall be made by a scientifically valid method, such as a random number table or a computer based random number generator that is matched with the employee's social security number, payroll identification number or other comparable identifying number. Each employee shall have an equal chance of being tested each time selections are made. An employee may be selected for both types of tests at the same time.
  - c. The number of random drug tests conducted each year shall be consistent with the minimum annual percentage testing rate as determined by the Federal Motor Carrier Safety Administration.

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- d. Random alcohol and drug tests are unannounced, and the dates for administering them shall be spread reasonably throughout the calendar year.
  - e. Each employee who is notified of selection for random alcohol and/or drug testing shall proceed to the test site immediately, or, if the employee is performing a safety sensitive function at the time of notification, the employee shall cease to perform the safety sensitive function and proceed to the testing site as soon as possible.
  - f. An employee shall only be tested for alcohol while the employee is ready to, immediately available to or performing safety sensitive functions, just before the employee is ready to or immediately available to perform safety sensitive functions, or just after the employee has ceased performing such functions.

5. Return to Duty Testing

- a. Before an employee returns to duty requiring the performance of a safety sensitive function after engaging in alcohol misuse, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- b. Before an employee returns to duty requiring the performance of a safety sensitive function after engaging in drug use, the employee shall undergo a return to duty drug test with a result indicating a verified negative result for drug use.

6. Follow-up Testing

- a. Following a determination by a substance abuse professional that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of drugs, the employee shall be subject to unannounced follow-up alcohol and/or drug testing as directed by a substance abuse professional.
  - b. The number and frequency of follow-up tests shall be as directed by the substance abuse professional and shall consist of at least six tests in the first twelve months following the employee's return to duty.
  - c. The employee's supervisor may direct the employee to undergo return-to-duty and follow-up testing for both alcohol and drugs, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and drugs is necessary for that employee.
  - d. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty.
  - e. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered if the substance abuse professional determines that such testing is no longer necessary.
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## V. COLLECTION AND ANALYSIS

- A. All collection of urine or breath for random testing shall be performed at a facility or facilities to be designated by the County, and for all other testing required by this Policy, at the site of an independent health provider selected by the Safety Officer. Employees shall be advised of the location of the testing site during training on alcohol and drugs, and by a supervisor at the time testing is required.
- B. Collection and testing of urine and breath shall be in accordance with 49 C.F.R. Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
- C. The collection site for urine samples will provide a privacy enclosure for urination, a toilet, a suitable, clean, writing surface, and a water source for hand washing which, if practicable, will be outside the privacy enclosure. Any water source within the privacy enclosure will be secured to prevent its use to adulterate the urine sample.
- D. The employee will be assured of privacy during urination except in circumstances where there is evidence that the prior sample was altered, adulterated, or tampered with, in which case a retest will be required, and privacy will not be assured.
- E. The urine specimen must be split and poured into two specimen bottles. This provides the employee with the option of having an analysis of the split sample performed at a separate laboratory if the primary specimen test result is verified positive.
- F. Urine testing will be conducted at a laboratory certified by the United States Department of Health and Human Services.
- G. All drug testing laboratory results will be reviewed by a qualified Medical Review Officer (MRO) to verify and validate test results. An MRO is a licensed physician responsible for receiving laboratory results generated by a drug testing program who has knowledge of substance abuse disorders and has relevant training and qualifications.
- H. The MRO will review and interpret all confirmed positive tests by reviewing the employee's medical history, including any medical records and biomedical information provided, affording the employee a reasonable opportunity to discuss the test result, and deciding whether there is a legitimate medical explanation for the result including legally prescribed medication.
- I. The MRO will notify each employee who has a verified positive test that the employee has 72 hours in which to request a test of the split specimen at a separate certified laboratory.
- J. Upon completion of the MRO'S review the MRO shall report each verified test result to the Safety Officer. The employee's supervisor will be informed by the Safety Officer of a verified positive test result, and the employee will be removed from safety sensitive functions and shall be subject to the consequences outlined in Article VIII of this Policy. Removal from safety sensitive functions will be immediate and will not await the result of any requested retest.

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- K. An employee requesting a drug retest shall pay the cost of the additional analysis and all costs associated with the transfer of the specimen to another laboratory including shipping and handling. If the retest results in the employee passing the drug test, Tioga County shall reimburse any costs collected in advance. Selection of the certified laboratory for retests will be made by the Safety Officer or the MRO.

## VI. ALCOHOL TESTING PROCEDURES

- A. Alcohol testing shall be conducted by collection of a breath specimen through the use of an evidential breath testing device (EBT) that is approved by the National Highway Traffic Safety Administration. The test must be performed by a breath alcohol technician (BAT), who is trained to proficiency in the operation of the EBT being used and in the alcohol testing procedures specified in the regulations.
- B. The persons who will serve as BAT's shall be personnel employed by a health facility selected by the County. The health facility will be identified to employees during training and by a supervisor at the time of selection for an alcohol test.
- C. Alcohol tests will be conducted at a site that provides privacy to the individual being tested.
- D. Upon arrival at the alcohol collection site, the employee must provide positive identification to the BAT. After testing procedures are explained to the employee, the employee and the BAT must complete, date and sign the alcohol testing form.
- E. Screening Test
1. The BAT will open an individually sealed, disposable mouthpiece in view of the employee and attach it to the EBT. The BAT will instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until an adequate amount of breath has been obtained.
  2. Following the screening test, the BAT must show the employee the result displayed on the EBT or a printed result. If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required, and the test will be reported to the employer as a negative test. The employee may then return to his or her safety sensitive position.
- F. Confirmation Test
1. If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.
  2. The confirmation test must be conducted at least 15 minutes, but not more than 20 minutes, after completion of the initial test. The employee will be instructed not to eat, drink, or put any object or substance in his/her mouth, and will be instructed not to belch to the extent possible while awaiting the confirmation test. The confirmation test will be performed whether or not the employee complies with such instructions.
  3. The confirmation test is conducted using the same procedures as the screening test. A new mouthpiece will be used.
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4. If the initial and confirmatory test results are not identical, the confirmation test result is deemed to be the final result.
5. The BAT will transmit all results to the Safety Officer in a confidential manner. If the employee must be removed from safety sensitive duties, the BAT will notify the Safety Officer immediately. The employee's supervisor will be informed by the Safety Officer, and the employee will be removed from safety sensitive functions by the supervisor.
6. Where a random, reasonable suspicion, or post-accident alcohol test indicates an alcohol concentration of .02 percent or more but less than .04 percent, the employee shall not perform safety sensitive functions until at least 24 hours after such test. Only if there are other duties available for the employee to perform, during such time, shall the employee receive the employee's regular rate of pay after the test. An employee, for whom other duties are not available, may use any available vacation day or personal time. Sick time shall not be available for this purpose.
7. On the day following a random, reasonable suspicion, or post-accident alcohol test indicating an alcohol concentration of .02 percent or more but less than .04 percent, the employee may be required to submit to another alcohol test, whether or not the employee is reasonably suspected of alcohol misuse. In the event this test indicates an alcohol concentration of .02 percent or more, but less than .04 percent, the employee shall not perform safety sensitive functions until at least 24 hours after such test; and shall immediately be sent home without pay. The provisions of this paragraph are not required by federal law or regulation.

## VII. VIOLATIONS

### A. The following conduct shall be considered a Major Violation of this Policy:

1. Having a verified positive result after having taken a drug or alcohol test as required by this policy. For purposes of this subparagraph A, a verified positive result includes an alcohol test indicating an alcohol concentration of .04 percent or more.
2. Using alcohol while performing safety sensitive functions.
3. Using alcohol within eight hours after an accident requiring a post-accident alcohol test or until the employee undergoes a post-accident alcohol test, whichever occurs first.
4. Refusal to submit to a post-accident alcohol or drug test, a random alcohol or drug test, a reasonable suspicion alcohol or drug test, or a follow-up alcohol or drug test required by this policy.
5. Failure to produce an adequate urine or breath sample when selected for testing, where such failure is not consistent with the requirements of 49 C.F.R. Part 40.
6. Altering, adulterating, or tampering with a urine sample or a breath sample used in a drug or alcohol test required by this Policy, or otherwise distorting the result of a required drug or alcohol test or attempting to do any of the foregoing.

7. Refusal to sign consents or releases required by federal regulations in connection with drug or alcohol tests.
  8. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater.
  9. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee uses any of the drugs prohibited by this Policy, except when the use is pursuant to the instructions of a physician who has advised the employee that the drug does not adversely affect the employee's ability to operate safely a commercial motor vehicle.
  10. Failure to comply with the requirements of a treatment or rehabilitation program prescribed by a substance abuse professional while on authorized leave as a result of a violation of this policy.
- B. The following conduct shall be considered a Minor Violation of this Policy:
1. Being on duty or operating a commercial motor vehicle while possessing alcohol unless the alcohol is manifested and transported as part of a shipment.
  2. Performing safety sensitive functions within four hours after using alcohol.

#### VIII. CONSEQUENCES

- A. Each employee who commits a Major Violation or a Minor Violation of this Policy shall be immediately removed from safety sensitive functions, as required by federal law and regulations. In addition, although not required by federal law or regulation:
1. Any employee who commits a Minor Violation shall be subject to progressive disciplinary action up to and including termination.
  2. Any employee who commits a Major Violation, if not terminated pursuant to paragraph 3 or 4, shall be placed on an involuntary, unpaid leave of absence not to exceed eighteen (18) months. During such leave of absence, the employee may use accrued benefits such as sick time, vacation time, compensatory time, etc. Nothing in this Article VIII shall be construed to prevent the imposition of progressive discipline up to and including termination for conduct of such employee while under the influence of alcohol or while using any prohibited drugs.
  3. Any employee who commits a Major Violation involving the death of a person or bodily injury to an individual who immediately receives medical treatment away from the scene of the accident shall be subject to progressive disciplinary action up to and including termination.
  4. The employment of any employee who commits a Major Violation of this Policy twice within a five-year period shall be terminated immediately.
  5. Any disciplinary steps taken under this policy shall be in accordance with Section 75 of the Civil Service Law.
- B. Each employee who has engaged in conduct prohibited by this Policy shall be advised of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and the use

of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

C. Each employee who engages in conduct prohibited by this Policy and has not had his/her employment terminated shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and drug abuse.

D. Each employee identified as needing assistance in resolving problems associated with alcohol misuse or drug use shall be referred to a treatment or rehabilitation program and shall be evaluated by a substance abuse professional to determine whether the employee has properly followed and completed such rehabilitation or treatment program.

E. An employee who has violated this Policy and has not had his or her employment terminated shall qualify for return to duty by following the recommendations of a substance abuse professional including completion of a treatment or rehabilitation program, as certified by such substance abuse professional, and by passing a return to duty drug test or alcohol test or both, as specified by the substance abuse professional. The employee shall be allowed up to eighteen (18) months to return to duty. Failure to return to duty within said time period shall result in disciplinary action up to and including termination.

F. An employee who has violated this Policy and undertakes a treatment or rehabilitation program upon the recommendation of a substance abuse professional shall bear the expense of such treatment or rehabilitation program. Medical benefits, if available to the employee, may be used for such purposes.

G. Any employee who returns to safety sensitive functions after having satisfied the requirements of this Article VIII shall be subject to follow-up testing as provided in Article IV (6) of this Policy.

## IX. EMPLOYEE RIGHTS

### A. Testing and Waiting Time

All time spent on testing, including reasonable travel time of not more than one hour to and from the testing facility, is paid time under regular pay status, including overtime, if applicable. Employees will be paid while being tested for the time away from duty, or, if their duty assignment has ended, they will be paid up to the time they are released from the testing site. All costs of testing under this Policy shall be borne by the County, except as specifically provided in article V (K).

### B. Confidentiality

The County shall make every effort to assure confidentiality throughout the testing process and to protect the individual dignity and right to privacy of all employees. Personal data regarding the drug testing results and rehabilitation program evaluations will be forwarded only to the Safety

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Officer and are confidential. Any release of this information to persons other than representatives of the Safety Officer, Personnel Officer, or the employee's supervisor is prohibited without the written permission of the employee tested.

C. Employee Assistance Program

The Employee Assistance Program is open to all employees and their families who voluntarily seek its assistance, except that the EAP may not be used to avoid the taking of a drug or alcohol test when an employee has been selected for testing under this Policy. An employee who has been selected to take a required drug or alcohol test may not avoid the obligation to take the test by past or future participation in the EAP. Voluntary participation in the EAP is confidential and will not adversely affect an employee's employment with the County.

D. Return to Work

Any employee qualified to return to duty pursuant to this Policy has the right to return to duty in the same position immediately, subject to the provisions of Section 72 of the Civil Service Law.

E. The County shall make reasonable efforts to afford employees the right to union representation whenever an employee is directed to submit to an alcohol or drug test. Such representation shall not interfere with, or more than minimally delay, the movement of the employee to the testing site and shall not include the presence of a union representative when the independent health provider referred to in Article V (A) is conducting the testing, collection or required preliminary procedures (interview, identification, consents, etc.).

**\*APPENDICES A THROUGH E ARE LOCATED ON THE COUNTY INTRANET\* "EMPLOYEE HANDBOOK-EH FORMS".**



REFERRED TO:

FINANCE, LEGAL & SAFETY COMMITTEE

RESOLUTION NO. -23

APPLY FOR INDIGENT LEGAL SERVICES GRANT

WHEREAS: The New York State Office of Indigent Legal Services has made available to Tioga County a three-year, non-competitive grant totaling \$123,804.00 to improve the quality of Indigent Legal Services provided under Article 18-B of the County Law; and

WHEREAS: Tioga County realizes the importance of providing quality representation to indigent individuals; and

WHEREAS: The grant funds will be used:

1. To partially fund the positions listed below:
  - a. Chief Public Defender
  - b. Family Court Public Defender
  - c. Family Court Paralegal
  - d. Part-time First Assistant Public Defender
  - e. Part-time Second Assistant Public Defender
  - f. Part-Time Assigned Counsel Administrator
  - g. Part-Time Assigned Counsel Assistant
2. To fund the on-line research tool for the Public Defender's Office.
3. To fund the annual support for the PD CMS system.
4. To partially fund Investigative, Expert Witness, Transcripts, and Training for the Public Defender's Office.

Therefore be it

RESOLVED: That the Assigned Counsel Administrator be authorized to submit the appropriate grant application for the purpose of securing this funding.

REFERRED TO: FINANCE, LEGAL & SAFETY COMMITTEE

RESOLUTION NO. -23 AUTHORIZE CONTRACT BETWEEN  
NYS OFFICE OF INDIGENT LEGAL SERVICES AND  
TIOGA COUNTY

WHEREAS: The New York State Office of Indigent Legal Services has approved the distribution of funds to counties in New York for the purpose of improving the quality of representation for persons who are legally entitled to counsel but cannot afford to hire an attorney; and

WHEREAS: Said funds are available through a three-year agreement with the NYS Office of Indigent Legal Services with a Budget of \$771,014 per year for Years 6, 7, and 8; and

WHEREAS: The amount allocated to Tioga County from NYS for the fiscal year 2023 is \$771,014; and

WHEREAS: The NYS Office of Indigent Legal Services intends to maintain the \$771,014 level of funding for the following two years thereafter; and

WHEREAS: It is necessary for Tioga County to approve entering into a three-year agreement with NYS Office of Indigent Legal Services and adopt Year 6 budget in an amount not to exceed \$771,014; and

WHEREAS: Subsequent year's budgets will be presented to the Tioga County Legislature for approval; therefore be it

RESOLVED: That the Tioga County Legislature hereby approves the Year 6 budget of said distribution in an amount not to exceed \$771,014 and further approves entering into a three-year contract for Years 6, 7, and 8 with the NYS Office of Indigent Legal Services; and be it further

RESOLVED: That the Tioga County Legislature hereby authorizes the Chair of the Legislature to execute said Year 6 distribution contract with the NYS Office of Indigent Legal Services.

REFERRED TO: FINANCE, LEGAL AND SAFETY COMMITTEE

RESOLUTION NO. -23 ESTABLISH NEW BUDGET LINE,  
MODIFY 2023 BUDGET AND TRANSFER FUNDS  
SAFETY OFFICE

WHEREAS: The Safety Officer has a need for a stand/bookcase to serve as a security checkpoint at the main entrance; and

WHEREAS: The bookcase selected by the Safety Officer for this purpose costs \$132.70; and

WHEREAS: Furniture must be purchased using a Furniture expense line 520210 and the 2023 Safety budget does not have this established line; and

WHEREAS: Legislative approval is required for budget amendments and transfer of funds; therefore be it

RESOLVED: That a 520210 Furniture line be established in the Safety budget and that the following funds be transferred for said purchase:

From:	CI8042	540733	Training/All Other	\$ 132.70
To:	CI8042	520210	Other Furniture	\$ 132.70

REFERRED TO:

FINANCE, LEGAL & SAFETY COMMITTEE  
PERSONNEL COMMITTEE

RESOLUTION NO. -23

AUTHORIZE APPOINTMENT OF PUBLIC DEFENDER  
(PUBLIC DEFENDER)

WHEREAS: Legislative approval is required for any appointment to a Management/Confidential position within Tioga County; and

WHEREAS: The Public Defender position will become vacant upon the retirement of the current incumbent, George Awad on December 30, 2023; therefore be it

RESOLVED: That the Tioga County Legislature is authorized to promote Thomas Cline to the title of Public Defender, at an annual, Management/Confidential salary of \$116,940, effective January 1, 2024, for the balance of the four-year term which shall continue through December 31, 2025; and be it further

RESOLVED: That in accordance with Tioga County's Civil Service Rules, Mr. Cline shall serve a probationary period of eight to fifty-two weeks; and be it further

RESOLVED: That in accordance with Tioga County Employee Handbook Management/Confidential Benefits policy, Mr. Cline shall be eligible for any authorized 2024 Management/Confidential salary increase effective July 1, 2024, following a successful six-month evaluation.