

## REQUEST FOR PROPOSALS

FTA Section 5311:

Oneida County Mobility Management Professional Support Services

RFP # 2025-417

RELEASED: May 5, 2025

PROPOSAL DUE: May 12, 2025, at 4:00 PM

### SUBMIT TO:

Oneida County Department of Planning

Boehlert Center at Union Station

321 Main Street, 3rd Floor Utica, New York 13501

**ATTN: Oneida County Mobility Management Services**

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## I. Overview

Oneida County is seeking to enter into a professional services agreement with a qualified vendor to provide Mobility Management Services to serve people, transportation providers and human service agencies through coordination, service analysis and development and the promotion of effective, collaborative solutions to meet the transportation needs throughout all of Oneida County.

Oneida and Herkimer Counties, located in the center of New York State, combine to form a small urban area surrounded by vast rural areas. The Herkimer-Oneida Counties Transportation Council (HOCTC) is the designated Metropolitan Planning Organization (MPO), and the regional entity charged with planning and programming federal transportation funds for highways, transit, non-motorized transportation, and other means of moving people and goods in central New York State. The HOCTC MPO works within federal transportation requirements to guide the development of a multimodal transportation system within the Metropolitan Planning Area (MPA). HOCTC seeks proposals from qualified firms, individuals, or teams of firms and/or individuals to provide the work outlined in this RFP. HOCTC, on behalf of its host and member agencies and jurisdictions, will administer the consultant contract and will serve as project manager.

## II. Purpose

Oneida County, New York, is soliciting proposals for Mobility Management Professional Support Services to serve people, transportation providers, and human service agencies through coordination, service analysis, development and promotion, and practical collaborative solutions to meet the transportation needs of all people. Mobility Management in Oneida County seeks to mobilize services that enhance the quality of life for people of all ages, abilities, and income levels. This will occur through transportation mobility services that assist people in accessing medical care, shopping, employment, and social activities.

Oneida County will select an entity with the appropriate resources, technical and professional skills, and experience to improve Mobility Management Services throughout Oneida County. A lack of reliable access to transportation forms a significant barrier to employment and access to everyday health, human services, and social programs. Additionally, no single private or public transportation provider provides regular service to all populations across the county, thus making transportation services in Oneida County a patchwork of public, private, nonprofit, and agency transportation providers.

## III. Background

Oneida and Herkimer Counties are located in central New York State and encompass a geographical area of 2,716 square miles. The counties have a combined population of 289,577 (American Community Survey, 2023) and are characterized as rural and 81% of roadways are of the local jurisdiction. The population in disadvantaged communities is 4.35% and 7.64% respectively, and 14.6% in Oneida County and 13.3% of the population in Herkimer County live in poverty. In the 2023 American Community Survey (ACS), people with disabilities comprise 15.2% of the regional population. By county, 15.1% of Oneida County's population has a disability and 15.8% of Herkimer

County's population has a disability. According to the 2023 ACS Estimates, 19.4% of the total population in Oneida County and 21.6% of the total population in Herkimer County is age 65 or older.

The urban area boundaries and surrounding Herkimer and Oneida Counties are situated between Syracuse and Albany, NY. The region's population centers are oriented primarily along the east-west Mohawk River Valley corridor. The entirety of the two counties, encompassing both urban and rural areas, is the HOCTC MPA. The two counties are each nearly the same physical size (Oneida is 1,212 sq. mi. and Herkimer is 1,411 sq. mi.), however, Oneida County has approximately three times the population of Herkimer County. Herkimer County is predominantly rural, with vast tracts of wilderness and other protected conservation areas. The two counties contain the urban areas of Ilion-Herkimer, Oneida, Rome, and Utica. Oneida County contains 45 municipalities (3 cities, 16 villages, and 26 towns). Herkimer County contains 30 municipalities (1 city, 10 villages, and 19 towns).

#### IV. Project Objectives

Ensuring safe, accessible, and desirable transportation in the region is central to the HOCTC mission and is reflected in HOCTC's most recently adopted Going Places 2045 Long-Range Transportation Plan, Coordinated Human Services Transportation Plan 2025-2028 and Oneida & Herkimer County SS4A Safety Action Plan which collectively embody the goals of "Improving the scope and coordination of the transit system to enhance mobility options for those that cannot or will not rely solely on the automobile,"<sup>1</sup> and provide a reference for strategic approaches to provide mobility and accessibility opportunities to:

- Ensure sufficient mobility and adequate access to places of work.
- Expand intercity and rural public transportation.
- Support multimodal accessibility for all travelers including the mobility disadvantaged.
- Enhance existing facilities to provide better bicycle and pedestrian integration within the transportation network; and
- Increasing safety and reducing conflicts among transportation modes by evaluating operations and transit system improvements from a multi-modal lens.

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<sup>1</sup> Department of Environmental Conservation -NYSERDA <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>

<sup>2</sup> <https://long-range-transportation-plan-hoccpp.hub.arcgis.com/>

## V. Scope of Work

Mobility management encourages coordination between multiple providers and develops or promotes shared services to expand transportation access while reducing costs to providers and individual members of the public. Anticipated Mobility Management professional services include:

- A. Assist in promoting, enhancing, and facilitating access to transportation services for rural residents, including integrating and coordinating services designed for individuals with disabilities and older adults.
- B. Support HOCTC staff in short-term management activities to plan and implement coordinated services funded by 5311 and 5310.
- C. Collaborate with Oneida County to create a centralized information hub for available mobility and transportation services. This hub will serve as a static repository for transit resources, passenger eligibility, service and cost information, and links to external resources.
- D. Assist in forming and managing a Regional Mobility Coordination Council. The "Coordination Council" members may include current HOCTC 5311 recipients, transportation providers, and HOCTC Transportation Planning Committee (TPC) members. In this support role, the mobility manager would collaborate with HOCTC staff in organizing and managing the committee's initial setup, develop quarterly meeting agendas, provide presentations or speakers on national best practices in mobility management, and support collaboration among regional transit, transportation, and mobility providers in HOCTC.
- E. Supporting HOCTC staff in establishing quarterly performance metrics and reporting processes for recipients, including a system for collecting operational data (e.g., ridership, key origins, destinations). The data collected will assess recipients' overall effectiveness and performance, helping HOCTC refine program goals and objectives.
- F. Mobility Management Oversight: The role of the mobility manager for this effort is not to directly schedule rides or operate transit services. Instead, one of the anticipated functions will focus on supporting agencies and transportation providers as a regional transportation liaison who will be available to assist in coordinating rides between services and ensuring providers meet established performance standards. This includes managing data collection systems, reporting service performance, and ensuring compliance with funding requirements, particularly for 5311 program recipients. Additionally, assist Oneida County in identifying opportunities to flex funding and service delivery between 5311 and 5310 providers. The approach should leverage both programs to enhance rural and urban mobility services, ensuring a comprehensive and integrated mobility solution across regions.
- G. Grant Technical Support: Assist Oneida County by providing policy guidance and grant technical support designed to identify and secure additional funding sources for rural transportation services and closing last-mile connectivity. The role includes researching grants, identifying best practices, and offering strategic advice on securing funding for mobility-related projects such as microtransit, micromobility, mobility as a service (MaaS) models, van and car-sharing, and transit services focused on closing rural mobility gaps.
- H. Assist in transit analysis, as needed. This may include operational, planning, or fiscal analysis and function as a technical support mechanism for HOCTC staff and transit operators.

- I. Ensure that Oneida County complies with federal guidelines and NYS DOT policies and procedures and that the 5311 program is administered correctly and appropriately while meeting the needs of Oneida County's rural communities.

**Additional coordination activities that Oneida County may request include:**

- a. Coordinate and support the Oneida County Rural Transit (OCRT) system operated by CENTRO.
- b. Monitoring OCRT services, including developing and conducting passenger surveys, ridership, and operational statistical analyses and evaluations.
- c. Management of additional transportation assessment projects.
- d. Other duties as agreed upon or required are necessary to support transportation services in Oneida County.

**Project Goals:**

- Increase the availability of transportation options and coordinate public, private, nonprofit, and volunteer services.
- Improve the delivery of transportation services.
- Generate efficiencies in operation that can lead to increased level of services and transit ridership.
- Encourage cooperation and coordination among local and regional transportation providers.

## **VI. Required Contents & Submission Instructions for Proposal Package**

Proposers may be firms, individuals, or teams of firms and/or individuals. Please note that materials submitted to Oneida County are subject to the Freedom of Information Law (FOIL). If a proposer provides material(s) of a confidential nature for disclosure to third parties, the proposer should indicate the specific material(s) it considers confidential. Oneida County assumes no responsibility for any loss or damage resulting from any determination requiring disclosure of information pursuant to FOIL.

### **A. Required Contents**

Each proposal shall be concise and comprehensive. Proposals that do not include all required documentation, are not submitted in the required format, are submitted late, or are submitted to the incorrect address, may be deemed to be non-responsive. Non-responsive proposals shall receive no further consideration. Below is an outline of the required contents for the proposal package. This should be used as the base template for the organization of the proposal package.

1. Cover letter including a statement of qualifications explaining how the proposer is qualified to perform the work and describing: the interest the proposer has in working on the project, what uniquely sets them apart from other equally qualified proposers, naming the lead firm, and all sub-consultant firms (no more than 3 pages, single-sided).

2. Professional background information about the proposer including the legal name, legal address, state of incorporation, and type of business. If the proposer is owned by another entity or person, provide the legal name, address, state of incorporation, and type of business of the owner. All sub-consultants must be identified and include the same information. A brief description of the areas of expertise, qualifications, and experience must be provided for all participating firms and sub-consultants named (no more than two (2) pages per firm).
3. Project management plan identifying the project manager and all staff working on the project indicating roles and responsibilities. An organizational chart must be included to indicate the project management structure for all firms and individually for each firm outlining the roles and responsibilities within the SOW. Brief resumes of the personnel working on the study for the lead firm as well as all sub-consultant firms are required. Ensure that the titles of the identified personnel match those on the resumes and in the cost proposal. Failure to properly identify personnel significantly reduces the credibility of the proposal.
4. Detailed scope of work that demonstrates the proposer has a clear understanding of the issues associated with this project and communicates the proposer's ability and approach to completing the required scope of work tasks outlined in this RFP. If based on the proposer's knowledge or experience, the proposer believes the scope of work should be changed in any way or is too ambitious, the proposer must suggest changes in the proposal and describe how those changes will better meet the project objectives. Any proposed changes must be identified within the scope of work and articulate the reasoning. Proposers are encouraged to incorporate out-of-the-box approaches and value-added processes, utilize new technologies, and draw from best practices to deliver a superior product.
5. Project schedule by task should be included. This 24-month project may be extended upon award of additional FTA 5311 funding. Oneida County shall have the sole option to renew the contract for three (3) additional terms of twenty-four (24) months each. Requests for service will not be placed against the contract prior to contract effective date or the beginning date of the contract term, whichever is later.
6. Examples of relevant previous work that demonstrate the Proposer has the technical capabilities, experience, and interpersonal skills to perform the required tasks will be required as Appendix 1 to the offeror's proposal. The examples should reflect the work of personnel to be assigned to this project, particularly the project manager, on studies similar in type, size, or scope. Include the name of the reference, contact person, email or telephone number, the period of the contract, description of contract work, and dollar value of work performed. Oneida County reserves the right to seek references beyond those supplied by the Proposer, which may be used as part of the evaluation process. No more than eight (8) examples should be provided for all participating firms.
7. Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) and Disadvantaged Business Enterprise (DBE) Programs. Oneida County will make every effort to comply with U.S. DOT 49 CFR Part 26, to ensure that equal opportunity to participate

is afforded to all entities. The Federal Disadvantaged Business Enterprise (DBE) program promotes the use of DBEs in all types of federally assisted contracts and procurement activities and does not apply to 100% state or locally funded contracts. The Federal DBE program is a separate program and subject to different requirements than the New York State (NYS) Minority Business Enterprise (MBE) and Women-owned Business Enterprise Program (WBE).

The Oneida County M/WBE goal for Oneida County is 1.6 %. The FTA DBE transportation program goal for FFY 2025 is 4.62%.

- a. If Proposer is a Disadvantaged Business Enterprise (DBE), supply documentation.
- b. If there is an intent to subcontract, the proposer shall provide evidence of due diligence to search for DBE firms (can be demonstrated through supplying a screen shot of a search on <http://www.nysucp.net/> and copies of any correspondence with DBEs)
- c. The Proposal shall make a good faith effort to attain the M/WBE goals for Oneida County. If the M/WBE or DBE goals are not met, the Proposer shall document the good faith efforts to utilize certified M/WBE or DBE firms to attain these goals, and why they were not.

## B. Cost Proposal

1. Cost proposals must be in a separate sealed envelope marked 'Cost Proposal - RFP # "2025-417", to be included with the proposal package. Non-compliance with this requirement shall result in the Proposal being deemed non-responsive.
  - a. Eighty percent of funding for Mobility Management Services is provided through the Federal Transit Administration (FTA) Section 5311 grant program, of which Oneida County Planning is a grantee. There is a requirement that the contract will provide no more than 90% of the total mobility management service project funds.
  - b. Proposers should be aware that the County intends to budget up to \$186,507 toward the professional services sought in this RFP, contingent upon receipt of grant funding. Respondents should scope their proposals with this budget as the upper limit and should be mindful that the cost of the services is one factor the County will consider when making an award to a consultant.

The cost proposal shall include:

2. All anticipated costs and expenses associated with the proposal in a standard category format that includes details of two years' worth of project expenses, in annual increments, Cost proposal should include indirect costs, overhead rates, fringe benefits, document production, graphics, meeting costs, technology costs, travel, and administrative services. The County will require the consultant to secure various insurance coverages and to name the County as an additional insured on such insurance policies. The cost of insurance should be considered in developing the cost proposal.



3. All assigned staff billing rates, hours assigned per task, cumulative hours per task, and specify which firm is providing the task services. This must be completed for all firms identified in a management plan. All prices are to be quoted firm against increase for the duration of the contract, unless otherwise noted in the proposal. Any deviation from this must be approved in writing by Oneida County. Travel and incidental expenses cannot be separately invoiced. The County shall not be responsible for any additional costs.
4. Additional information is required to support the reasonableness of the submitted cost proposal.
5. All Oneida County Certifications (Appendix B-1) must be completed, signed, and provided for all firms participating in the proposal. This will be included as Attachment 1 of the Cost Proposal.
6. A sample professional service agreement is included in Appendix C-1, and it will incorporate the requirements set forth in all other Appendices. Any exceptions to this sample agreement must be identified in writing and will be included in Attachment 2 of the Cost Proposal.

The cost proposal shall not include any cost incurred with the development and submission of the proposal. All costs incurred with the development and submission of the proposal, prior to full execution of a contract, shall be at the selected Consultant's sole expense.

### C. Proposal Evaluation

Oneida County reserves the right to reject any or all proposals associated with this work. Dependent on the number of proposals received, Oneida County reserves the right to complete an initial review utilizing the criteria outlined. Based upon the review of each proposal, the highest-scoring Proposers will be invited to interview. Oneida County reserves the right to not conduct interviews, dependent on the proposals received. Firms not selected for interviews will be notified via email within thirty (30) days of the RFP proposal deadline. Oneida County may conduct discussions with any Proposer to determine the Proposer's qualifications for further consideration. A qualified proposer will be selected based on the following evaluation criteria:

1. Project understanding, proposed scope of work and its alignment with project goals **(25 pts.)**
2. Demonstrated experience/qualifications/technical expertise of staff or partners providing mobility management services **(15 pts.)**
3. Methodology, approach and programs proposed to serve the mobility management needs of Oneida County. **(15 pts.)**
4. Experience with mobility management service in the small urban and rural context. **(15 pts.)**
5. Similar services currently or recently performed for other clients, including but not limited to public transportation. **(10 pts.)**
6. Utilization of technology and software to deliver work tasks **(10 pts.)**
7. Proposed project schedule, budget and work indicated to be accomplished **(10 pts.)**

**Total Points Possible: 100**

Proposers may be asked to provide additional written information beyond what is contained in their Proposals. Oneida County has established a Selection Committee whose role shall be to evaluate each proposal based on the evaluation criteria. The final selection of a proposal/ consultant team will be conditionally awarded by Oneida County. Final award until final approval is granted, the contract is approved by the Oneida County Board of Legislators, and the contract documents are executed by Oneida County and returned to the selected team.

## D. Proposal Package

Specifications for proposal package:

1. Three (3) originals and one (1) electronic copy in Adobe PDF format (USB flash drive or CD media) of the completed proposal must be received by 4:00 pm EST on May 12, 2025.
2. A transmittal form or memo must be included with the proposal package and reference RFP # 2025-417
3. Proposals are to be sent to:

Oneida County  
Department of Planning  
321 Main Street, 3<sup>rd</sup> Floor  
Utica, New York 13501

**Attn: Oneida County Mobility Management Services**

## E. Timeline

Approximate RFP timeline for solicitation and award of contract.

<i>Procedural Step</i>	<i>Date</i>
RFP Release Date	May 5, 2025
RFP Active	7 days from release
Deadline for Questions	May 8, 2025 at 4:30 PM EST
Deadline for the submission of proposals	May 12, 2025 at 4:00 PM EST
Evaluate Proposals	May 2025
Technical Interviews	June 2025
Consultant Selection/ Notification	June 2025
Conditional Contract Award	June 2025

Contract Award Date	July 2025
Notice to Proceed	July 2025
Contract Duration	24 months, with renewal terms
Contract Execution Date	July 2025

## F. Conditional Contract Award

A Conditional Contract Award will be made according to the timeline in item E. This Conditional Contract Award will stand until such time that Oneida County has fully executed a contract with the NYSDOT to provide funding for the SOW within this RFP. The consultant may not incur any chargeable costs during the time of the Conditional Contract Award. If costs are incurred, they will be the sole responsibility of the consultant and Oneida County will not provide any form of reimbursement.

## G. Notice to Proceed

A Notice to Proceed will be issued prior to the activity commencing by the consultant to deliver the SOW. A Notice to Proceed will be issued only after Contracts are fully executed between NYSDOT and Oneida County, and Oneida County and the Consultant. Any costs incurred prior to the Notice to Proceed are the sole responsibility of the Consultant.

## H. Questions Regarding this RFP

Questions specifically relating to this RFP shall be accepted in writing only. Proposers are welcome to submit questions regarding the content in or process governing this RFP up until May 8, 2025, at 4:30 pm EST.

1. Questions shall be directed to:

### **Oneida County Mobility Management Services**

[transplan@oneidacountyny.gov](mailto:transplan@oneidacountyny.gov)

or hard copy:

Oneida County Department of Planning

Boehlert Center at Union Station

321 Main Street, 3rd Floor Utica, New York 13501

### **ATTN: Oneida County Mobility Management Services**

2. Oral questions will not be accepted. Any perception of an oral answer to a question asked relative to this RFP will not be binding on Oneida County.
3. There will be no pre-submission meeting. All questions will be addressed in writing using the methodology outlined herein.
4. All questions and answers will be posted under the link RFP # 2025-417 FAQs at [www.hoctc.org](http://www.hoctc.org)
5. Questions submitted will be answered as soon as possible. To ensure all proposers have equal access to the FAQ and knowledge of all questions asked and answered regarding this RFP, questions received after the last question deadline will not be answered.

To ensure fairness of process to all proposers, apart from any technology, internet, or nature- based unforeseen delays to posting, all questions will be answered in chronological order, as submitted.

## I. Additional Information

1. All information and materials submitted will become the property of Oneida County and may be subject to disclosure pursuant to the Freedom of Information Law, subpoena, or court order. Proposers should not submit proprietary or confidential business information unless they believe such information is critical to the proposal. Such information should be identified. Oneida County will protect such proprietary information only to the extent that the law allows.
2. Oneida County shall not be liable for nor pay any costs incurred in the preparation of a Proposal in response to this request, and shall not be liable for any costs, expenses, or fees of the successful respondent accrued before the County authorizes the respondent to begin work.
3. Oneida County reserves the right to cancel this RFP or reject any or all proposal packages received as a result of this request, in whole or in part, without liability and without notice; to negotiate with selected Proposers, or to cancel in part or its entirety this RFP, if it is determined to be in the best interest of the Oneida County to do so.
4. A low-cost proposal does not necessarily guarantee the award of the RFP. All proposal evaluation criteria and required components included in this RFP will be considered.
5. The awarded Proposer shall enter into a contract with Oneida County and be subject to legal requirements established by Oneida County. **A SAMPLE CONTRACT IS ANNEXED AS APPENDIX C-1.**
6. The Deputy Commissioner of Planning (or designee) will serve as the Project Manager and manage the contract and all other project-related tasks.
7. The awarded Proposer shall comply with the Standard Clauses for NYS Contracts attached as Appendix A.
8. The awarded Proposer shall comply with the Federal Clauses and Certifications attached as Appendix A-1.
9. The awarded Proposer shall comply with the Standard Oneida County Conditions attached as Appendix B.

## J. Standard of Conduct for this RFP

The purpose of the standards of conduct is to provide for the fair and equitable treatment of persons and companies involved with the procurement processes for professional service contracts entered into by Oneida County. This includes terms for protests and appeals and disputes. The governing policy for this RFP is the County of Oneida, Procurement Policy, which is available at <https://ocgov.net/departments/purchasing/>.

### J-1. Appeals and Remedies

#### Bid Protests.

1) Right to Protest. Any actual or prospective bidder, or contractor who is aggrieved in connection with the solicitation or award of a contract retains the right to protest. Protestors are urged to first seek resolution of their complaints with the Director of Purchasing. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within 3 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. If the matter is unable to be resolved through this process, the protest may be submitted to the County Executive's office for additional consideration.

2) Stay of Procurements during Protests. In the event of a timely protest under Subsection

(1) of this Section, the Director of Purchasing shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the County Executive makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County of Oneida.

The Board of Legislators shall receive electronic notification of each bid protest and any stays of procurement issued during the pendency of such protest or other action taken by the County Executive under this section of the procurement policy.

#### Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims.

The Director of Purchasing is authorized to settle any protest regarding the solicitation or award of a County of Oneida contract awarded through the Purchasing Department, or any claim arising out of the performance of a County of Oneida contract, prior to an appeal to the County Executive or the commencement of an action in a court of competent jurisdiction.

#### Remedies for Solicitations or Awards in Violation of Law.

1) Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

2) Prior to Award. If after bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, the solicitation or proposed award shall be cancelled.

3) After Award. If, after an award, the Director of Purchasing, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:

(b) If the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County of Oneida; or

(ii) the contract may be terminated, and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

(c) If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County of Oneida.

## J-2. Appeals to Federal Transit Administration

A protestor may file an appeal with FTA under certain limited circumstances, after Oneida County has rendered a decision on a protest. FTA's review of any protest will be limited to an alleged failure by Oneida County to have written protest procedures or alleged failure by Oneida County to follow such procedures. A protestor desiring to do so shall file its protest with FTA not later than five (5) days after the final decision of Oneida County is rendered under Oneida County protest procedure. In instances where the protestor alleges that Oneida County failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) days after the protestor knew or should have known of Oneida County's failure to render a final determination on the protest.

Protests to FTA should be filed with the appropriate FTA Regional Office with a concurrent copy to Oneida County. The protest filed with Oneida County shall be filed in accordance with FTA Circular 4220. 1F, include the name and address of the protestor, identify Oneida County project number, contain a statement of the grounds for the protest and any supporting documentation and include a copy of the local protest filed with Oneida County and a copy of Oneida County decision, if any.

## VIII. Appendices

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

APPENDIX A-1: U.S. GOVERNMENT (FTA) REQUIRED CLAUSES

APPENDIX B: STANDARD ONEIDA COUNTY CONDITIONS

APPENDIX B-1: ONEIDA COUNTY CERTIFICATIONS

APPENDIX C-1: SAMPLE CONTRACT

APPENDIX D: LIST OF DOCUMENTS REQUIRING UNDERSTANDING OR COMPLIANCE

## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**



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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life

of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of

inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction,

demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining

contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the

Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## APPENDIX A-1

### U.S. GOVERNMENT (FTA) REQUIRED CLAUSES

For any conditions imposed upon a “contractor” or “subcontractor”, it shall be the recipient’s responsibility to notify and impose applicable requirements upon any such contractor or subcontractor. Notwithstanding the foregoing, other requirements applicable to the recipient or subrecipient may also apply to a contractor or subcontractor, or any other third party, for which the recipient or subrecipient shall also be responsible for imposing any such condition.

Any use of “recipient” or “subrecipient” shall mean the grant recipient of the associated agreement to which this appendix is incorporated and applies. Such terms are interchangeable and may be used contemporaneously. A recipient or subrecipient shall impose any requirements of this appendix, or associated agreement, to any sub-awardee.

Any use of “Sub-agreement” or “Sub-grant” shall mean an agreement through which the Recipient awards federal assistance to a Sub-grantee(s) to support or stimulate any of the Recipient’s or Sub-grantee(s) Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third-party subcontract, or lease.

Any use of “Sub-awardee” shall mean any entity or person that receives federal assistance from the FTA through an associated agreement, but is not a direct recipient of fund from, or a direct party to this agreement with, the State. Sub-awardee shall not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.

Any use of “Third Party”, “Third-Party Participant”, or variations thereof, shall mean a grant recipient, sub-awardee – and contractor(s), subcontractor(s), or suppliers, thereof – whose work under the associated agreement is supported with FTA funding, eligible non-federal share dedicated to the Project, or is dedicated as an in-kind contribution eligible for as a non-federal share. Such terms are interchangeable and may be used contemporaneously.

**Fly America Requirements** – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

**Buy America Requirements** – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Build America, Buy America Act** – Applicability – all

Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

**Charter Bus Requirements** – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, “Charter Service,” 49 CFR part 604, the terms and conditions of which are incorporated herein by reference. If a Recipient or any Third-Party Participant that has operated a chart bus in violation of federal laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

**School Bus Requirements** – School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school



bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third-Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third-Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third-Party Participant from receiving Federal transit funds.

**Cargo Preference** - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Recipient shall:

- a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;
- b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

**Seismic Safety** – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

**Energy Conservation** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**Clean Water** – Applicability – All Contracts and Subcontracts over \$250,000.

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

**Safe Operation of Motor Vehicles-** Applicability – All

- a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 *Fed. Reg.* 19217), by:  
Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.
- b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:
  - (1) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,
  - (2) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and
  - (3) Extension of Provision. The Recipient is encouraged to include the immediately preceding Provision of section (1) – (2) in each third party sub-agreement (if applicable) at each tier supported with federal assistance.

**Bus Testing** – Applicability – Rolling Stock/Turnkey

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall **provide a copy of the final test report** to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report,

which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**Pre-Award & Post-Delivery Audit Requirements** - Applicability – Rolling Stock/Turnkey Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
  - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
  - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
  - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

**Lobbying** – Applicability - Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

**Trafficking in Persons**

- (1) Legal Authorities. The Recipient and subrecipient agrees to comply with federal requirements and guidance, including:
  - (a) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and
  - (b) The terms of this section, which have been derived from U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 C.F.R. part 175, per U.S. OMB’s direction.
- (2) Definitions. The Recipient agrees that ***for purposes of this section:***
  - (a) Employee means either an individual who is employed by the Recipient or a Subrecipient, and is participating in a Project or related activities as set forth in the Underlying Agreement, or another person who is participating in a Project or related activities as set forth in the Underlying Agreement and is not compensated by the Recipient, including, but not limited to, a volunteer, or an individual whose services are contributed by the Recipient or Third Party Participant as an in-kind contribution toward the cost sharing requirements of the Recipient’s Underlying Agreement.
  - (b) Forced labor means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - (c) Private entity means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 C.F.R. § 175.25(b).
  - (d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
  - (e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
  - (f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
  - (g) Recipient or Direct Recipient means a non-federal entity that receives an award directly from the State of New York to carry out an activity under a federal program. The term “Recipient” does not include a Subrecipient.
  - (h) Subrecipient or Sub-grantee means any entity or person that receives federal assistance provided by the State instead of from the State directly, but does not include a Third-Party Contractor, Third Party Subcontractor, or Lessee.
  - (i) Sub-agreement or Sub-grant means an agreement through which the Recipient awards federal assistance to its Subrecipient(s) to support or stimulate any of the Recipient’s or Subrecipient’s Projects or related activities supported under the Award, the accompanying Underlying Agreement, or Amendments thereto, but does not include a third-party contract, third party subcontract, or lease.
  - (j) “This Section” any references to “this section” shall mean and refer to the section titled, **“Trafficking in Persons”**.
- (3) Provisions Applicable to All Recipients. The Recipient agrees to and assures that it,

and any Subrecipients, will:

- (a) Provide Information. Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this section, and
- (b) Sub-agreement Provision. Certify and include the following provision in any sub-agreement it enters with a private entity as defined above in section (2)(c) of this section:

*Recipient, or sub recipient, agrees that it and its employees that participate in the Recipient's Award, may not:*

- 1. Engage in severe forms of trafficking in persons during the period that the Recipient's Award is in effect,*
- 2. Procure a commercial sex act during the period that the Recipient's Award is in effect, or*
- 3. Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.*

- (4) Provisions Applicable to a Private Entity Recipient. If the Recipient is a private entity, it agrees that:

- (a) Prohibitions. It, its employees, its Subrecipients, and its Subrecipients' employees that participate in the Underlying Agreement will not:
  - 1 Engage in severe forms of trafficking in persons during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect,
  - 2 Procure a commercial sex act during the period that the Recipient's or Subrecipient's Underlying Agreement is in effect, or
  - 3 Use forced labor in the performance of the Recipient's or Subrecipient's Underlying Agreement or sub-agreements.
- (b) Termination of Federal Assistance. Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. part 175, provide FTA and the State of New York, through receipt of federal funds, the right to unilaterally terminate the Underlying Agreement for a violation of that Act without penalty to the Federal Government or the State of New York, if FTA or the State of New York determines that the private entity Recipient or its Subrecipient:
  - 1 Has violated a prohibition described above in section (4)(a) of this Section, or
  - 2 Has an employee whose conduct is determined to have violated a prohibition described above in section (4)(a) of this Section because that employee's conduct is either:
    - a Associated with the performance of the Recipient's Underlying Agreement, or
    - b Imputed to the Recipient or Subrecipient using the standards of due process for conduct of an individual to an organization provided in:
      - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, or
      - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension

(Nonprocurement),” 2 C.F.R. part 180.

- (5) Provisions Applicable to a Recipient That is Not a Private Entity. A Recipient that is not a private entity agrees that section 106(g) of the TVPA, as amended, 22 U.S.C. §7104(g), and U.S. OMB regulatory guidance, “Award Term for Trafficking in Persons,” 2 C.F.R. part 175, provides FTA, and consequently the State, the right to unilaterally terminate the Underlying Agreement, without penalty to the Federal Government or the State of New York, for a violation of that Act if FTA, or the State of New York, determines that:
- (a) A private entity that is the Recipient or Subrecipient is determined to have engaged in severe forms of trafficking in persons during the period that the Recipient’s or Subrecipient’s Underlying Agreement is in effect; procured a commercial sex act during the period that the Recipient’s or Subrecipient’s Underlying Agreement is in effect; or used forced labor in the performance of the Recipient’s or Subrecipient’s Underlying Agreement or sub-agreements thereunder; or
  - (b) An employee of a private entity that is the Recipient or Subrecipient has engaged in severe forms of trafficking in persons during the period of time that the Recipient’s or Subrecipient’s Underlying Agreement is in effect; procured a commercial sex act during the period of time that the Recipient’s or Subrecipient’s Underlying Agreement is in effect; or used forced labor in the performance of the Recipient’s or Subrecipient’s Underlying Agreement or sub-agreements thereunder, and whose conduct described above is associated with the performance of the Recipient’s or Subrecipient’s Underlying Agreement; or is imputed to the Subrecipient using the standards for due process to impute the conduct of an individual to an organization as provided in U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, and U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200.
- (6) Remedies Other Than Termination of Federal Assistance. The Recipient or Subrecipient agrees that FTA’s right to terminate federal assistance as provided in the TVPA and in sections (4)(b) and (5) are in addition to all other remedies for noncompliance available to the State and Federal Government under the associated grant agreement.

**Access to Records and Reports**– Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2. Where the purchaser is a State and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub-grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an recipient, subrecipient, or a sub-grantee of an FTA recipient, and in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)(1)) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto, as provided by 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes** – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract, to the extent that such are publicly available. Contractor's failure to comply shall constitute a material breach of the contract.

**Bonding Requirements** – Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$250,000, FTA may accept the bonding policy and

requirements of the recipient, provided they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
  - (1) 50% of the contract price if the contract price is not more than \$1 million;
  - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### Bid Bond Requirements (Construction)

- (a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
- (b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified



Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.  
Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

(a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.  
The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
  - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
  - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (iii) Two and one half million if the contract price is increased.

#### Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**Clean Air** – Applicability – All contracts over \$150,000.

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

**Recycled Products** – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds.

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**Davis-Bacon and Copeland Anti-Kickback Acts** – Applicability -Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

**(1) Minimum wages** –

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the

contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Responsibilities

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to

the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iv) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program.
- (vi) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe

benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(v)(B) or (1)(v)(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(ii)(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training,

or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the



wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may, by appropriate instructions, require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

**Contract Work Hours & Safety Standards Act** – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract

work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**Awards Involving Commerce.** The Recipient agrees to comply, and assures that each Third-Party Participants will comply, with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, or as the Federal Government otherwise determines applicable.

**No Government Obligation to Third Parties** - Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part

with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Civil Fraud. The Recipient acknowledges and agrees that:

- (i) Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31.
- (ii) By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
- (iii) The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.

(2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination** – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effectuated by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for

supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions.

If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach If the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth

in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an

equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

**Government-wide Debarment and Suspension (Nonprocurement)** – Applicability – Contracts over \$25,000

The Recipient/subrecipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third-Party Participant that is debarred or suspended except as authorized by:

- (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200,
- (ii) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and
- (iii) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if

required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third-Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

- (i) Will comply with Federal debarment and suspension requirements, and
- (ii) Reviews the “System for Award Management” at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and
- (iii) If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
  - (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
  - (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or
  - (c) FTA Chief Counsel,

**Contracts Involving Federal Privacy Act Requirements** – Applicability - When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**Civil Rights Requirements**– Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian

Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third-Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA’s “Nondiscrimination” statute):

- (1) FTA’s “Nondiscrimination” statute prohibiting discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and
- (2) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity,
- (3) Except as FTA determines otherwise in writing:
  - (a) General. Follow:
    - (i) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance, and
    - (ii) Other applicable Federal guidance that may be issued, but
  - (b) for the exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program;

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third-Party Participant will:

- (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin,
- (2) Comply with:
  - (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.,
  - (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and
  - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and
- (3) Except as FTA determines otherwise in writing, follow:
  - (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance.
  - (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and
  - (c) Other applicable Federal guidance that may be issued;

c. Equal Employment Opportunity.

- (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third-Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
  - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.,



- (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and
- (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. The Recipient agrees to:

- (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: (1) Race, (2) Color, (3) Religion, (4) Sex, (5) Disability, (6) Age, or (7) National origin,
- (b) Take affirmative action that includes, but is not limited to: (1) Recruitment advertising, (2) Recruitment, (3) Employment, (4) Rates of pay, (5) Other forms of compensation, (6) Selection for training, including apprenticeship, (7) Upgrading, (8) Transfers, (9) Demotions, (10) Layoffs, and (11) Terminations, with the exception of Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third-Party Participant, with:

- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
- (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise.

(1) To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project, and Recipient agrees to comply with:

- (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note,
- (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
- (c) Federal transit law, specifically 49 U.S.C. § 5332,

(2) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26,

(3) Assurance. As required by 49 C.F.R. § 26.13(a),

(4) The Recipient provides assurance that:

(a) The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26.

(b) The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

(c) Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement.

(d) Upon notification to the Recipient of its failure to abide by DBE requirements, the Federal Government may impose sanctions as provided for in 49 C.F.R. part 26, as implemented by the State through this agreement, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(5) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation.

e. Nondiscrimination on the Basis of Sex

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age

The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:

(1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,

(4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and

(5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability

The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

(1) Federal laws, including:

- (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
- (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,”
- (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
- (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) Federal regulations, including:

- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
- (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
- (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,
- (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
- (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
- (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
- (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and

(3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:

- (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq.,
- (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and
- (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following:

- (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and
- (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:

- (1) Comply with other applicable Federal nondiscrimination laws and regulations, and
- (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

#### **Breaches and Dispute Resolution** – Applicability – All contracts over \$250,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights

and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **Patent and Rights Data** –

Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

#### **Patent Rights**

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third-Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery,
- (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and
- (3) When a patent is issued or patented information becomes available as described in Patent Rights Section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights.

The Recipient agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third-Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and
- (2) Unless the Federal Government determines otherwise in writing – irrespective of the Recipient's status or the status of any Third-Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual – the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in:
  - (a) 35 U.S.C. § 200 et seq., and
  - (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for patents, patent applications, and inventions derived from the

Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:

- (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and
- (b) As FTA determines otherwise in writing.

## Rights in Data and Copyrights

A. Definition of “Subject Data” means recorded information, subject to (1) Copyright, whether or not copyrighted, and (2) Delivery, that which is delivered or specified to be delivered under the Underlying Agreement.

B. Examples of “Subject Data.” Examples of “subject data” include, but are not limited to:

- (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but do not include: (1) Financial reports, (2) Cost analyses, or (3) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient’s Project supported by the Underlying Agreement:

(1) Prohibitions. The Recipient may not:

- (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or
- (b) Permit others to do so, but

(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to:

- (a) Publications or reproductions for the Recipient’s own internal use,
- (b) An institution of higher learning,
- (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or
- (d) The portion of data that has the Federal Government’s prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that:

(1) License Rights. The Recipient must provide a license to its “subject data” to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable,

(2) Uses. The Federal Government’s license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA’s purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third-Party Participants, therefore, the Recipient agrees that:

- (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,
- (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,
- (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third-Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,
- (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,
- (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but
- (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both:
  - (a) For the Recipient's use, and
  - (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:
  - (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and
  - (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

- (1) Violation by Recipient.
  - (a) If it willfully or intentionally violates any:
    - (1) Proprietary rights, (2) Copyrights, or (3) Right of privacy, and
  - (b) Its violation occurs from any of the following uses of Project data:
    - (1) Publication, (2) Translation, (3) Reproduction, (4) Delivery, (5) Use, or (6) Disposition, then
  - (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of:
    - (1) The Federal Government's officers acting within the scope of their official duties,
    - (2) The Federal Government's employees acting within the scope of their official duties, and
    - (3) Federal Government's agents acting within the scope of their official duties, but
- (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights Section G(1) if:
  - (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or
  - (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section

pertaining to rights in data either:

- (1) Implies a license to the Federal Government under any patent, or
- (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:

- (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
- (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential,” and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:

- (1) The Freedom of Information Act, 5 U.S.C. § 552,
- (2) Another applicable Federal law requiring access to Project records,
- (3) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” specifically 49 C.F.R. § 19.36(d), or
- (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

**Transit Employee Protective Provisions** – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

#### **Public Transportation Employee Protective Arrangements**

The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

1. **U.S. DOL Certification** When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
  - (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project,
  - (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto,



- (c) It will follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
  - (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including:
    - (1) Alternative comparable arrangements U.S. DOL has specified for the Project,
    - (2) Any revisions U.S. DOL has specified for the Project, or
    - (3) Both, and
  - (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project:
    - (1) The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement,
    - (2) The documents cited in that U.S. DOL certification for the Project,
    - (3) Any alternative comparable arrangements that U.S. DOL has specified for the Project, and
    - (4) Any revisions that U.S. DOL has specified for the Project,
2. Special Warranty When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that:
- (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b),
  - (b) Follow the U.S. DOL guidelines, “Guidelines, Section 5333(b), Federal Transit Law,” 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing,
  - (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: (1) Any alternative comparable arrangements U.S. DOL has specified for the Project, (2) Any revisions U.S. DOL has specified for the Project, or (3) Both, and
  - (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement:
    - 1. The U.S. DOL Special Warranty for its Project,
    - 2. Documents cited in that Special Warranty,
    - 3. Alternative comparable arrangements U.S. DOL specifies for the Project, and
    - 4. Any revisions that U.S. DOL has specified for the Project, and
3. Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public

transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions:

- (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and
- (b) FTA reserves the right to make other exceptions as it deems appropriate.

**Disadvantaged Business Enterprise (DBE)** – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt Payment** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

**Incorporation of Federal Transit Administration (FTA) Terms** – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

**Drug & Alcohol Abuse and Testing** – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations:

- (a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182,
- (b) Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

**Other Federal Requirements:**

**Full and Open Competition** – In accordance with 49 U.S.C. § 5325, all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications** – Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture** – Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January

8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **Safeguarding Protected Personally Identifiable Information (PPI)**

U.S. DOT Common Rules requires Recipient to implement, and require any sub-grantee, if any, to implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

**Access Requirements for Persons with Disabilities** – Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation** – To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third-party contract.

**Interest of Members or Delegates to Congress** - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors** - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements** - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance with Federal Regulations** – Any of Recipient's contracts shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including,

without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Real Property** - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Recipient and any third-party participant(s) shall comply with 49 U.S.C. § 303, 23 C.F.R part 774, 54 U.S.C. §306108, 54 U.S.C. 312501 *et. seq.*, 36 C.F.R. part 800, 42 U.S.C. §1996, §3161 note and Executive Order No. 13007 as such actions may relate to: Parks, Recreation Areas, Wildlife and Waterfowl Refuges; Historic Sites, Archeological and Historic Preservation, Protection of Historic Properties; preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act; compliance with environmental mitigation measures related to environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.

**Access to Services for Persons with Limited English Proficiency** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice** - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:

- (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and
- (2) DOT Order 5610.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and
- (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

**Environmental Protections** – Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: The National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions

with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

**Geographic Information and Related Spatial Data** – Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Preference**

All project activities must be advertised without geographic preference, except as permitted by federal law, regulation, requirement or guidance. Such exception may include, but may not be limited to, A/E contracts under certain circumstances and preference for hiring veterans on transit construction projects.

### **Organizational Conflicts of Interest**

The Recipient and subrecipient, if any, agrees that it will not enter a procurement that involves a real or apparent organizational conflict of interest described as follows:

- (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:
  - (a) To that Third-Party Participant or another Third-Party Participant performing the Project work, and
  - (b) That impairs that Third Party Participant's objectivity in performing the Project work, or
- (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,
- (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:
  - (a) Any instances of organizational conflict of interest, or
  - (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and
- (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Ethics**

Standards of Conduct. At a minimum, the Recipient / Subrecipients will establish and maintain written Standards of Conduct covering conflicts of interest that:

- (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third-party contract or subcontract:
  - (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third-party agreement,
  - (b) The immediate family members or partners of those listed above in section (1)(a) of this Master Agreement, and
  - (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections (1)(a) and (b) of this Master Agreement;

(2) Prohibit those individuals listed above in section (1) from:

(a) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third-Party Participants at any tier, including selection, award, or administration of a third-party agreement in which the individual has a present or potential financial or other significant interest, and

(b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third-Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and

(3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section (1) and the Recipient's or Subrecipient's Third Party Participants.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non- Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non- Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B-- Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

Non- Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Catalog of Federal Domestic Assistance (CFDA) Identification Number**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

### **The CFDA number for the Federal Transit Administration**

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December

26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

**Veterans Preference** As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**  
– Applicability – all

The Contractor agrees to comply with the following Federal requirements:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be



an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

# Appendix B- Standard Oneida County Conditions

## STANDARD ONEIDA COUNTY CONDITIONS

The County of Oneida ("County") and \_\_\_\_\_ ("Contractor"), for good consideration, agree to be bound by the following clauses which are hereby made a part of the foregoing Agreement:

### 1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

### 2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

### 3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:
  - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

- ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
  - i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or

local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

2) The Contractor's policy of maintaining a drug-free workplace;

3) Any available drug counseling, rehabilitation, and employee assistance program; and

4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

1) Abide by the terms of the statement; and

2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes

by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, NY 12240. Notice shall include the identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:
  - i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
  - ii. The Contractor may provide data aggregation services relating to the health care operations of the County.
- c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and
- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible,



extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
  - i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

#### 10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions

of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application; request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services (hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the “use of tobacco” shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that delivers vapor which is inhaled by an individual user as he or she simulates smoking.
- c. For the purposes of this provision, “on Oneida County property” shall be defined as:
  - i. Upon all real property owned or leased by the County of Oneida;  
and

- ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

- d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

## 20. COMPLIANCE WITH NEW YORK STATE LABOR LAW § 220-i

If this contract is for a public work and is a covered project as set forth in Labor Law § 220-i, the Contractor shall at all times comply with, and shall require its subcontractors (if any) to comply with, Labor Law § 220-i. The Contractor and its subcontractors (if any) shall at all times be registered by the Department of Labor as set forth in Labor Law § 220-i. Should the registration of the Contractor or its subcontractors (if any) lapse during the term of the contract or subcontract, the Contractor and its subcontractors shall be subject to Labor Law § 220-i(5). Should a Contractor or subcontractor be determined by the Department of Labor to be unfit to be registered by the Department of Labor during the term of the contract or subcontract, then its work may continue only if a monitor is appointed to oversee the work completed at the sole expense of the Contractor or its subcontractor, as applicable. Such monitor must be approved by the Department of Labor.



## Appendix B-1 Standard Certifications

(Proposers Must Sign and Return With Their Proposals)

**IT IS UNDERSTOOD AND AGREED BY THE OFFEROR THAT:**

1. This Request for Proposals (hereinafter "RFP") does not commit the County of Oneida (hereinafter the "County") to award any contracts, pay the costs incurred in the preparation of response to this RFP, or to procure or contract services. The County reserves the right to accept or reject any or all submissions that do not completely conform to the instructions given in the RFP.
2. The County reserves the right to amend, modify or withdraw this RFP, and to reject any submissions submitted, and may exercise such right at any time, without notice and without liability to any Offeror (hereinafter the "Respondent") or other parties for their expenses incurred in the preparation of a submission or otherwise. Submissions will be prepared at the sole cost and expense of the Applicant.
3. Submission of a submission will be deemed to be the consent of the Applicant to any inquiry made by the County of third parties with regard to the Applicant's experience or other matters relevant to the submission.
4. The awarded agreement may be terminated in whole or in part, by the County. Such termination shall not affect obligations incurred under the awarded agreement prior to the effective date of such termination.
5. Funds shall not be paid in advance and shall be used only for service as approved by the County. The County shall have no liability to anyone beyond funds appropriated and made available for the contract.
6. Any significant revision of the approved submission shall be requested in writing by the Applicant prior to enactment of the change.
7. Necessary records and accounts, including financial and property controls, shall be maintained and made available to County for audit purposes.
8. All reports of investigations, studies, publications, etc., made as a result of this submission, information concerning individuals served, and/or studies under the project, are confidential and such information shall not be disclosed to unauthorized persons. Applicants acknowledge that the County is subject to Section 6 of the Public Officers Law.

All references to time contained in this RFP are Eastern Standard Time. Applicants are encouraged to make their submissions in advance of the submission date, as the dates and times specified in this RFP may not be extended in the event Oneida County offices are closed for any reason, including, but not limited to, inclement weather.

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Legal Name of Respondent's Organization

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Signature

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Date

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Printed Name

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Title

## NON-COLLUSION CERTIFICATION

### (GML § 103-D)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

I further certify that I have not, nor has my organization, been disqualified to contract with any municipality and I am, and/or my organization is, in a position to accept any contract subject to the provision of Section 103-d of the General Municipal Law.

*The word "bid" shall be construed as if it read "submission" and the word "bidder" shall be construed as if it read "Respondent", whenever the sense of this certification so requires.*

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Legal Name of Respondent's Organization

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Signature

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Date

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Printed Name

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Title

## SEXUAL HARASSMENT PREVENTION CERTIFICATION

### (Lab. Law § 201-g)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has, and has implemented, a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all his/her/its employees. Such policy, at a minimum, meets the requirements of Section 201-g of the Labor Law.

*The word "bid" shall be construed as if it read "submission" and the word "bidder" shall be construed as if it read "Respondent", whenever the sense of this certification so requires.*

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Legal Name of Respondent's Organization

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Signature

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Date

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Printed Name

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Title

## RECYCLING AND SOLID WASTE MANAGEMENT CERTIFICATION

(Res. No. 249 of 1999)

The Oneida County Board of Legislators at its May 26, 1999, meeting passed Resolution No. 249 dealing with the inclusion of recycling and solid waste management provision in Oneida County contracts. All waste and recyclables generated by the contracting party shall be delivered to the facilities of the Oneida-Herkimer Solid Waste Authority.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that the bidder agrees to:

1. Comply with all applicable Federal, State and Local Statutes, rules and regulations, as may be amended, relating to the generation and disposition of recyclables and solid waste; and
2. Deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority (hereinafter the "Authority"), all wastes and recyclables generated within the Authority's service area by performance of this contract by the bidder and any subcontractors. Upon awarding of this contract, and before work commences, the bidder will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area that are generated by the bidder and any subcontractors in performance of this contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

I certify that I understand and agree to comply with the terms and conditions of the Oneida County Recycling and Solid Waste Management Program (R-249). I further agree to provide Oneida County proof of such compliance.

*The word "bid" shall be construed as if it read "submission" and the word "bidder" shall be construed as if it read "Respondent", whenever the sense of this certification so requires.*

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Legal Name of Respondent's Organization

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Signature

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Date

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Printed Name

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Title

## IRAN DIVESTMENT ACT COMPLIANCE CERTIFICATION

### (GML § 103-g)

By submitting a bid in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, each bidder, any person signing on behalf of any bidder and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that to the best of his/her/its knowledge and belief, that each bidder and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a (3) (b).

Additionally, the bidder is advised that any bidder seeking to renew, extend or assume a contract award in response to this solicitation, must certify at the time the contract is renewed, extended or assigned, that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment that is in violation of the Act within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder in default.

The County reserves the right to reject any bid from, or request for assignment for, a bidder that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any bidder that is awarded a contract and subsequently appears on the Prohibited Entities List.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief, she/he/it is not identified on the Prohibited Entities List.

*The word "bid" shall be construed as if it read "submission" and the word "bidder" shall be construed as if it read "Respondent", whenever the sense of this certification so requires.*

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Legal Name of Respondent's Organization

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Signature

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Date

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Printed Name

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Title

## PURCHASE OF TROPICAL HARDWOODS PROHIBITION CERTIFICATION

### (SFL § 165)

Pursuant to Section 165 of the State Finance Law, any bid, submission or other response to a solicitation for bid or submission that proposes or calls for the use of any tropical hardwood or wood product as defined by Section 165 of the State Finance Law in performance of the contract shall be deemed non-responsive.

This prohibition shall not apply to:

1. To bid packages advertised and made available to the public or any competitive and sealed bids received or entered into prior to August twenty-fifth, nineteen hundred ninety-one; or
2. To any amendment, modification or renewal of a contract, which contract was entered into prior to August twenty-fifth, nineteen hundred ninety-one, where such application would delay timely completion of a project or involve an increase in the total monies to be paid under that contract; or
3. Where the contracting officer finds that:
  - a) No person or entity doing business in the state is capable of performing the contract using acceptable non-tropical hardwood species; or
  - b) The inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract; or
  - c) The use of tropical woods is deemed necessary for purposes of historical restoration and there exists no available acceptable non-tropical wood species.

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief, she/he/it is not submitting a bid which would be deemed non-responsive.

*The word "bid" shall be construed as if it read "submission" and the word "bidder" shall be construed as if it read "Respondent", whenever the sense of this certification so requires.*

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Legal Name of Organization

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Signature

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Date

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Printed Name

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Title

# APPENDIX C – SAMPLE CONTRACT

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the “Agreement”), effective upon the date of its full execution (“Effective Date”), is by and between the County of Oneida (“County”), a New York municipal corporation with its principal offices at 800 Park Avenue, Utica, New York, and \_\_\_\_\_ (“Consultant”), a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_. The County and Consultant are each a “Party” and collectively the “Parties.”

### RECITALS

WHEREAS, the County issued Request for Proposals Number 2025-\_\_\_\_\_ (“RFP”) seeking proposals from qualified firms to provide Mobility Management Services to serve people, transportation providers and human service agencies through coordination, service analysis and development and the promotion of effective, collaborative solutions to meet transportation needs throughout all of Oneida County; and a copy of the RFP is annexed as Exhibit B; and

WHEREAS, Consultant responded to the RFP and offered to provide the Mobility Management Services, as more fully described in its response (with cost proposal) to the RFP (the “Proposal”), a copy of which is annexed as Exhibit C; and

WHEREAS, the County wishes to hire Consultant to provide Mobility Management Services, and Consultant wishes to such services in exchange for the payments described herein.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the sufficiency of which the Parties expressly acknowledge, the Parties agree as follows:

1. THE SERVICES. Consultant shall perform the services, through its efforts and the use of its subconsultants, as follows (collectively, the “Services”):
  - 1.1. Task 1: \_\_\_\_\_. [insert]
  - 1.2. Task 2: \_\_\_\_\_. [insert].
  - 1.3. Task 3: \_\_\_\_\_. [insert].
  - 1.4. Additional Services. In the event that the Parties wish for Consultant to perform additional services not described herein, such additional work shall be set forth in the form of a Statement of Work Supplemental (“Supplemental”) as annexed as Exhibit A hereto. Additional services shall be reviewed and approved by the County, prior to commencement.
2. COMPLIANCE WITH REGULATIONS
  - 2.1. In performing the Services, Consultant shall understand and comply with the most current versions of the following documents. Additional documents may require



understanding of or compliance with, as they pertain to individual tasks in a SOW.

- 2.1.1 National Roadway Safety Strategy (“NRSS”), Safe System Approach
- 2.1.2 Highway Safety Improvement Program (“HSIP”)
- 2.1.3 The Public Right of Way Accessibility Guidelines (“PROWAG”)
- 2.1.4 Rural Opportunities to Use Transportation for Economic Success (“ROUTES”) Initiative
- 2.1.5 A Policy on Design Standards - Interstate System, AASHTO
- 2.1.6 A Policy on Geometric Design of Highways and Streets, AASHTO New York State Highway Safety Plan (NYSHSP)
- 2.1.7 Manual of Uniform Traffic Control Devices (MUTCD) with New York State Supplement
- 2.1.8 New York State Pedestrian Safety Action Plan (NYPSAP)
- 2.1.9 New York State NEVI Plan
- 2.1.10 NYS Highway Safety Strategic Plan (Governor’s Traffic Safety Committee)
- 2.1.11 NYS DOT Safety Investigation Procedures Manual (also known as the Yellow Book)
- 2.1.12 Highway Design Manual
- 2.1.13 Annual Report titled “Update of Accident Costs”
- 2.1.14 Annual Report titled “Update of Accident Reduction Factors and Average Accident Rates”
- 2.1.15 NYS DOT Procedures for Locally Administered Federal Aid Projects
- 2.1.16 NYS DOT Project Development Manual
- 2.1.17 NYS DOT Right Of Way Mapping Procedure Manual
- 2.1.18 NYS DOT Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right of Way
- 2.1.19 NYS Environmental Quality Review Act (Environmental Conservation Law Article 8) and accompanying regulations (6 NYCRR Part 617)
- 2.1.20 Design Consultant Manual

- 2.1.21 Standard Specifications for Construction and Materials
- 2.1.22 Engineering Instructions and Directives
- 2.1.23 TRNS\*PORT Estimator User's Guide
- 2.1.24 The Environmental Manual (TEM)
- 2.1.25 Environmental Procedures Manual
- 2.1.26 HOCTC Long-Range Transportation Plan - Going Places 2045
- 2.1.27 HOCTC Environmental Justice Analysis 2025
- 2.1.28 HOCTC Public Participation Plan 2024
- 2.1.29 HOCTC Coordinated Human Services Transportation Plan 2025-2028
- 2.1.30 HOCTC Electric Vehicle Charging Station Plan
- 2.1.31 Oneida & Herkimer Counties Safe Streets for All Safety Action Plan

3. DELIVERABLES.

3.1. Acceptance & Rejection. Any deliverable created pursuant to this Agreement (each, a "Deliverable" and collectively, the "Deliverables") will be considered accepted (the "Acceptance") (a) when the County provides Consultant written notice of acceptance or (b) thirty (30) days after delivery if the County has not first provided Consultant with written notice of rejection. The County may reject a Deliverable in the event that it materially deviates from its specifications and requirements. In the event of such rejection, Consultant will correct the deviation and redeliver the Deliverable within twenty (20) days. After redelivery pursuant to the previous sentence, the Parties will again follow the acceptance procedures set forth in this Subsection.

3.2. Ownership of Deliverables. Effective upon Acceptance of each Deliverable, the County shall own and may reproduce, modify, and use all Deliverables.

4. SCHEDULE. Consultant shall perform the Services in no more than \_\_\_\_\_ (\_\_) months from the Effective Date, according to the following schedule"

4.1. [insert]

5. PAYMENT.

5.1. For Consultant providing the Services, the County will pay Consultant an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_). Payment shall be made monthly on the basis of work completed.

- 5.2. There shall be no separate payments for reimbursable expenses. Compensation for all reimbursable expenses is included in the not-to-exceed fee.
- 5.3. Such payments shall be made by the County after receipt of vouchers presented by Consultant on forms prescribed by the County and after audit and approval by the County's Department of Audit and Control and the County's Comptroller.
6. TERM. The Term of this Agreement shall commence upon the Effective Date and shall continue for twenty-four (24) months. The Parties may renew this Agreement for up to three (3) renewal terms of twenty-four (24) months each.
7. CONFIDENTIAL INFORMATION. "Confidential Information" refers to the following items that one Party to this Agreement (the "Discloser") discloses to the other (the "Recipient") and includes: (a) any document the Discloser marks "Confidential;" (b) any information the Discloser orally designates as "Confidential" at the time of disclosure, provided the Discloser confirms such designation in writing within ten (10) business days; and (c) any other nonpublic, sensitive information the Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Recipient's possession at the time of disclosure; (ii) is independently developed by the Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Recipient's improper action or inaction; or (iv) is approved for release in writing by the Discloser. The Recipient is on notice that the Confidential Information may include the Discloser's valuable trade secrets.
- 7.1. Nondisclosure. The Recipient will not use Confidential Information for any purpose other than to facilitate the provision of the Services (the "Purpose"). The Recipient: (a) will not disclose Confidential Information to any employee or contractor of the Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with the Recipient with terms no less restrictive than those of this Section; and (b) will not disclose Confidential Information to any other third party without the Discloser's prior written consent. Without limiting the generality of the foregoing, the Recipient will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The Recipient will promptly notify the Discloser of any misuse or misappropriation of Confidential Information that comes to the Recipient's attention. Notwithstanding the foregoing, the Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Recipient will give the Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with the Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at the Discloser's expense.
- 7.2. Injunction. The Recipient agrees that breach of this Section would cause the Discloser irreparable injury, for which monetary damages would not provide

adequate compensation, and that in addition to any other remedy, the Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

- 7.3. Termination & Return. With respect to each item of Confidential Information, the obligations of nondisclosure will terminate ten (10) years after the date of disclosure of the Confidential Information to the Recipient. Upon termination of this Agreement, the Recipient will return all copies of Confidential Information to the Discloser or certify, in writing, the destruction thereof.
- 7.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Discloser will retain all rights, title, and interest in and to all Confidential Information.
- 7.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), the Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

- 7.5.1 *Immunity.* An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

- 7.5.2 *Use of Trade Secret Information in Anti-Retaliation Lawsuit.* An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

## 8. HIPAA DISCLOSURES

- 8.1. HIPAA Assurances. In the event Consultant creates, receives, maintains, or otherwise is exposed to personally identifiable or aggregate patient or other medical information defined as Protected Health Information (“PHI”) in the Health Insurance Portability and Accountability Act of 1996 or its relevant regulations (“HIPAA”) and otherwise meets the definition a Business Associate as defined in the HIPAA Privacy Standards (45 CFR Parts 160 and 164), Consultant shall:

- 8.1.1 Recognize that HITECH (the Health Information Technology for Economic and Clinical Health Act of 2009) and the regulations thereunder (including 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316), apply to a business associate of a covered entity in the same manner that

such sections apply to the covered entity;

- 8.1.2 Not use or further disclose the PHI, except as permitted by law;
  - 8.1.3 Not using or further disclosing the PHI in a manner that had the County done so, would violate the requirements of HIPAA;
  - 8.1.4 Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for electronic PHI) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;
  - 8.1.5 Comply with each of the applicable requirements of 45 C.F.R. Part 162 if Consultant conducts standard transactions for or on behalf of the County;
  - 8.1.6 Report promptly to the County any security incident or other use or disclosure of PHI not provided for by this Agreement of which Consultant becomes aware;
  - 8.1.7 Ensure that any subcontractors or agents who receive or are exposed to PHI (whether in electronic or other format) are explained Consultant's obligations under this paragraph and agree to the same restrictions and conditions;
  - 8.1.8 Make available PHI in accordance with the individual's rights as required under the HIPAA regulations; Account for PHI disclosures for up to the past six (6) years as requested by the County, which shall include: (i) dates of disclosure, (ii) names of the entities or persons who received the PHI, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose and basis of such disclosure;
  - 8.1.9 Make its internal practices, books, and records that relate to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for purposes of determining the County's compliance with HIPAA; and
  - 8.1.10 Incorporate any amendments or corrections to PHI when notified by the County or enter into a Business Associate Agreement or other necessary Agreements to comply with HIPAA.
- 8.2. Termination Upon Breach of Provisions. Notwithstanding any other provision of this Agreement, the County may immediately terminate this Agreement if it determines that Consultant breaches any term in this Section. Alternatively, the County may give written notice to Consultant in the event of a breach and give Consultant five (5) business days to cure such breach. The County shall also have the option to immediately stop all further disclosures of PHI to Consultant if the County reasonably determines that Consultant has breached its obligations under this Section. In the event that termination of this Agreement is not feasible,

Consultant hereby acknowledges that the County shall be required to report the breach to the Secretary of the U.S. Department of Health and Human Services, notwithstanding any other provision of this Agreement to the contrary.

- 8.3. Return or Destruction of Protected Health Information upon Termination. Upon the termination of this Agreement, unless otherwise directed by the County, Consultant shall either return or destroy all PHI received from the County or created or received by Consultant on behalf of the County in which Consultant maintains in any form. Consultant shall not retain any copies of such PHI. Notwithstanding the foregoing, in the event that Consultant determines that returning or destroying the Protected Health Information is infeasible upon termination of this Agreement, Consultant shall provide to the County notification of the condition that makes return or destruction infeasible. To the extent that it is not feasible for Consultant to return or destroy such PHI, the terms and provisions of this Agreement shall survive such termination or expiration, and such PHI shall be used or disclosed solely as permitted by law for so long as Consultant maintains such Protected Health Information.
- 8.4. No Third-Party Beneficiaries. The Parties agree that the terms of this Agreement shall apply only to themselves and are not for the benefit of any third-party beneficiaries.
- 8.5. Amendment. Consultant and the County agree to amend this Agreement to the extent necessary to allow either Party to comply with the Privacy Standards, the Standards for Electronic Transactions, the Security Standards, or other relevant state or federal laws or regulations created or amended to protect the privacy of confidential information. All such amendments shall be made in writing and signed by both Parties.
- 8.6. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the County to comply with the then most current version of HIPAA and the HIPAA privacy regulations.
- 8.7. Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them as outlined in HIPAA and its related regulations.
- 8.8. Survival. The obligations imposed by this Agreement shall survive any expiration or termination of this Agreement.
9. **REPRESENTATIONS & WARRANTIES.**
  - 9.1. From Consultant. Consultant represents and warrants: (a) that all Services will be performed in a professional and workmanlike manner; and (b) that all deliverables will conform to their specifications or the applicable SOW for a period of three (3) years following acceptance. In the event of a breach of either warranty in this subsection, Consultant, at its own expense, will promptly re-perform the Services or repair and redeliver the deliverable in question.

- 9.2. From Each Party. Each Party represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

## 10. INDEMNIFICATION.

- 10.1. Consultant will defend, indemnify and hold harmless the County, its officers, agents, and employees against any “Indemnified Claim,” meaning any claim, suit, or proceeding, including those of third parties, arising out of, related to, or alleging: (a) direct infringement of any patent, copyright, trade secret, or other intellectual property right by any deliverable; (b) injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of Consultant or of any of its agents, subconsultants, or employees; (c) Consultant’ or its subconsultant’s performance of the Agreement, (d) intentional or negligent acts or omissions of Consultant, its subconsultants, employees, or agents, or (e) Consultant’ or its subconsultant’s failure to comply with any of the provisions of this Agreement or of the law.
- 10.2. The obligations of Consultant to indemnify, and defend and hold harmless shall include (a) all costs and expenses, including attorneys’ fees, incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section by way of crossclaim, third-party claim, declaratory action or otherwise and (b) settlement at Consultant’ expense and payment of judgments concerning the Indemnified Claim.

## 11. INSURANCE

- 11.1. Consultant shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
- 11.1.1 Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 for each occurrence and \$3,000,000 annual aggregate.
- 1.11.1.1. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
- 11.1.2 Workers’ Compensation and Employer’s Liability: Statutory limits apply.
- 11.1.3 Professional Liability (“PL”) coverage, including errors and omissions, with limits of insurance of not less than \$2,000,000 for each occurrence and \$2,000,000 annual aggregate. (An umbrella or excess liability policy

may be utilized to attain these PL limits).

- 11.2. Waiver of Subrogation: Consultant waives all rights against the County and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by CGL, PL, or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.
- 11.3. Certificates of Insurance: Prior to the Effective Date, Consultant shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of each of Consultant's policies. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the County.

## 12. TERMINATION.

- 12.1. Termination for Cause. Either Party may terminate this Agreement for the other's material breach by written notice. Such notice will specify in detail the nature of the breach and will be effective in 30 days, or more if specified in the notice, unless the other Party first cures the breach.
- 12.2. Termination for Convenience. The County may terminate this Agreement for convenience upon 30 days advance written notice to Consultant. On the date of such termination, the County will pay Consultant for those Services provided up to the date of such written termination.

## 13. INDEPENDENT CONTRACTOR

- 13.1. Consultant and any of its subconsultants and all of their collective employees, agents, officers, servants, and any of their other personnel shall be independent contractors with regard to the County. They shall not be deemed an employee of the County and therefore shall not make any claim, demand, or application for any employee benefit including, but not limited to, unemployment insurance, workers' compensation, retirement, paid absence, or health insurance. Consultant covenants and agrees that it will conduct itself in accordance with its status as an independent contractor, and shall not hold itself out as, nor claim to be, an officer or employee of the County. The County shall have the right to participate in any conference, discussion, or negotiation with any governmental agency regarding Consultant's as an independent contractor.
- 13.2. Payments to Consultant shall be reported on IRS Form 1099, and the County shall not make any withholding for taxes or any other obligations. Consultant shall be solely responsible for all applicable taxes, payroll deductions, workers' compensation insurance, and provision of health insurance where required. Consultant shall indemnify and hold County harmless from all loss or liability incurred by Consultant as a result of Consultant not making such payments or withholdings.



14. MISCELLANEOUS.

- 14.1. Notices. Notices pursuant to this Agreement will be sent by certified mail, return receipt requested, to the addresses first set forth above below, or to such others as either Party has previously designated in writing.
- 14.2. Subconsultants. The Parties agree that Consultant will engage those subconsultants identified in its Proposal, annexed as Exhibit C (each, a "Subconsultant"). Consultant shall not otherwise subcontract for the performance of any additional work to be performed under this Agreement without the prior written consent of the County. The Subconsultants and any additional permitted subconsultants shall agree, in writing, to be bound by the terms of this Agreement as if it were Consultant under this Agreement. Consultant shall be responsible to the County for any failure by any subconsultant to comply with the terms of this Agreement.
- 14.3. Assignment & Successors. Consultant may not assign this Agreement or any of its rights or obligations hereunder without the County's express written consent. Except to the extent forbidden in this Subsection, this Agreement will be binding upon and inure to the benefit of the Parties' respective successors and assigns.
- 14.4. No Waiver. Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 14.5. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of New York without regard to any conflicts of law principle that would apply the substantive laws of another jurisdiction. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of Oneida County, New York. This Subsection governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 14.6. Construction. The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either Party by reason of authorship.
- 14.7. Entire Agreement. The terms of this Agreement, including any attachments, amendments, addendums, or appendixes attached hereto, constitute the entire understanding and agreement of the Parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the Parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto, including, but not limited to those set forth in Exhibit D (Standard County Conditions) and Exhibit E (Federal Conditions)
- 14.8. Waiver. No waiver, alterations or modifications of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized

representative of the Parties sought to be bound.

- 14.9. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each Party.
- 14.10. Severability. In the event that a portion of this Agreement is found illegal, invalid, contrary to public policy, or unenforceable by a court of competent jurisdiction, then the surviving remainder of the Agreement shall continue in full force and effect.
- 14.11. Advice of Counsel. Each party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.
- 14.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties have executed this Agreement.

COUNTY OF ONEIDA

CONSULTANT

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: Anthony J. Picente, Jr.  
Title: Oneida County Executive

Name:  
Title:

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

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

Approved

\_\_\_\_\_  
Andrew Dean, Esq.  
Deputy County Attorney-Administration

# **EXHIBIT A**

(Template Statement of Work - Supplemental)

**STATEMENT OF WORK – SUPPLEMENTAL NUMBER \_\_\_\_**  
**Title:** \_\_\_\_\_

This Statement of Work Supplemental Number \_\_\_\_ (this “Supplemental”) is entered into pursuant to the Professional Services Agreement (the “Agreement”), effective \_\_\_\_\_, by and between the County of Oneida (“County”) and \_\_\_\_\_ (“Consultant”).

This Supplemental is incorporated into the Agreement. In the event of any conflict with this Supplemental, the main body of the Agreement will govern. The provisions of this Supplemental govern only the subject matter hereof and not any other subject matter covered by the Agreement. Capitalized terms not otherwise defined in this Supplemental will have the meanings given in the main body of the Agreement.

I. Professional Services & Deliverables. Consultant will provide the following services:  
[Insert description of professional services for the Supplemental work. Include technical specifications for any Deliverables, materials to be used, types of labor to be employed (with the rates included), any subcontractors to be utilized, and references to specifications attached to this Supplemental.]

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II. County Cooperation. County will reasonably cooperate with Consultant in the provision of services and will provide the following assistance to Consultant: [Insert description of County responsibilities or insert “N/A” if not applicable.]

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III. Payment. For the Supplemental work, County will pay Consultant as follows: [Insert payment schedule. Insert any payment/invoicing terms not already covered in the main body of the Agreement.]

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IV. Additional Provisions. In addition, the parties agree as follows: [Insert additional terms or “N/A” if not applicable.]

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This Supplemental is effective as of the latest date of execution set forth below.

\_\_\_\_\_  
**ONEIDA COUNTY**

\_\_\_\_\_  
**[INSERT]**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(print)

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

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

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(print)

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

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

## APPENDIX D

### List of Documents Requiring Understanding or Compliance

The following is a list of the minimum documents that need to be understood and/or complied with. All work shall conform to current versions of the following documents. Where necessary the appropriate agency shall provide or make available to the Consultant the most current edition in either the full document or guidance extracted from it. Additional documents may require understanding of or compliance with, as they pertain to individual tasks in the SOW.

- FHWA Planning and Environmental Linkages (PEL) Program
- National Roadway Safety Strategy (NRSS), Safe System Approach
- Highway Safety Improvement Program (HSIP)
- PROWAG- Public Right of Way Accessibility Guidelines
- Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative
- A Policy on Design Standards - Interstate System, AASHTO
- A Policy on Geometric Design of Highways and Streets, AASHTO New York State Highway Safety Plan (NYSHSP)
- Manual of Uniform Traffic Control Devices (MUTCD) with New York State Supplement
- New York State Pedestrian Safety Action Plan (NYPSAP)
- New York State NEVI Plan
- NYS Highway Safety Strategic Plan (Governor's Traffic Safety Committee)
- NYS DOT Safety Investigation Procedures Manual (also known as the Yellow Book)
- Highway Design Manual
- Annual Report titled "Update of Accident Costs"
- Annual Report titled "Update of Accident Reduction Factors and Average Accident Rates"
- NYS DOT Procedures for Locally Administered Federal Aid Projects
- NYS DOT Project Development Manual
- NYS DOT Right Of Way Mapping Procedure Manual
- NYS DOT Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right of Way
- NYS Environmental Quality Review Act (Environmental Conservation Law Article 8) and accompanying regulations (6 NYCRR Part 617)
- Design Consultant Manual
- Standard Specifications for Construction and Materials
- Engineering Instructions and Directives
- TRNS\*PORT Estimator User's Guide
- The Environmental Manual (TEM)
- Environmental Procedures Manual
- HOCTC Long-Range Transportation Plan - Going Places 2045
- HOCTC Environmental Justice Analysis 2025
- HOCTC Electric Vehicle Charging Station Plan
- Coordinated Human Services Transportation Plan 2025-2028
- Herkimer and Oneida Counties Safe Streets for All Safety Action Plan