

REQUEST FOR PROPOSALS

HOCTC Update for the Long-Range Transportation Plan (LRTP)

RFP # 2023-371

ORIGINALLY RELEASED: OCTOBER 6, 2023

RE-RELEASED: NOVEMBER 10, 2023

PROPOSAL DUE: NOVEMBER 17, 2023 at 12:00 PM EST

SUBMIT TO THE ATTENTION OF THE:

Herkimer-Oneida Counties Transportation Council
Transportation Program Manager
Boehlert Center at Union Station
321 Main Street, 3rd Floor
Utica, New York 13501

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I. Agency Overview

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 and with the New York State Department of Transportation to plan and guide the development of the multimodal transportation system within the Metropolitan Planning Area (MPA) which encompasses the entirety of Oneida and Herkimer Counties. 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 HOCTC, as the MPO, is charged with carrying out the federally required continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for Oneida and Herkimer counties. As such, HOCTC is required to maintain a Long-Range Transportation Plan (LRTP) for the twenty (20) year vision of the transportation network with periodic updates every five (5) years.

II. Purpose of the RFP

The purpose of this RFP is to invite a Consultant to develop a 2025-2045 comprehensive Long-Range Transportation Plan (LRTP) as an update to the 2020-2040 LRTP “Going Places” for the HOCTC. The LRTP is updated every five years to identify evolving transportation-related needs and priorities in the region and adapt to population shifts, policy changes, new legislation and guidance (federal and state), and other changes affecting the region. Federal regulations require the 2025-2045 LRTP to be a financially constrained transportation plan. The update must demonstrate compliance with the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58) in accordance with Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) rulings, as described in 23 CFR §450. This compliance includes but is not limited to a review of the current scoring mechanism for prioritizing investments or projects and proposing adjustments as necessary to ensure performance-based planning is incorporated, performing revenue and project cost forecasting, and creating separate ranking categories for highway, transit, bicycle, pedestrian, safety, and other transportation project improvements. The cost of the development must be covered by state, federal, local, private, and other transportation revenues that can be reasonably expected to be available from 2025 through 2045. HOCTCs expects the cost of delivering the work outlined in this RFP not to exceed \$200,000.

III. Project Background and Objective

HOCTC facilitates transportation planning by engaging the public and fostering strong partnerships between the MPO and other agencies, local governments, and communities. One of HOCTC’s most important responsibilities is developing and implementing its LRTP in coordination with other regional and local planning efforts, while moving toward an agreed-upon vision for transportation in the MPA.

The last current HOCTC LRTP was adopted in December 2019, for the years 2020 through 2040. That plan, entitled *Going Places* sought to develop regional transportation policies, delineate transportation needs,

integrate agency responsibilities, and integrate federal performance-based planning and programming approaches into the transportation planning process. HOCTC would like to build upon this plan by refining and furthering the concepts, policies, and approach documented in that plan with an updated 2025-2045 LRTP. The time horizon for the updated LRTP is 2045 with an interim year of 2035. HOCTC is committed to continued improvement and innovation in the delivery of the 2050 LRTP update. The update will focus on greater coordination, while fully adhering to the guiding principles of the Infrastructure Investment and Jobs Act (IIJA).

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 Metropolitan Planning Area (MPA). Of the roadways in the MPA, 81% are under local ownership. 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 (230,274) has approximately five times the population of Herkimer County (59,937). Within the two counties, there are 45 municipalities (3 cities, 16 villages, and 26 towns) in Oneida County and 30 municipalities (1 city, 10 villages, and 19 towns) in Herkimer County.

HOCTC has completed or has in progress multiple planning efforts that may inform the development of elements of the LRTP update. Such plans include, but are not limited to:

- Completed:
 - HOCTC LRTP Going Places 2020-2040
 - HOCTC Transportation Atlas for Oneida and Herkimer Counties
 - HOCTC Environmental Justice Analysis 2021 (EJ 2021)
 - HOCTC 2021-2024 Public Transportation – Human Services Coordinated Plan
 - HOCTC 2021 Electric Vehicle Charging Station Plan
 - HOCTC System-wide Analysis for Transit Based Transportation Connections
- In-progress:
 - Transportation Corridor - Planning and Environmental Linkages (PEL) Study for the area of the I-90 Utica Interchange (Exit 31) at N. Genesee Street (NYS Route 921 C)
 - Safety Action Plan for Oneida and Herkimer Counties
 - Coordinated Public Transit – Human Services Transportation Plan for Herkimer and Oneida Counties

In addition to community-based plans, the LRTP update will link to other plans and build upon other performance-based transportation plans, programs and processes and support broader state, regional plans. The update will consider plans from the Bipartisan Infrastructure Law, such as the State Human Capital and Housing Coordination Plans, and should look to develop goals and objectives beyond traditional transportation performance (such as environmental sustainability, accessibility, resiliency and equity). These Plans include discussions of future infrastructure needs, future land use designations, and transportation policy, as well as providing insight into the growing needs of the region.

As a non-TMA MPO, it becomes extremely important that transportation projects utilizing its directly suballocated funds are studied, programmed, and developed according to a schedule that would lead to prompt utilization of those funds within a predictable timeframe so that funds are not in danger of lapsing. This plan should lay out the priorities for each directly suballocated funding source for the 20-year period,

paying special attention to project priorities that are expected to lead to funding applications during the first five fiscal years after the adoption of the LRTP, and those one to three years outside the five-year window that will need to be under project development during the next five years. Projects identified in the LRTP are expected to lead to inclusion in the Transportation Improvement Program (TIP), project development, and ultimately construction.

IV. Scope of Work and Add-on Tasks

This RFP provides for the tasks necessary to assist HOCTC and local stakeholders in the development of the 2025-2045 update to HOCTC's LRTP. The LRTP will use a performance-based planning and programming methodology to provide for a system-level, data driven process to identify strategies and investments for the HOCTC region. Such a process will help to define key goals and objectives for the LRTP update and to analyze and evaluate strategies and scenarios for meeting the stated goals developed for the Plan.

The LRTP will use 2045 as the horizon year, with an interim scenario year of 2035 to document and assess the need for transportation facilities in all modes, and policy direction over the next 20 years. Importantly, it will continue the new paradigm established in the previous plan update (2045) to provide a balanced transportation system that achieves optimum mobility and supports economic growth through improvements in multiple transportation modes. HOCTC would like to strike a balance between new infrastructure needs of a growing region, right-sizing infrastructure, system efficiency, and creating livable built environments for residents.

The LRTP update process will consider a wide range of social, mobility, freight, safety, infrastructure, environmental, energy, and economic factors reflected by the LRTP's Goals, Objectives (G&O) and Measures/Performance Measures (PM) to identify future transportation needs. The 2025-2045 LRTP update will first evaluate the existing conditions and performance of the transportation system with respect to the existing performance targets and then weigh and balance the cost of newly identified transportation investments against anticipated future funding to ensure the LRTP update investment strategy is a fiscally constrained plan for the HOCTC MPA over the next 20 years.

The LRTP update will include a needs assessment identifying strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods. In keeping with the intent and requirements of IJIA, and the requirements stipulated by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the New York State Department of Transportation (NYSDOT), this plan update will be multimodal in nature. It will include public transportation, transit, pedestrians, bicyclists, highways, rail, and freight transportation. Coordination with local airport management will be used to document airport improvements that are relevant to the regional transportation network. The LRTP update will consider new and emerging technologies and services such as electrification, automation, ride-sharing, and micro-mobility. Improvements in these areas should be linked to policies and funding opportunities in IJIA. The LRTP update will also include safety and security elements to meet the Federal requirements included in 23 CFR 450.

HOCTC has included the following scope of work to provide interested consultants insight into project intent, context, coordination, responsibilities, and other elements to help facilitate proposal

development. Consultants must provide a detailed approach with their submission as to how each project task is to be accomplished. If based on consultant knowledge, the consultant believes the scope of work outlined in this RFP should be changed in any way or is too ambitious, the consultant must suggest changes in the proposal [as described in the Submission Instructions section of this RFP] and describe how those changes will better meet the project objectives. For this Scope of Work, references to the utilization of or work completed by in-house staff include staff of Oneida County, Herkimer County, and the HOCTC. At minimum, the Consultant shall be expected to establish detailed analysis, recommendations, and/or deliverables for the following Scope of Work tasks.

A. Scope of Work

Task 1: Project Management

This task involves activities required to manage the project including staff, equipment, and documentation. It also includes the preparation of monthly progress reports, documenting travel and expense receipts, and preparing and submitting invoices for reimbursement. In addition, this task includes progress meetings with HOCTC. It should be assumed that progress meetings will occur at least monthly and as needed in between.

The Consultant will assign a single person to serve through the life of the contract as Consultant Project Manager (PM). The PM must be the person identified in the selected firm's proposal and may not be changed without prior written notice to HOCTC. The PM is responsible for overall project management necessary to ensure the satisfactory completion of the 2025-2045 LRTP update, on time and budget, in accordance with the scope of services. The PM will serve as the direct point of contact and will be expected to ensure the consultant team is properly managed, adequate resources are available, submittals are timely, quality control processes are utilized for maximum benefit, and invoices are paid in a timely fashion.

To facilitate the development of the LRTP update a Technical Advisory Committee (TAC) will be established. The TAC will primarily consist of members of the state and local transportation planning agencies, HOCTC members, human service agencies, and community organizations that will guide the study throughout the planning process.

Task 2: Public Participation

Public input is a key component of all HOCTC's planning efforts. The planning process shall combine face-to-face meetings with the use of digital tools to enhance stakeholder participation leading to measurable feedback that can be utilized to develop the various elements of the plan. To maximize resources this effort is expected to be coordinated with other in-progress HOCTC planning activities. The plan will include a summary documenting all public involvement activities.

Public participation will be in accordance with HOCTC's Public Participation Plan and be integrated throughout the update of the LRTP and will involve the following:

- Stakeholder/Agency: The Consultant will work with the MPO to identify key stakeholders and MPO partners that are required to be included in the transportation planning process. These stakeholders/agencies may include local governments, freight companies, transportation providers, and representatives for pedestrians, bicyclists, and the disabled. The consultant will create an engagement strategy for these entities that satisfies Federal requirements.

- Digital Engagement: In conjunction with the meetings identified, the Consultant will engage the public utilizing digital means which may include, but are not limited to design, creation of a website, virtual public meeting or open house, and interactive techniques during public meetings.
- Outreach: The consultant should propose a strategy that incorporates outreach efforts in both traditional and online media.

The update will be developed using inclusive and representative processes to pursue a comprehensive approach to advancing equity for all, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, Indigenous, Native Americans, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

The consultant will conduct an analysis of underserved communities that includes population characteristics and an initial equity impact assessment. This will allow socio-demographic data to be overlaid with technical transportation system data and will help inform and identify future projects and programming needs.

Public engagement and stakeholder involvement should capture what is important to the public and the stakeholders with respect to achieving the national goals and planning factors, as well as inform the development of the vision, goals, and objectives within the local context.

Task 3: Integration of Previous and Current Planning Efforts

In the past ten years, HOCTC has completed numerous plans. These plans contain transportation policy, future projects, and project timing among other topics. To solidify these priorities and to carry the elements of these studies forward, HOCTC would like the consultant to incorporate the findings of these planning efforts into the LRTP. Such plans are listed in Section III of this RFP. Other documents relevant to this task may include local comprehensive plans. The consultant should work with HOCTC to incorporate elements of these plans into the LRTP update.

The foundation of the LRTP update is the 2020-2040 LRTP 'Going Places'. The outline of that document should be the framework to build upon and incorporate the current legislation, FHWA, and FTA guidance. This includes the U.S. DOT's seven key elements of a Performance-Based Plan: 1) Context Setting Information, 2) Goals and Objectives, 3) Performance Measures and Targets, 4) System Performance Report, 5) Identification of Needs, 6) Strategies, Investments, and Financial Plans, and 7) Connection to Programming.

This RFP offers a unique opportunity to update both the LRTP and Coordinated Public Transit-Human Services Transportation Plan (CPT-HSTP) in a coordinated and cooperative manner. This, combined with other in-progress studies offers HOCTCs a rare chance to coordinate plan goals, priorities, and outcomes during an update process, rather than through sequentially adopted plans or policies.

Task 5: Goals and Objectives

The 2020-2040 LRTP included goals and objectives, derived both locally and from federal guidance. These goals and objectives are currently used to not only score and rank projects during funding solicitations but also to direct HOCTC's transportation planning efforts.

HOCTCs would like to evaluate and refine these goals and objectives from the 2020-2040 LRTP to best reflect the status of the planning areas. This will help to provide clear direction on preferred regional outcomes on a variety of transportation related topics. This effort should include discussion and coordination with HOCTC staff and its regional partners to gain perspective amongst agencies and to garner feedback on issues important to local jurisdictions.

Task 4: Transportation System

The great diversity in the HOCTC planning area's density of development is reflected in its transportation system network. The 2020-2040 LRTP laid out a fresh vision for the region's transportation assets and services for the next 20 years, with a horizon year of 2040. With the update, HOCTC is ready to dive deeper and evaluate each modal component of the transportation network, with the goal of being able to identify the strengths, weaknesses, opportunities, and threats. The update should capture all of this and offer real-time and aspirational planning solutions, best practices, and methodologies to build a stronger more resilient multi-modal transportation network. The discussion and planning should focus on the system, however, each component must be addressed independently. The listing below provides the base premise for how each is included in the LRTP update.

1. Highways and bridges – to consider the efficiency of the road transport system and how it supports a better quality of life, safety, and economic development
2. Bicycle and pedestrians – to consider the current level of connectivity, local conditions, and the relationship to the regional network and how the network needs to be integrated
3. Public Transit – to consider how public transit options can improve health and health equity by reducing traffic crashes and air pollution, increasing physical activity, and improving access to medical care, healthy food, vital services, employment, and social connection
4. Micromobility – to consider the viability of micromobility in the planning area as a way to provide expanded transportation options for short-distance trips

Herkimer and Oneida County are in an attainment area for Air Quality, and therefore not subject to Congestion, Mitigation, and Air Quality Improvement Standards. Regardless, the LRTP update will consider reducing motor-vehicle-related pollution such as air pollution and greenhouse gas emissions, incorporate lower-carbon pavement and construction materials, support fiscally responsible land use and transportation efficient design that reduce greenhouse gas emissions, and include stormwater management practices and other climate resilience measures or features that improve the built and/or natural environment while enhancing resilience.

Resiliency, extreme weather, and the effects of climate change will be evaluated to understand the direct impact on the transportation system. Where feasible, countermeasures and evidence-based practices will be identified to be incorporated into future projects, with the purpose of mitigating climate change effects and the impact of extreme weather events on the transportation system.

Task 5: Human Services Transportation Planning

To be incorporated with the LRTP update is the update to the locally developed 2021-2024 Coordinated Public Transit-Human Services Transportation Plan (CPT-HSTP) to meet the unified comprehensive strategy for public transportation service delivery requirements of the Federal Transit Administration (FTA), particularly under the Enhanced Mobility for Individuals and Individuals with Disabilities (Section 5310) Program

The CPT-HSTP update will address public transit and human service transportation to enhance mobility for the region's seniors, disabled, and low-income persons while focusing on improving coordination and creating efficiencies for the transportation network and existing transit providers. Emphasis should be placed on how mobility management can play a key role in focusing human service transportation coordination efforts in the future.

The CPT-HSTP update shall be prepared with the active involvement of and consultation with public, private, and non-profit transportation providers, transportation users, and stakeholders throughout the urbanized area. The plan shall be developed and approved through a process that includes participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public that utilize these transportation services. The HOCTC planning area with the HOCTC Transportation Coordination Committee (TCC) serving as a steering committee.

Task 6: Performance-Based Planning and Programming of Projects

The development of future projects utilizing federal funding suballocated to this region is a critical element of the LRTP. This listing of project priorities serves as a basis for necessary transportation improvements needed over the life of the plan and provides the agency and its partners a roadmap in guiding funding decisions.

HOCTC will continue to work with its state and federal partners to ensure all plans, projects, and activities of the MPO are carried out in compliance with federal transportation authorizations. This is in conjunction with ensuring that the MPOs' goals and objectives are aligned with the NYSDOT, FTA, and FHWA adopted goals and objectives. The National Goals established are outlined below:

1. Safety
2. Infrastructure Condition
3. Congestion Reduction
4. System Reliability
5. Freight Movement and Economic Vitality
6. Environmental Sustainability
7. Reduced Project Delivery Delays

In keeping with the memorandum dated December 30, 2021, jointly issued by the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the Consultant will propose a methodology for incorporating the following PEAs into the planning process.

1. Tackling the Climate Crisis
2. Equity and Justice⁴⁰
3. Complete Streets
4. Public Involvement
5. Strategic Highway Network (STRAHNET)/U.S. Department of Defense (DOD) Coordination
6. Federal Land Management Agency (FLMA) Coordination
7. Planning and Environment Linkages (PEL)
8. Transportation Planning Data

The LRTP is required to be a fiscally constrained document. The consultant will work with HOCTC to develop fiscal constraint (funding that can be reasonably expected over the life of the plan that can be used to implement, maintain, and operate the transportation system) which is required to be inflated over the life of the plan. This can be based on past projects funded through the TIP and the current funding levels within IJA.

The consultant will be required to develop future projects stemming from the needs identified by both transportation demand and maintenance needs identified by local jurisdictions utilizing a performance-based planning and programming methodology. The consultant will develop three separate project tables: 1) total project needs, 2) fiscally constrained project needs, and 3) visionary future projects (large projects outside of fiscal constraint and 2045 needs). These project tables should be organized into five-year time bins based on need. The consultant should develop a methodology to prioritize needs across modes based on environmental resource assessments and environmental justice and equity analysis and develop funding scenarios for the fiscally constrained needs table listed above.

Task 7: Document

The consultant will prepare technical memorandums that represent the information developed in each individual task as they are completed. These will be made available to HOCTC and the project leadership team for review during the development of the LRTP. These can be used in the development of the final document at the end of the planning process.

A. Plan Content

The Consultant will deliver a final plan that addresses all Federal transportation planning requirements and reasonably satisfies all comments made during the public involvement phase of the project. The plan will include a description of the public engagement and contain a summary of how the feedback was incorporated into the decision-making process.

B. Plan Recommendations

The Consultant will use the financial assessment of the anticipated costs and revenues to prepare a realistic list of projects for construction based on the anticipated funding levels. Identified projects which cannot reasonably be forecasted to have available funds by 2045 will be grouped as illustrative projects.

C. Draft Plan

The Consultant will develop a draft plan for consideration by the public, stakeholders and policy makers and revise the draft in consultation with the HOCTC and federal agency review. All outreach will be compliant with the MPO's Public Participation Plan.

D. Graphics

The document and technical memorandums should be as graphically rich as possible and shall include charts, graphs, infographics, etcetera where applicable. These graphics should be developed along with the content in the technical memorandums so that they can be reviewed by HOCTC.

E. Executive Summary

The consultant will be required to develop an executive summary. The consultant should propose how it would develop such a summary and what it will look like. The executive summary should encompass and

explain all important elements of the LRTP (as determined through conversations with HOCTC staff and the project leadership team).

F. Final Document

The culmination of the process should result in an LRTP that is coordinated, comprehensive, and continuous. It should meet federal non-TMA requirements as well as contain state and local goals, policies, and initiatives. The document should be graphically rich and be able to be both used for technical purposes and be understandable to the public.

HOCTC will require PDFs of the document and appendices that are suitable for both printing and for posting on our website. This may involve providing documents of different file sizes. Products developed during the process, such as Word or Adobe or InDesign files, spreadsheets, GIS layers, map files, etc. shall be provided to HOCTC upon adoption of the plan to ensure that we have possession of the files needed to process future amendments.

B. Add-on Tasks

These are not required to be included in the response/proposal for RFP 2023-363.

The following Add-on tasks are not to be included in the scope of work outlined previously.

HOCTC has identified the following Add-on Tasks as critical to delivering the Metropolitan Planning Program and progressing the LRTP. For the Add-on Tasks, all may be proposed or only a selected few. If a proposer chooses to offer Add-on Tasks, they must provide a statement of qualifications, scope, cost, and working time for these items.

The Add-on Task proposal must be presented separately from the proposal for RFP 2023-363. It shall be titled “Add-on Task Proposal for HOCTC”.

Add-On A: Transportation Atlas

An update of the Transportation Atlas for Herkimer and Oneida Counties. The comprehensive atlas styled book will be an intuitive, user-friendly resource for the public and elected officials to utilize in obtaining a comprehensive understanding of the transportation system Herkimer and Oneida Counties. The Atlas update will be graphically rich for the purposes of 1) Illustrating the existing trends of the transportation network in Herkimer and Oneida counties, 2) Illustrating the future of the transportation network, and 3) Illustrating the goals and objectives of HOCTC.

Add-On B: Freight Network Analysis Modeling

The freight network analysis and modeling shall build upon the inventory of existing conditions and an assessment of current and future freight needs for HOCTC. The analysis will consider changes in industrial development within the HOCTC planning area, including and operations of the overall supply chain and logistics industry. The analysis and modeling process may use any combination of regional and local area travel demand models, analytical tools, visualization tools, and methodologies that useful information in progressing the LRTP and the transportation planning process for HOCTC.

Add-On C: LRTP Scenario Planning

The use of scenario planning to assist in assessing gaps or deficiencies noted through the analysis of the System Performance Report, other data sources and engagement with the public and stakeholders to

look at future states or conditions that might prompt the incorporation of alternative responses to different types (or frequency) of factors and trends such as significant weather events, a future that assumes a more significant shift in traveler behavior to non-auto modes, or a future where 30 percent of the vehicles on the road are essentially "driverless." Consideration of alternate future scenarios can result in the identification of new technology or data needs and investments, more communication and coordination across emergency response stakeholders, new multimodal strategies, and other insights that can be factored into LRTP goals and objectives.

Add-On D: LRTP Implementation

This task will support the implementation of the LRTP goals and objectives and projects. Implementation assistance will cover a variety of formats (written products, tabular analysis, data collection, visualization, engagement, spatial analysis, report development, infographics, and other similar and related formats), to support HOCTC in delivering the Federal transportation planning program. This will include maintaining compliance with all Federal statutes and regulations to deliver the requirements for a "continuous, cooperative, and comprehensive" (3-C) metropolitan multimodal transportation planning process (23 USC §134; 49 USC §5303; 23 CFR §450.300).

V. 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. Subject to the provisions of FOIL and any other applicable laws, Oneida County may agree to maintain the confidentiality of such material(s), if requested. 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 three (3) pages).
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. 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** must be included. The HOCTC LRTP update is required to be adopted by December 31, 2024. The project working timeline may continue beyond this date.
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. 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 six (6) 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**
HOCTC 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). NYS M/WBE applies to projects funded by NYS. Only those M/WBE firms that are certified by the New York State through Empire State Development and the Division of Minority and Women's Development (DMWBD) qualify under this provision. To obtain a listing of certified M/WBE firms or information the New York State Contract System ("NYSCS") enables users to search for NYS M/WBE certified firms through Empire State Development and the Division of Minority and Women's Development (DMWBD) at <https://ny.newnycontracts.com/>

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 FHWA DBE transportation project goal is 12.85%. The percentages for each goal may be cross-counted to be met, with 13.83% being the highest percentage needing to be reached cumulatively.

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

The cost proposal must be in a separate sealed envelope marked 'Cost Proposal - RFP # 2023-363'. Non-compliance with this requirement shall result in the Proposal being deemed non-responsive. The cost proposal shall include:

1. All anticipated costs and expenses associated with completing the scope of work. 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.
2. 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.
3. Additional information is required to support the reasonableness of the submitted cost proposal.
4. All Oneida County Certifications (Appendix C-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.
5. A sample master service agreement is included in Appendix D, 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

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

1. Project understanding and the proposed scope of work (30 pts.)
2. Proposed project schedule, budget, and work indicated to be accomplished (30 pts.)
3. Professional Qualifications of Consultant Firm/Team (20 pts.)
4. Experience completing Long Range Transportation Plans in small urban and rural areas (20 pts.)

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. One (1) electronic copy in Adobe PDF format (downloadable file or link to a file transfer site) of the completed proposal must be received by 12:00 pm EST on November 17, 2023.
2. File size is capped at 20 MB for email acceptance. Larger files will need to be sent through a file transfer site or delivered on a USB drive to the address in #5.
3. A transmittal form or memo must be included with the proposal and reference RFP 2023-371
4. Proposals are to be sent using the following format:

Subject: Team name_Submission for RFP # 2023-371

Email: transplan@ocgov.net

File naming convention: Team name_proposal for RFP # 2023-371

5. Optional: a backup hard copy and/or USB flash drive may be mailed to:

Oneida County Department of Planning

Transportation Program Manager

321 Main Street, 3rd Floor

Utica, New York 13501
Attn: RFP 2023-363

E. Timeline

Approximate RFP timeline for solicitation and award of contract.

<i>Procedural Step</i>	<i>Date</i>
RFP Release Date	November 10, 2023
RFP Active	7 days from release
Deadline for Questions	November 14 at 12:00 PM EST
Questions & Answers Posted	November 15 at 12:00 PM EST
Deadline for the submission of proposals	November 17 at 12:00 PM EST
Technical Reviews	November 20-21, 2023
Interviews (if applicable)	November 22, 2023
Consultant Selection/ Notification	November 29, 2023
Conditional Contract Award	December 2023
Contract Award Date	January 2023
Contract Duration	18 months
Contract Complete Date	June 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 HOCTC/Oneida County has fully executed a contract with for the SOW within this RFP. The consultant shall 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. 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 November 14, 2023, at 12:00 pm EST.

1. Questions shall be directed to:

Subject: RFP # Question
transplan@ocgov.net

or hard copy:

Herkimer-Oneida Counties Transportation Council
Boehlert Center at Union Station

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

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 at the same location where the RFP is published, <https://ocgov.net/departments/purchasing/rfps/>.
5. All questions submitted will be answered directly to the asker.
6. To ensure all proposers have equal access and knowledge of all questions asked and answered regarding this RFP, questions received after the last question deadline of 12:00 pm EST on November 14, 2023, will not be answered.
7. 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.

H. Additional Information

1. All information and materials submitted will become the property of HOCTC/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. HOCTC/Oneida County will protect such proprietary information only to the extent that the law allows.
2. HOCTC/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. HOCTC/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 HOCTC/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.

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 Federal Clauses and Certifications attached as Appendix A.
8. The awarded Proposer shall comply with the Standard Oneida County Conditions attached as Appendix B.

I. 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/>.

VI. Appendices

- A. Standard Clauses For New York State Contracts
 1. Supplemental Title VI Provisions (Civil Rights Act)
- B. Requirements For Federally Aided Transportation Projects
- C. Standard Oneida County Conditions
- D. Master Services Agreement

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, licenser, 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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, 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 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). 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 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). 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

Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.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 October 2019, 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 State Technology Law § 208) and commencing March 21, 2020, shall also comply with General Business Law § 899-bb.

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/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferors-pursuant-nys-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

**SUPPLEMENTAL TITLE VI PROVISIONS
(CIVIL RIGHTS ACT)**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
 - b) Cancellation, termination, or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Appendix B

**REQUIREMENTS FOR FEDERALLY AIDED
TRANSPORTATION PROJECTS**

(June 2016)

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

NON-DISCRIMINATION/EEO/DBE REQUIREMENTS

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON-DISCRIMINATION**. No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY**. In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES**. In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality

or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 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.).

FEDERAL SINGLE AUDIT REQUIREMENTS

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. 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 agency¹ 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.

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United

¹ The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.

² <http://www.cfda.gov/>

States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/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 most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

Additional CFDA numbers for other transportation and non-transportation related programs are:

- 20.215 Highway Training and Education**
- 20.219 Recreational Trails Program**
- 20.XXX Highway Planning and Construction - Highways for LIFE;**
- 20.XXX Surface Transportation Research and Development;**
- 20.500 Federal Transit-Capital Investment Grants**
- 20.505 Federal Transit-Metropolitan Planning Grants**
- 20.507 Federal Transit-Formula Grants**
- 20.509 Formula Grants for Other Than Urbanized Areas**
- 20.600 State and Community Highway Safety**
- 23.003 Appalachian Development Highway System**
- 23.008 Appalachian Local Access Roads**

PROMPT PAYMENT MECHANISMS

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Appendix C

STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this _____ day of _____, 20____, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the “Contract”), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

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).

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 (HIPAA).

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.

Appendix C-1

ONEIDA COUNTY CERTIFICATIONS

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 proposals 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 proposals submitted, and may exercise such right at any time, without notice and without liability to any Offeror (hereinafter the “Applicant”) or other parties for their expenses incurred in the preparation of a proposal or otherwise. Proposals will be prepared at the sole cost and expense of the Applicant.
3. Submission of a proposal 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 proposal.
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 proposal 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 proposal, 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 Article 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.

Legal Name of Organization

Signature

Date

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

**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;
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 "proposal" and the word "bidder" shall be construed as if it read "Applicant", whenever the sense of this certification so requires.

Legal Name of Organization

Signature

Date

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

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 of 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 "proposal" and the word "bidder" shall be construed as if it read "Applicant", whenever the sense of this certification so requires.

Legal Name of Organization

Date

Signature

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

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 "proposal" and the word "bidder" shall be construed as if it read "Applicant", whenever the sense of this certification so requires.

Legal Name of Organization

Signature

Date

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

**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 "proposal" and the word "bidder" shall be construed as if it read "Applicant", whenever the sense of this certification so requires.

Legal Name of Organization

Signature

Date

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

**PURCHASE OF TROPICAL HARDWOODS PROHIBITION CERTIFICATION
(SFL § 165)**

Pursuant to Section 165 of the State Finance Law, any bid, proposal or other response to a solicitation for bid or proposal 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 "proposal" and the word "bidder" shall be construed as if it read "Applicant", whenever the sense of this certification so requires.

Legal Name of Organization

Signature

Date

Printed Name

Title

SIGN AND RETURN WITH FULL PROPOSAL

APPENDIX D

DRAFT PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the “Agreement”), effective January 1, 2024 (“Effective Date”), is by and between the Herkimer-Oneida Counties Transportation Council (“HOCTC”), through its host the County of Oneida (together with “HOCTC,” the “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, HOCTC is designated by the State of New York as the Metropolitan Planning Organization (“MPO”) for the Metropolitan Planning Area which covers the entirety of Oneida and Herkimer Counties, and the County of Oneida is the designated host of HOCTC and as such, is responsible for the execution of all contracts of HOCTC; and

WHEREAS, federal law requires MPOs to establish Long-Range Transportation Plans covering a 20-year forecast period and satisfying other criteria, and such plans must be updated every five years; and

WHEREAS, by resolution dated December 17, 2019, HOCTC adopted the 2020–2040 Long Range Transportation Plan “Going Places” as the official Long-Range Transportation Plan for HOCTC (“LRTP”), followed by the national award winning Transportation Atlas—A Visual Guide to Herkimer and Oneida Counties (2021); and

WHEREAS, the County issued Request for Proposals Number 2023-363 (“RFP”) seeking proposals from qualified firms to provide an update to the LRTP, as more fully described in the RFP, a copy of which is annexed as Exhibit B; and

WHEREAS, Consultant responded to the RFP and offered to update the LRTP, 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, after review of all proposals received, the County determined that the Consultant was the most qualified to provide the services required; and

WHEREAS, the County wishes to hire the Consultant to prepare the update to the LRTP and complete the associated tasks, and the consultant wishes to provide such professional 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 own efforts or through the use of its subconsultants, as follows (collectively, the “Services”) and as more particularly described in the RFP annexed as Exhibit B:
 - 1.1. Task One: Project Management. Consultant shall provide those Project Management Services as described more fully in the RFP.
 - 1.2. Task Two: Public Participation. Consultant shall provide those Public Participation services as described more fully in the RFP.
 - 1.3. Task Three: Integration of Previous and Current Planning Efforts. Consultant shall provide those Integration of Previous and Current Planning Efforts Services as described more fully in the RFP.
 - 1.4. Task Four: Goals and Objectives. Consultant shall provide those Goals and Objectives Services as described more fully in the RFP.
 - 1.5. Task Five: Transportation System. Consultant shall provide those Transportation System Services as described more fully in the RFP.
 - 1.6. Task Six: Human Services Transportation Planning. Consultant shall provide those Human Services Transportation Planning Services as described more fully in the RFP.
 - 1.7. Task Seven: Performance-Based Planning and Programming of Projects. Consultant shall provide those Performance-Based Planning and Programming of Projects as described more fully in the RFP.
 - 1.8. Task Eight. Documentation. Consultant shall provide those Documentation Services as described more fully in the RFP.
 - 1.9. Add-on Tasks. [insert if selected]
 - 1.10. 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 (“SOW”) as annexed as Exhibit A hereto.
2. COMPLIANCE WITH LAWS REGULATIONS
 - 2.1. In performing the Services, Consultant shall understand and comply with the following, as amended or superseded.
 - 2.1.1 The Infrastructure Investment and Jobs Act (IIJA), aka the Bipartisan Infrastructure Law (BIL) and accompanying regulations and guidance.
 - 2.1.2 The Fixing America’s Surface Transportation Act and accompanying regulations and guidance.

- 2.1.3 23 United States Code Section 134.
- 2.1.4 23 Code of Federal Regulations 450.
- 2.1.5 All other applicable laws, regulations, and administrative guidance.

3. DELIVERABLES.

3.1. Form of Deliverables. Consultant will be required to provide deliverables created pursuant to this Agreement (each, a “Deliverable” and collectively, the “Deliverables”) as follows:

- 3.1.1 Digital formats of any reports or graphics (Microsoft platform or Adobe Suite format).
- 3.1.2 Any data, data sets, analysis reports, inventories, and similar type materials in Microsoft format-based format.
- 3.1.3 All mapping developed will be in ESRI/ArcGIS format and provided to the County and the HOCTC at the conclusion of the project.
- 3.1.4 One (1) digital copy of the draft LRTP update, in Adobe or MS Word format suitable for staff review.
- 3.1.5 One (1) digital copies of the final draft LRTP update, in Adobe or MS Word format suitable for partner agency review.
- 3.1.6 Consultant shall provide the final work product to the County and the HOCTC in the following format.

1.3.1.6. Graphic documents. Graphic documents shall be printed or plotted on paper and delivered to the County and the HOCTC (one reproducible copy only). When completed these documents shall be delivered to the County and the HOCTC on a USB flash drive or transferred through a file-sharing link in a digital format. Upon request and at an additional cost to the Consultant only, the Consultant will provide an additional three (3) sets of high-quality reproductions of the graphics documents at an appropriate size, to be legible in the printed format.

2.3.1.6. Written documents. One reproducible and unbound copy of all written documents shall be printed on paper in a manner appropriate for reproduction. This document shall be digitally stored in an appropriate computer format (Microsoft and/or Adobe) and will be provided to and become the property of the County and the HOCTC on a USB flash drive or transferred through a file-sharing link in a digital format. The digital report will be prepared in two (2) formats: 1 - converted into a read-only format (*.pdf),

sized such that online consumption of the material is possible, and 2 – in an Adobe format that is editable to allow for necessary amendments by HOCTC after transfer of ownership.

- 3.2. Acceptance & Rejection. Any Deliverable 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 only in the event that it materially deviates from its specifications and requirements listed herein or in a SOW, if applicable, and only via written notice setting forth the nature of such deviation. 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.
- 3.3. Ownership of Deliverables. All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials, including electronic data files, required to be furnished by Consultant under this Agreement, including drafts, reproduction copies thereof, mapping, and graphics, shall be and remain the property of the HOCTC and the County, and the HOCTC shall have the right to publish, transfer, sell, license, and use all or any part of such reports, plans, drawings, specification, and other documents without payment of any additional royalty, charge, or other compensation to Consultant. Upon request of the HOCTC during any stage of the work, Consultant shall deliver all such materials to the HOCTC. All products developed for the purpose of this planning project (studies, graphics, etc.) and delivered to the County or the HOCTC shall become the property of the County or the HOCTC. “Deliverables” shall include any tangible property, including software media, delivered to the County or the HOCTC under this Agreement. Except for commercial, off-the-shelf-type products where the license for such products is contained in the applicable product itself, the County and the HOCTC shall have exclusive unlimited ownership rights to all Deliverables developed.
4. SCHEDULE. Consultant shall provide the final LRTP update in sufficient time for its adoption by HOCTC by December 31, 2024, it being the express understanding of the parties that time is of the essence. Add on tasks, and other work, shall be completed in final form before the end of the Term. The Parties may extend this schedule upon mutual written agreement.
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 and billed in accordance with the hourly rates established in Exhibit C.
 - 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 eighteen (18) months. Up to two (2) renewal terms of eighteen (18) months each will be considered upon the mutual written agreement of the Parties.

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 right, 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 use or further disclose 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' 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 a writing 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 set forth herein 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. Consultant’ obligations to defend, indemnify, and hold harmless the County and its officers, agents, and employees do not apply to the extent that an Indemnified Claim arises solely out of: (a) the County’s breach of this Agreement; (b) revisions to the deliverable made without Consultant’ written consent; (c) the County’s failure to incorporate updates or upgrades that would have avoided the alleged infringement, provided Consultant offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (d) Consultant’ design or modification of the deliverable in compliance with specifications provided by the County; or (e) use of the deliverable in combination with hardware or software not provided by Consultant, unless (A) the Agreement or its SOW, or other documentation provided by Consultant or agreed between the Parties, (collectively, the “Documentation”) refers to a combination with such hardware or software, without directing the user not to perform such a combination, or (B) such combination achieves functionality described in the Documentation (and the Documentation does not direct the user not to perform such combination).
- 10.3. Litigation & Additional Terms. The obligations of Consultant to indemnify, 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 each occurrence and \$2,000,000 annual aggregate.

3.11.1.1. 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.

4.11.1.1. The County and any other parties required by the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured(s).

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 each occurrence and \$2,000,000 annual aggregate.

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, County will pay Consultant for those Services provided up to the date of such written termination.

13. SUBCONSULTANTS. The Parties agree that Consultant will engage those subconsultants identified in its Proposal, annexed as Exhibit C (each, a "Subconsultant") and any other subconsultants as agreed by the County and Consultant. 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. INDEPENDENT CONTRACTOR

14.1. Consultant and any of its subconsultants, and all of their collective employees, agents, officers, servants, and other personnel, are independent contractors. They shall not be deemed an employee of 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, and will require its subconsultant to covenant and agree, that it and its employees, agents, officers, servants and other personnel will conduct themselves 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 County. The County shall have the right to participate in any conference, discussion or negotiation with any governmental agency regarding Consultant's or its subconsultant's status as an independent contractor.

14.2. Payments to Consultant shall be reported on IRS Form 1099, and 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.

15. MISCELLANEOUS.

15.1. Notices. Notices pursuant to this Agreement will be sent by certified mail, return receipt requested, to the addresses below, or to such others as either Party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.

15.1.1 *For Consultant:*
[insert]

15.1.2 *For the County:*
Oneida County Commissioner of Planning
321 Main Street, Third Floor
Utica, NY 13501

and

Oneida County Attorney
800 Park Avenue, Tenth Floor
Utica, NY 13501

- 15.2. Executory Clause. This Agreement shall be deemed executory to the extent of monies appropriated and available and for the purpose of this Agreement and no liability on account thereof shall be incurred by the County or the HOCTC beyond monies actually appropriated and made available for the purpose hereof.
- 15.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, strikes or other labor disputes, riots or other acts of civil disorder, pandemics or other public health emergencies, embargoes, or other causes beyond the performing Party's reasonable control.
- 15.4. 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.
- 15.5. 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.
- 15.6. 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, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. 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.
- 15.7. 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.
- 15.8. 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 Clauses for New York State Contracts, Supplemental Title VI Provisions, Requirements For Federally Aided Transportation Projects; and Standard Oneida County Conditions).
- 15.9. 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.

- 15.10. 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.
- 15.11. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each Party.
- 15.12. 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.
- 15.13. Advice of Counsel. Each arty 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.

[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.
Assistant County Attorney

EXHIBIT A

(Template Statement of Work)

STATEMENT OF WORK (SOW) NUMBER 1

Title: _____

This Statement of Work Number _____ (this "SOW") is entered into pursuant to the _____ [date] Master Services Agreement (the "Agreement") by and between _____ ("Consultant") and _____ ("County").

This SOW is incorporated into the Agreement. In the event of any conflict with this SOW, the main body of the Agreement will govern. The provisions of this SOW govern only the subject matter hereof and not any other subject matter covered by the Agreement. Capitalized terms not otherwise defined in this SOW 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. Include technical specifications for any Deliverables, materials to be used, types of labor to be employed (with the rates therefore), and any subcontractors to be utilized, or include reference to specifications attached to this SOW.]

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.]

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

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

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

ONEIDA COUNTY

CONSULTANT

By: _____
(signature)

By: _____
(signature)

Name: _____
(print)

Name: _____
(print)

Title: _____

Title: _____

Date: _____

Date: _____