

## **REQUEST FOR PROPOSALS**

Safety Action Plan for Oneida and Herkimer  
Counties, U.S. Department of Transportation Safe  
Streets and Roads for All (“SS4A”) Grant Program

RFP # 2023-342

RELEASED: APRIL 26, 2023

PROPOSAL DUE: MAY 26, 2023 at 4:00 PM

### **SUBMIT TO:**

Oneida County Department of Planning  
Boehlert Center at Union Station  
321 Main Street, 3rd Floor  
Utica, New York 13501

ATTN: SS4A Program

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## **I. Introduction**

Oneida County as the lead applicant jointly applied with Herkimer County and was awarded a Fiscal Year 2022 Safe Streets and Roads for All (SS4A) Grant from the U.S. Department of Transportation to complete a Safety Action Plan for Oneida and Herkimer Counties. The SS4A Safety Action Plan for Oneida and Herkimer Counties was awarded \$415,969.95 in Federal funding. Proposals are sought from qualified professional transportation planning and engineering firms, teams, or individuals to develop the Safety Action Plan for 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 Herkimer-Oneida Counties Transportation Council (HOCTC) is the designated Metropolitan Planning Organization (MPO) and the regional entity charged with planning and programming federal transportation funds for highways, transit, non-motorized transportation, and other means of moving people and goods in central New York State. The HOCTC MPO works within federal transportation requirements to guide the development of a multimodal transportation system within the Metropolitan Planning Area (MPA) which encompasses the entirety of Oneida and Herkimer Counties. HOCTC is partnering with Oneida and Herkimer Counties, to administer the RFP process, consultant contract, and provide project management services.

## **II. Purpose**

The purpose of the Safety Action Plan for Oneida and Herkimer Counties (the Safety Plan) is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development and implementation focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial vehicle operators. The Safety Plan develops the tools to help strengthen a community's approach to roadway safety and save lives and is intended to meet the needs of diverse local, rural, and regional communities that differ dramatically in size, location, and traveler experience.

The Safety Plan aims to improve roadway safety by developing a comprehensive safety action plan based on a Safe System Approach and implementing projects and strategies that significantly reduce or eliminate transportation-related fatalities and serious injury accidents and is part of the federal and state efforts toward an ambitious long-term goal of reaching zero roadway fatalities. The Safe System Approach addresses the safety of all road users. It involves a paradigm shift to improve safety culture, increase collaboration across all safety stakeholders, and refocus transportation system design and operation on anticipating human mistakes and lessening impact forces to reduce crash severity and save lives.

The Safety Plan will be aligned with an update to the 2017 New York State Strategic Highway Safety Plan (NYSHSP) anticipated for approval by New York State and the Federal Highway Administration in April 2023 and take into consideration the Governor's Traffic Safety Committee Highway Safety Strategic Plan (HSSP) (revised August 2020) and the New York State Pedestrian Action Plan (PSAP) adopted in June 2016.

The Safety Plan will undertake a robust safety investigation on the jurisdictional roadways in Oneida and Herkimer Counties. This will be done through a more in-depth look at location-based crash data, causal factors, and complete streets principles to identify broad engineering, education, and enforcement strategies that consider local context. Efforts should guide in shaping future implementation projects

through SS4A, or other applicable federal or state transportation related funding programs that can contribute to meeting performance measures locally, at the state, and federally.

The Safety Plan will identify a comprehensive set of projects and strategies, that are data-driven, and incorporate best practices, stakeholder input, equity, and environmental considerations, to address the safety problems. Innovative strategies and technologies will be molded to the needs of the area, promoting safety and equity. The identified strategies will be those with the greatest potential to reduce fatal and serious injury crashes and reduce crash rates on all public roads.

The Safety Plan will consider other factors in addition to safety, including equitable investment in the safety needs of underserved communities. As part of this effort, a public involvement process that focuses on reaching underserved, underrepresented, and vulnerable populations will be undertaken to ensure inclusion and equity for all persons within the planning area. Within the planned output are progress and transparency methods that measure progress over time after the Safety Plan is completed.

### **III. Background**

Oneida and Herkimer Counties are located in central New York State and encompass a geographical area of 2,716 square miles. The counties have a combined population of 290,812 (American Community Survey, 2019) and are characterized as rural and 81% of roadways are of the local jurisdiction. The count of motor-vehicle-involved roadway fatalities from 2016-2020 is 17 in Oneida County and 6 in Herkimer, with a fatality rate of 7.39 and 9.66 respectively. The population in underserved communities is 2.09% and 5.39 % respectively, and 15.5% in Oneida County and 13.6% of the population in Herkimer County live in poverty. In the 2019 American Community Survey (ACS), people with disabilities comprise 14.8% of the regional population. By county, 14.4% of Oneida County's population has a disability and 16% of Herkimer County's population has a disability. According to the 2019 ACS Estimates, 18.4% of the total population in Oneida County and 20.1% of the total population in Herkimer County is age 65 or older.

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

Ensuring safe, accessible, and desirable transportation in the region is central to the HOCTC mission and is reflected in HOCTC's Going Places 2040 Long Range Regional Transportation Plan (LRTP) with the guiding principle of "Maintaining and operating an integrated transportation system that considers safety for all users and all modes."<sup>1</sup> Two goals identified as priorities included:

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<sup>1</sup> *Going Places 2030 p. 8.*

1. System Preservation- inclusive of enhancing **safety** and **security**; and
2. **Mobility and Accessibility**- the objective of *Mobility/access to places of work and locations where goods and services may be obtained* is the top priority among committee members.

Objectives in the LRTP to achieve this goal include: "...Reducing conflicts among transportation modes and services through the coordination of operations and improvements and implementing cost-effective improvements that reduce the frequency and severity of crashes."<sup>2</sup>

The HOCTC Environmental Justice Analysis 2021 completed under Executive Order 12898 assessed the Environmental Justice community within the two counties and evaluated the policies and activities by addressing the effects of all programs, policies, and activities on minorities and low-income people. This includes the processes, programs, and products of transportation planning, including project development. This included the development of a 5-step process to assess and ensure that its planning efforts comply with the regulations and requirements of Title VI: Develop a demographic profile, identify needs and issues in the target population, develop a methodology, and conduct data collection of target populations, establish thresholds for identifying imbalances in the transportation planning process, and analyze the findings to assess benefits and burdens of transportation planning activities. These efforts will inform the planning work outlined in this scope.

HOCTC supports New York State's safety efforts by contributing to the development and implementation of the NY SHSP and the New York State Pedestrian Safety Action Plan (NYPSAP), sponsoring many educational programs and activities that emphasize bicycle and pedestrian safety, supporting local government development of Complete Streets policies and programs, considering safety as a topic in every one of HOCTC's Local Transportation Planning Assistance Program (LTAP) applications and including safety as a project evaluation criteria for competitive federal transportation funding programs. HOCTC staff also participate in the New York State Association of Metropolitan Planning Organization's Safety Working Group (NYSAMPOSWG). In that role, staff contribute to the development of tools such as the Safety Assessment Guidelines for use by MPOs and local governments, participated with NYSDOT in the past use of the Accident Location Information System (ALIS), and the development and enhancement of new data analysis tools, such as the roll-out of the CLEAR crash data safety viewer, and subsequent CLEAR data training for MPO staff.

Current federal transportation legislation, the IIJA/BIL, has further reinforced HOCTC's role in transportation safety planning by reaffirming the safety requirements of the FAST Act and MAP-21 and adding to them. Those requirements include using HSIP funds, for safety projects that are consistent with the NY SHSP, coordinating with NYSDOT to ensure that projects are eligible for HSIP funds, and directing HSIP funds to correct or improve a hazardous road location or feature or address a highway safety problem.

Safety Performance Measurement (Safety PM) has now become a required part of investment decisions and policy-making in States and at MPOs. The Safety PM establishes safety performance measure requirements to carry out the HSIP and assess fatalities and serious injuries on all public roads. The five performance measures established for safety based on a five-year rolling average are:

- Number of Fatalities

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<sup>2</sup> *Going Places 2040 p.11*

- Rate of Fatalities per 100 million Vehicle Miles Traveled (VMT)
- Number of Serious Injuries
- Rate of Serious Injuries per 100 million VMT
- Number of Non-motorized Fatalities and Non-motorized Serious Injuries

States are required to set the targets for the five safety performance measures and MPOs have the option to set independent measures or support the state, HOCTC via Resolution #2022-22, agreed to support the NYSDOT 2023 safety targets.

This initiative and scope of work represent the first step in addressing safety in Oneida and Herkimer Counties by analyzing local crash data and will provide HOCTC and its local government members with guidance on projects, policies, and programs that have been proven to reduce fatal and serious injury crashes and crash rates. To date, the two-county region has not completed a local level deep-dive analysis of its roadway network. The output strategies and projects are expected to be foundational in addressing systemic and point-specific safety issues while supporting equity, environmental, sustainability, and economic growth in the two counties.

#### **IV. Project Objectives**

The Safety Action Plan for Oneida and Herkimer Counties (the Safety Plan) will identify a comprehensive set of projects and strategies, that are data-driven, and incorporate best practices, stakeholder input, equity, and environmental considerations, to address the safety problems. Innovative strategies and technologies will be molded to the needs of the area, promoting safety and equity.

The Safety Plan will progress key recommendations from HOCTC's Going Places 2040 Long-Range Transportation Plan, build upon the NY SHSP, and incorporate the findings of the HOCTC EJ Analysis 2021.

The Safety Plan will support Oneida and Herkimer County's efforts in progressing on the regions' safety performance by providing information to the region's safety partners on the specifics of the crash problem in their jurisdictions and offer guidance on how those problems can be addressed through multi-modal, multi-discipline engineering, education, and enforcement strategies.

The Safety Plan is expected to use safety investigations and utilize tools such as Safety Assessments, ALIS/CLEAR crash data, crash reports, and HSM analysis. NYSDOT HSIP procedures will be utilized to identify the nature of the problem and identify appropriate countermeasures for engineering, education, and enforcement. The technical process will analyze crash data, in corridors, or at locations with common characteristics, identify focus areas, engage with public and private stakeholders, and develop projects, programs, strategies, and include legislative and policy actions.

The Safety Plan is expected to present a vision and identify goals and objectives that support and deliver the purpose of the SS4A program, as well as the SS4A required public commitment to an eventual goal of zero roadway fatalities and serious injuries (vision zero).

The Safety Plan will have a lens on equity. Building off the Safe System Approach, additional factors beyond safety will be incorporated, including equitable investment in the safety needs of underserved communities. The Safety Plan will look at advancing sustainability and mitigating climate change through the strategy and project development process, as outlined in E.O. 14008 Tackling the Climate Crisis at Home and Abroad.

The Safety Plan will demonstrate engagement with a variety of public and private stakeholders and seek to adopt innovative technologies and strategies to promote safety, employ low-cost, high-impact strategies that can improve safety over a wider geographic area, ensure equitable investment in the safety needs of underserved communities, which includes both underserved urban and rural communities, incorporate evidence-based projects and strategies, and align with the Department's mission and with priorities such as equity, climate and sustainability, quality job creation, and economic strength and competitiveness.

Identification of action items to address the mounting roadway safety crisis will comply with USDOT's required components including goal setting, safety analysis, public engagement, equity analysis, policy and process proposals, and progress reporting.

## **V. Scope of Work**

The consultant will perform the following tasks to facilitate delivering the required Safe Streets And Roads For All (SS4A) Grant elements. 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.

### **Task 1: Project Initiation**

The consultant will be expected to understand all parameters and requirements of the Safe Streets and Roads for All (SS4A) Action Plan Grant, Notice of Funding Opportunity (NOFO) Assistance Listing # 20.939. An understanding of the required Federal and USDOT guidance including the National Roadway Safety Strategy (NRSS), the Safe System Approach, Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), the President's greenhouse gas reduction, climate resilience, the federal workforce investment programs, Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative, the Justice40 Initiative, the Highway Safety Improvement Program (HSIP), and related Federal programs is required. An understanding of New York State's safety program documents including the New York State Highway Safety Plan (NYSHSP), New York State Pedestrian Safety Action Plan (NYPSAP), NY Highway Safety Strategic Plan (Governor's Traffic Safety Committee), NYSDOT Safety Investigation Procedures Manual (also known as the Yellow Book) is required. In addition, familiarity with the safety principle in HOCTC's Going Places 2040, the HOCTC Environmental Justice Analysis 2021 (EJ 2021), HOCTC 2021-2024 Public Transportation – Human Services Coordinated Plan, HOCTC 2021 Electric Vehicle Charging Station Plan, Oneida County Main Streets Program, Complete Streets (National Complete Streets Coalitions), and Vision Zero strategy. All documents are intended to inform and guide the Plan development.

To facilitate the development of the Safety Plan a Project Steering Committee (PSC), Technical Advisory Committee (TAC), stakeholder list, and a project timeline will be established. The PSC will be comprised of HOCTC, Oneida County, and Herkimer County staff. The TAC will primarily consist of members of the state and local transportation planning agencies, law enforcement, traffic safety boards, human service agencies,



and community organizations that will guide the study throughout the planning process. The composition of the TAC will be determined collaboratively by the consultant and PSC.

An internal project kick-off meeting will be held by the consultant with the PSC. The technical and logistical elements of the Safety Plan will be reviewed. A project start-up meeting will be held by the consultant with the TAC and members of the PSC. This will include a review and discussion of the approach to network screening, coordination with FHWA, NYSDOT, local government partners, the public involvement process, and additional topics relevant to project start-up. A project website will be developed by the consultant and used throughout the study process to ensure the accessibility, transparency, and documentation of the planning process for public information.

## **Task 2: Analysis of Crash Data**

The consultant will perform an analysis of existing conditions and historical trends that provides a baseline level of crashes involving fatalities and serious injuries across Oneida and Herkimer Counties. A benchmark crash data analysis for all roadways (to the extent practical, the analysis should include all roadways within the jurisdiction, without regard for ownership) will be performed. Six (6) years of reportable crash data (2016-2020) will be included for all public roads. This will include an analysis of locations where there are crashes and the severity of the crashes, as well as contributing factors and crash types by relevant road users (motorists, people walking, transit users, etc.).

Based on the analysis performed, a geospatial identification of higher-risk locations is developed (a High-Injury Network or equivalent). The benchmark crash data will include geographic locations of crashes with related attribute data in an MS Excel and ArcGIS format, tables and maps of crash types and factors, comparisons of crash frequency data to other areas of New York State, and initial crash rates based on regional Vehicle Miles of Travel. The benchmark crash data will include crash data involving alternative modes (pedestrians, bicyclists, public transit users, etc.) and crash data within underserved communities within the jurisdiction(s), noting any disproportional safety impacts.

## **Task 3: Network Screening Analysis**

Network Screening will be undertaken by the consultant and specifically focus on the non-state or federally owned roadway system. New York State has a network screening process for state-owned roads and further analysis of state roads through this effort is not required. The consultant is to propose the approach to Network Screening including a method for developing average crash rates for local roads by type. Potential approaches include developing crash rates using traffic volume, per capita, per mile, or other metrics which can be applied uniformly. Average crash rates can be developed at the local, county, or regional level by road type or through another metric. HOCTC has traffic volume data on county roadways and the NYSDOT Traffic Data Viewer can be utilized to provide additional data. NYSDOT Main Office and Region 2 will be consulted in the review of network screening, as needed.

The data analysis conducted to support this task should consider site-specific locations with above-average crash histories, particularly in underserved communities. Systemic or corridor-based analysis tools that might identify high-risk characteristics of roadways for which countermeasures might exist must be included. Particular attention should be paid to the review of fatal and serious injury crashes. The objective of this Task is to assess the transportation system at a much greater level of detail than in the NYSHSP, by clearly identifying and articulating local problems. Analysis of systemic and specific safety needs is also performed, as needed (e.g., high-risk road features, specific safety needs of relevant road users, public health

approaches, analysis of the built environment, demographic, and structural issues, etc.). The findings will be used to guide the development of focus areas in the Safety Plan and locations to be considered for safety investigations.

The consultant will be responsible for developing appropriate graphics to communicate the crash data as part of the existing conditions section of the Safety Plan and for use in presentations, on websites, and in press releases. It should be noted that location-based crash data on maps is considered sensitive data. The consultant should suggest the types of mapped data and the level of detail which is useful but be cognizant of the sensitivity and suggest how it is to be made available to the public plan documents and at meetings. Baseline, benchmarking, and network screening data will be posted to the project website during plan development and on HOCTC's website following completion of the plan as part of a dashboard and tracking.

#### **Task 4: Targeted Safety Investigation**

The consultant will provide technical services to analyze crash problems at specific sites, in corridors, or at locations with common characteristics on the county, town, city, or village owned roads by undertaking detailed safety investigations. The safety investigations will utilize tools such as Safety Assessments, ALIS/CLEAR crash data, crash reports, and HSM software. The top third of the intersections will have safety investigations completed as part of this task. The type and location of the investigations will be identified in consultation with the TAC. Based on the analysis performed, a geospatial identification of higher-risk locations is developed (a High-Injury Network or equivalent).

NYS DOT HSIP procedures will be utilized to identify the nature of the problem, identify appropriate countermeasures for engineering, education, and enforcement as needed, and in the case of engineering, identify SS4A or HSIP candidate projects (site specific) or programs of projects (systemic) that reduce the risk of certain types of crashes from occurring. The analysis completed will include statistical, geospatial, and graphic outputs to illustrate the safety problems and their relation in the geographic and socio-demographic context of Oneida and Herkimer Counties.

#### **Task 5: Stakeholder Outreach**

The consultant will provide a stakeholder outreach methodology to ensure a robust engagement, including the private sector, community groups, and the public, that allows for both community representation and feedback will be undertaken. Information received from engagement and collaboration will be reviewed and incorporated into the Safety Plan. Outreach processes are coordinated and aligned with other governmental plans and planning processes, to the extent practical. Up to ten (10) focus group meetings will be organized with both public and relevant safety stakeholders to discuss existing safety concerns, projects, or programs in the area as well as current safety-related data, analysis output, and elicit community engagement and feedback. Staff will provide a list of active safety partners in the two-county region to be considered in the identification of stakeholders. A local public survey will supplement the stakeholder meeting and be released one week prior to the scheduled meeting and conclude one-week post meeting. The survey will be developed with the PSC, administered by staff, and summarized for incorporation into the Safety Plan. In coordination with Oneida County and HOCTC, the consultant will provide translation services, as needed, throughout the process. Information gathered through this outreach will be used to inform the planning process by serving as the basis for an inventory of local knowledge regarding roadway safety.

Throughout the data collection process, the consultant will work with stakeholders to identify inadequacies or systemic barriers in existing data sources or data collection programs and propose strategies for

addressing any inequity identified to provide equal access to opportunities and benefits and ensure a 40% allocation of federal resources to low income and underserved communities.

### **Task 6: Vision and Goal Development**

Following stakeholder outreach and with the data analysis underway, the consultant will develop an initial vision, goals, and objectives for the Safety Plan with the PSC. The TAC will review these prior to the Safety Summit. Safety Plan objectives will be developed consistent with the U.S. DOT National Road Safety Strategy, Safe Systems Approach, Vision Zero, Complete Streets, NYSHSP, NYSPSAP, and other relevant documents as outlined in Task 1, to guide proposed safety actions.

The Safety Plan goals must include a commitment and timeline for eliminating roadway fatalities and serious injuries achieved through one or both of the following 1) a target date for achieving zero roadway fatalities and serious injuries, or 2) an ambitious percentage reduction of roadway fatalities and serious injuries by a specific date with an eventual goal of eliminating roadway fatalities and serious injuries. It is anticipated support and evolution of the draft vision will be elicited throughout the stakeholder outreach and public participation process. This will include working with elected leaders to achieve an official public commitment (e.g., resolution, policy, ordinance, etc.) by a high-ranking official and/or governing body to an eventual goal of zero roadway fatalities and serious injuries. The staff will work directly with elected leaders to support the goal and carry the message of Vision Zero throughout the two-county area.

Vision and goal development will inform and shape Task 12 Policy and Process Recommendation. It is expected that the linkage between the TAC and stakeholders will allow for elected and community-based champions to emerge. During Task 12, this support will be leveraged to progress the intent of the Safety Plan. The consultant is expected to develop strategies that are locally relevant to support this Task and Task 12.

### **Task 7: Safety Summit for Public Involvement**

A Safety Summit will be held to collaborate with the safety partners including transportation agencies, public transit agencies, nonprofit organizations, traffic safety educators, businesses, community groups, and interested members of the public to participate in the safety planning process. The Summit will prioritize public involvement from persons belonging to underserved population groups (e.g., people in underserved communities, vulnerable populations, children, seniors, persons of color, persons with disabilities, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality) to ensure the impact of roadway safety to these groups is understood and addressed.

The Summit will be a pre-registration, free, partial-day event to share the SS4A planning philosophy and approach to the Safety Plan, to discuss federal requirements for safety planning and safety performance measures, to share existing conditions data, to gather additional information about existing knowledge of safety programs in Herkimer and Oneida Counties, and to publicly source focus areas for further exploration. It will be held twice, once in each Oneida and Herkimer Counties, not more than 10-day apart from the other date. A public survey will supplement the Summit and be released one week prior to the scheduled meeting and conclude one week post the last meeting date. The survey will be developed with the PSC, administered by staff, and summarized for incorporation into the Safety Plan. This will be the first opportunity for members of the public to engage directly in the safety planning process and materials that can be shared at this meeting regarding crash data will need careful consideration.

The goal of the Summit is to get feedback on and refine the draft vision, goals, and objectives of the Safety Plan, developed in Task 6, to confirm focus areas, and discuss potential strategies, programs, or projects, to make streets safe for all and achieve vision zero. The consultant will meet with the PSC and TAC before the Summit to discuss the goals, agenda, and format of the Summit. HOCTC will pay for room fees, refreshments, and related logistical fees outside of this consultant budget. HOCTC staff will handle the registration process and will be available to assist with facilitation and the registration table during the event. The consultant is expected to provide the following services:

- A written plan for how the Summit will be facilitated
- Manage and facilitate stakeholder engagement innovatively and effectively.
- Provide all necessary Summit materials needed to collect feedback from stakeholders.
- Attendance by key project and technical staff working directly on the Safety Plan.
- Provide Summit debrief including a summary, documentation of feedback, and photography.

It is expected that the Summit is to become an annual event to measure progress, maintain stakeholder involvement with local safety concerns, and foster the continued implementation of strategies and projects of the Safety Plan.

### **Task 8: Focus Areas and Strategies**

Using information gathered in the data analysis, stakeholder outreach, and Summit, the consultant, in consultation with the PSC and the TAC, will draft focus areas for the Safety Plan. The focus areas will need to complement the NY SHSP focus areas but will provide more detail as to the relationship of the statewide topics in the local context of Herkimer and Oneida County and the crash patterns occurring. Unique issues shall be identified during analysis, such as crash patterns occurring, and be noted as additional focus areas. All focus areas will be supported by data, input from stakeholders, and the public, and utilize FHWA guidance when identifying.

Draft systemic and site-specific strategies that are proven to reduce fatal and serious injury crashes and that reduce crash rates within the various focus areas will be identified. FHWA's Proven Safety Countermeasures, low-cost, high-impact safety improvements at both a system and site-specific level, and complete street principles will be considered. Various policies, education, enforcement, and emergency management services programs will also be incorporated. The identified strategies should consider potential implementers, funding sources, data needs, timeframes, and challenges, aiming to support the New York State safety performance measure targets. Strategies should also consider emerging technologies such as automated and connected vehicles and the context of the communities in the region, as well as EV infrastructure planning for rural areas, as outlined through the U.S. DOT ROUTES Initiative Charging Forward toolkit.

A list of focus areas and strategies will be developed through the application of a comprehensive Safe System Approach that involves using all available tools, including education, outreach, engineering solutions, and enforcement. The consultant will confer with PSC and the TAC to review the list of focus areas where behavioral research and interventions, education, technical assistance, outreach and dissemination to partners, alcohol, and drug-impaired driving interventions, and agency or organizational messaging are appropriate will be addressed.

## **Task 9: Racial Equity and Environmental Justice**

The Safety Plan 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, and 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 Safety Plan will further focus on the disproportionate, adverse safety impacts that affect certain groups on our roadways, particularly people walking and biking in underserved communities. Underserved communities are identified through data and the HOCTC Environmental Justice Analysis 2021, and in collaboration with community partners.

The analysis includes both population characteristics and initial equity impact assessments of the proposed projects and strategies. In support of E.O. 13985 Advancing Racial Equity and Support for Underserved Communities, the consultant, shall assess the focus areas and identified strategies identified in Task 8 through the lens of racial equity. The consultant will conduct an analysis of underserved communities that includes population characteristics and an initial equity impact assessment of proposed countermeasures and projects. This task builds on the completed analysis and will allow socio-demographic data to be overlaid with technical transportation system data and will help inform and identify intersections and road segments of need. In doing so, the consultant will include efforts to remove barriers to and provide equal access to opportunities and benefits proposed and increase investment in underserved communities and individuals within Oneida and Herkimer Counties.

## **Task 10: Climate Change, Sustainability, and Economic Competitiveness**

As climate change continues to reshape the environment, its future effects on roadway safety will be considered. Vulnerable roadway transportation systems and infrastructure undergoing severe weather events, experience disruption often by reducing traffic mobility, increasing weather-related crash risk, and delaying evacuation processes compromising roadway safety for all users. In addition to causing closures or delays, extreme rain, snow, fog, ice, heat, etc., may damage facilities, compromise roadway safety, and contribute to road fatalities.

The consultant will consider the effects of climate change and extreme weather events and incorporate, where feasible, safety-based countermeasures, evidence-based practices, and policy changes that should also work toward mitigating climate change effects and increasingly extreme weather events. Oneida and Herkimer County are in an attainment area for Air Quality, therefore not subject to Congestion Mitigation and Air Quality Improvement Standards. Regardless, the consultant 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 such as nature-based solutions that improve the built and/or natural environment while enhancing resilience in the context of analysis and output for the Safety Plan. Drawing from the data, stakeholders, and Summit, the consultant will identify the disproportionate impacts on underserved communities and propose strategies or policy recommendations addressing any inequities as it relates to climate change, sustainability, and economic competitiveness.

The Safety Plan should aim to increase economic or business activity due to enhanced safety features and expanded connectivity for all road users to jobs and business opportunities. A specific lens will be applied to

underserved communities, rural communities, vulnerable populations, and others as identified in Task 9, to improve multi-modal transportation systems and incorporate affordable transportation options such as public transit and micro-mobility. The Safety Plan should also demonstrate projects or actions that advance quality jobs and workforce programs and/or provide workforce opportunities for historically underrepresented groups.

### **Task 11: Strategy and Project Selection**

Identification of a comprehensive set of projects and strategies, shaped by data, the best available evidence, and equity considerations, as well as stakeholder and public input, that will address the safety problems described in the Safety Plan. These strategies, countermeasures, and projects focus on a Safe System Approach, effective interventions, and consider multidisciplinary activities. To the extent practical, data limitations have been identified and mitigated, and discussed in prior tasks.

Once identified, the list of projects and strategies will be prioritized by time ranges for when the strategies and countermeasures will be deployed (e.g., short-, mid-, and long-term timeframes). The list should include specific projects and strategies, or descriptions of programs of projects and strategies, and explains the prioritization criteria used. The list should contain interventions focused on infrastructure, behavioral, and/or operational safety. The list will be ordered, within each timeframe by order of magnitude determined by the estimated project cost and significant challenges to implementation. Additionally, the list will identify which county and municipality the project or strategy applies. For information accessibility, the list of projects and strategies will be mapped for public consumption.

### **Task 12: Policy and Process Recommendations**

The consultant shall provide an assessment of current policies, plans, guidelines, and/or standards (e.g., manuals) to identify opportunities to improve how processes prioritize transportation safety. The USDOT National Roadway Safety Strategy Safe System Approach acknowledges that both human mistakes and human vulnerability must be incorporated into the discussion of roadway safety, the Safety Plan will recognize that to attain the goal of zero fatalities, safety countermeasures will have to focus on more than just infrastructure recommendations but encompass programs and policy decisions that impact both human behavior, emergency response, and administrative actions. Other policy-oriented decisions include but are not limited to, land use recommendations, increasing safe mobility options through context-sensitive design, and addressing barriers to economic competitiveness because of the disproportionately high environmental and climate-related cumulative impacts on health in disadvantaged communities.

After the review of the assessment and consultation with the PSC, the consultant will provide a draft set of policy and process recommendations. The TAC will review all draft policy and process recommendations. Additional meetings may be held with champions, as identified in Task 6, for specific sites or corridors, as needed, to be incorporated into the final Plan recommendations. The Safety Plan will discuss implementation steps for each of the selected policies or processes through the adoption of revised or new policies, guidelines, and/or standards, as appropriate. The staff will work with local champions and elected leaders to implement and adopt the recommended policy, guidelines, or standards.

### **Task 13: Draft Safety Action Plan**

A detailed draft, including an executive summary, will be developed that incorporates a summary of the crash data evaluated through the benchmarking and network screening tasks, summarizes the stakeholder involvement and contribution to the Safety Plan development, and incorporated the public outreach and

involvement in shaping focus areas and strategies, describes the proposed focus areas and strategies to reduce fatal and serious injury crashes and crash rates, describes how these strategies may assist the counties in meeting safety performance targets, discusses the impacted people and areas that experience inequality in transportation safety, addresses climate change impacts on resiliency, discusses potential impacts on job availability, and identifies a list projects, programs, and strategies that are potentially eligible for implementation using SS4A, and other Federal and State safety funds. The draft Safety Plan is expected to be understandable to a non-technical audience and includes judicious use of tables and graphics.

A TAC meeting will be held to review the draft Safety Plan prior to its release to the public. TAC members will have two (2) weeks to provide comments and HOCTC will develop a comment tracking methodology to allow for efficient submission and review of all comments. A revised draft plan will then be prepared for public review and posted to the project website. The consultant should expect two (2) rounds of comments on the draft report: the first from the TAC and the second following the public outreach effort in Task 14.

### **Task 14: Public Outreach and Education**

This task will serve to inform, educate, and gain feedback from the entire community on the draft plan and build on Tasks 5 and 7. This will consist of 6 public workshops, which will be two (2) hours in duration, and occur at times and in locations such that underserved communities are provided equal opportunity for input. The workshop series will open a two (2) week public comment period. The format of the workshop should be proposed by the consultant in their response to this RFP. The PSC will be responsible for identifying and securing the meeting space, paying any fees, and all public notification for the workshops. The consultant is expected to provide the following services:

- A written plan for how the Workshop will be structured and facilitated
- Identify an approach to engage workshop attendees innovatively and effectively, including online engagement tools, surveys, or other methods for members of the public to provide input following this workshop
- Manage and facilitate the workshop effectively.
- Provide all necessary Workshop materials needed to collect feedback from stakeholders.
- Attendance by key project and technical staff working directly on the Safety Plan.
- Provide Workshop debrief including a summary, documentation of feedback, and photography.

### **Task 15: Final Safety Action Plan**

A final draft document will be prepared in consultation with the PSC and TAC, following a two (2) week public comment period that begins on the date of the first workshop and continues for two (2) weeks after the date of the last workshop. The total time for public review may be more than two (2) weeks. The final draft Safety Plan will be presented to HOCTC's Transportation Planning Committee and Government Policy & Liaison Committee, the Oneida County Board of Legislators, the Oneida County Executive, and the Herkimer County Legislature. Staff will document and respond to all comments in consultation with the consultant and ensure that all review periods comply with the HOCTC Public Participation Plan. The consultant should allocate time in the proposal to make what are expected to be minor final edits to the document and to prepare the Final version of the plan.

The Final Safety Plan will be developed after all comments are reviewed and the public review period has ended. If significant issues with the content of the Safety Plan are found, another draft and review period will be initiated. The Final Safety Plan will be provided to the PSC and TAC for a final read-through. After this,

HOCTC will direct the consultant to prepare the Safety Plan for final print and digital publication. The Safety Plan will be presented in final form to the same committees and boards as the draft plan. The Safety Plan will be made publicly available after acceptance.

### **Task 16: Progress and Transparency**

The consultant will provide a methodology to measure progress over time after the Safety Plan is developed or updated, including outcome data, to ensure ongoing transparency is established with the public and other stakeholders. The methodology, such as a web-based Dashboard, must include, at a minimum, annual public and accessible reporting on progress toward reducing roadway fatalities and serious injuries, and the public posting of the plan online. The methodology shall include a recommended update schedule for the Safety Plan and maintenance schedule for all public-facing components.

This means to measure progress will be web-based and built on the ESRI ArcOnline platform. HOCTC will assume responsibility for continuous updates of this website six (6) months after the Safety Plan and the associated contract is complete.

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

Proposers may be firms, individuals, or teams of firms and/or individuals. Please note that materials submitted to Oneida County are subject to the Freedom of Information Law (FOIL). If a proposer provides material(s) of a confidential nature for disclosure to third parties, the proposer should indicate the specific material(s) it considers confidential. 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 3 pages, single-sided).
2. ***Professional background*** information about the proposer including the legal name, legal address, state of incorporation, and type of business. If the proposer is owned by another entity or person, provide the legal name, address, state of incorporation, and type of business of the owner. All sub-consultants must be identified and include the same information. A brief description of the areas of expertise, qualifications, and experience must be provided for all participating firms and sub-consultants named (no more than two (2) pages per firm).



3. **Project management plan** identifying the project manager and all staff working on the project indicating roles and responsibilities. An organizational chart must be included to indicate the project management structure for all firms and individually for each firm outlining the roles and responsibilities within the SOW. Brief resumes of the personnel working on the study for the lead firm as well as all sub-consultant firms are required. Ensure that the titles of the identified personnel match those on the resumes and in the cost proposal. Failure to properly identify personnel significantly reduces the credibility of the proposal.
4. **Detailed scope of work** that demonstrates the proposer has a clear understanding of the issues associated with this project and communicates the proposer's ability and approach to completing the required scope of work tasks outlined in this RFP. If based on the proposer's knowledge or experience, the proposer believes the scope of work should be changed in any way or is too ambitious, the proposer must suggest changes in the proposal and describe how those changes will better meet the project objectives. Any proposed changes must be identified within the scope of work and articulate the reasoning. Proposers are encouraged to incorporate out-of-the-box approaches and value-added processes, utilize new technologies, and draw from best practices to deliver a superior product.
5. **Project schedule by task** should be included. Oneida County anticipates the study completed within twelve (12) to fourteen (14) months of contract execution.
6. **Examples of relevant previous work** that demonstrate the Proposer has the technical capabilities, experience, and interpersonal skills to perform the required tasks will be required as Appendix 1 to the offeror's proposal. The examples should reflect the work of personnel to be assigned to this project, particularly the project manager, on studies similar in type, size, or scope. Include the name of the reference, contact person, email or telephone number, the period of the contract, description of contract work, and dollar value of work performed. Oneida County reserves the right to seek references beyond those supplied by the Proposer, which may be used as part of the evaluation process. No more than eight (8) examples should be provided for *all* participating firms.
7. **Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) and Disadvantaged Business Enterprise (DBE) Programs**  
Oneida County will make every effort to comply with U.S. DOT 49 CFR Part 26, to ensure that equal opportunity to participate is afforded to all entities. The Federal Disadvantaged Business Enterprise (DBE) program promotes the use of DBEs in all types of federally assisted contracts and procurement activities and does not apply to 100% state or locally funded contracts. The Federal DBE program is a separate program and subject to different requirements than the New York State (NYS) Minority Business Enterprise (MBE) and Women-owned Business Enterprise Program (WBE).

The Oneida County M/WBE goal for Oneida County is 1.6 %. The 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

Cost proposals must be in a separate sealed envelope marked 'Cost Proposal - RFP # 2023-342', to be included with the proposal package. 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

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

1. Project understanding and the proposed scope of work (25 pts.)
2. Demonstrated experience/ knowledge/ history of completing safety action plans (15 pts.)
3. Demonstrated technical experience to perform a roadway safety analysis (15 pts.)
4. Experience with transportation safety in the small urban and rural context (15 pts.)
5. Qualifications and knowledge of staff/firm assigned to each task (10 pts.)
6. Utilization of technology and software to deliver work tasks (10 pts.)
7. Proposed project schedule, budget, and work indicated to be accomplished (10 pts.)

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

#### D. Proposal Package

Specifications for proposal package:

1. Three (3) originals and one (1) electronic copy in Adobe PDF format (USB flash drive or CD media) of the completed proposal must be received by 4:00 pm EST on May 26, 2023.
2. A transmittal form or memo must be included with the proposal package and reference RFP#
3. Proposals are to be sent to:

Oneida County Department of Planning  
 321 Main Street, 3<sup>rd</sup> Floor  
 Utica, New York 13501  
 Attn: SS4A Program

#### E. Timeline

Approximate RFP timeline for solicitation and award of contract.

<i>Procedural Step</i>	<i>Date</i>
RFP Release Date	April 26, 2023
RFP Active	30 days from release
Deadline for Questions	May 17 at 4:00 PM EST
Deadline for the submission of proposals	May 26 at 4:00 PM EST
Evaluate Proposals	June 2023
Technical Interviews	July 2023
Consultant Selection/ Notification	July 2023
Conditional Contract Award	July 2023

Contract Award Date	August 2023
Notice to Proceed	August 2023
Contract Duration	12 months (2-month extension allowed)
Contract Complete Date	August 2024

## F. Conditional Contract Award

A Conditional Contract Award will be made according to the timeline in item E. This Conditional Contract Award will stand until such time that Oneida County has fully executed a contract with the USDOT to provide funding 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. Notice to Proceed

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

## H. Questions Regarding this RFP

Questions specifically relating to this RFP shall be accepted in writing only. Proposers are welcome to submit questions regarding the content in or process governing this RFP up until May 17, 2023, at 4:00 pm EST.

1. Questions shall be directed to:

SS4A Program  
[transplan@ocgov.net](mailto:transplan@ocgov.net)

or hard copy:

Oneida County Department of Planning  
Boehlert Center at Union Station  
321 Main Street, 3rd Floor  
Utica, New York 13501  
ATTN: SS4A Program

2. Oral questions will not be accepted. Any perception of an oral answer to a question asked relative to this RFP will not be binding on Oneida County.

3. There will be no pre-submission meeting. All questions will be addressed in writing using the methodology outlined herein.
4. All questions and answers will be posted under the link RFP # 2023-342 FAQs at [www.hoctc.org](http://www.hoctc.org)
5. Questions submitted will be answered weekly. The table illustrates the FAQ Log timeline.

<i>Question submitted by 4:00 pm:</i>	<i>Answer posted in FAQ Log by 4:00 pm:</i>
May 3, 2023	May 5, 2023
May 10, 2023	May 12, 2023
May 17, 2023	May 19, 2023

6. To ensure all proposers have equal access to the FAQ and knowledge of all questions asked and answered regarding this RFP, questions received after the last question deadline of 4:00 pm EST on May 17, 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.

## I. Additional Information

1. All information and materials submitted will become the property of Oneida County and may be subject to disclosure pursuant to the Freedom of Information Law, subpoena, or court order. Proposers should not submit proprietary or confidential business information unless they believe such information is critical to the proposal. Such information should be identified. Oneida County will protect such proprietary information only to the extent that the law allows.
2. Oneida County shall not be liable for nor pay any costs incurred in the preparation of a Proposal in response to this request, and shall not be liable for any costs, expenses, or fees of the successful respondent accrued before the County authorizes the respondent to begin work.
3. Oneida County reserves the right to cancel this RFP or reject any or all proposal packages received as a result of this request, in whole or in part, without liability and without notice; to negotiate with selected Proposers, or to cancel in part or its entirety this RFP, if it is determined to be in the best interest of the Oneida County to do so.

4. A low-cost proposal does not necessarily guarantee the award of the RFP. All proposal evaluation criteria and required components included in this RFP will be considered.
5. The awarded Proposer shall enter into a contract with Oneida County and be subject to legal requirements established by Oneida County.
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.

#### J. Standard of Conduct for this RFP

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

## VI. Appendices

### **A. U.S. DEPARTMENT OF TRANSPORTATION GENERAL TERMS AND CONDITIONS UNDER THE FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL ("SS4A") GRANT**

**A-1. U.S. DEPARTMENT OF TRANSPORTATION EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM**

### **B. STANDARD ONEIDA COUNTY CONDITIONS**

**B-1. ONEIDA COUNTY CERTIFICATIONS**

### **C. MASTER SERVICES AGREEMENT**

### **D. LIST OF DOCUMENTS REQUIRING UNDERSTANDING OR COMPLIANCE**

**APPENDIX A.**

**U.S. DEPARTMENT OF TRANSPORTATION GENERAL TERMS AND CONDITIONS UNDER THE  
FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL (“SS4A”) GRANT**

**U.S. DEPARTMENT OF TRANSPORTATION**

**GENERAL TERMS AND CONDITIONS UNDER THE  
FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL (“SS4A”) GRANT  
PROGRAM:  
FHWA PROJECTS**

Revision date: March 28, 2023



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## GENERAL TERMS AND CONDITIONS

The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”) established the Safe Streets and Roads for All (SS4A) Discretionary Grant Program (BIL Section 24112) and appropriated funds to the United States Department of Transportation (the “USDOT”) under Division J, Title VIII of BIL to implement the program. The funds are available to provide Federal financial assistance to support local initiatives to prevent death and serious injury on roads and streets, commonly referred to as “Vision Zero” or “Toward Zero Deaths” initiatives.

The USDOT published a Notice of Funding Opportunity (the “NOFO”) to solicit applications for Federal financial assistance in Fiscal Year 2022 for the SS4A Discretionary Grant Program (87 Fed. Reg. 31606 (May 24, 2022; subsequently amended in 87 Fed. Reg. 47818 on August 4, 2022).

These general terms and conditions are incorporated by reference in a project-specific grant agreement under the fiscal year 2022 SS4A grant program. Articles 1–6 are in the project-specific portion of the agreement. The term “Recipient” is defined in the project-specific portion of the agreement. Attachments A through D are project-specific attachments.

### ARTICLE 7 PURPOSE

**7.1 Purpose.** The purpose of this award is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development or projects focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial vehicle operators. The parties will accomplish that purpose by achieving the following objectives:

- (1) timely completing the Project; and
- (2) ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Grant Application, as modified by section 3.3 and Attachment B.

### ARTICLE 8 USDOT ROLE

#### **Division of USDOT Responsibilities.**

- (a) The Office of the Secretary of Transportation is ultimately responsible for the USDOT’s administration of the SS4A Grant Program.
- (b) The Federal Highway Administration (the “FHWA”) will administer this grant agreement on behalf of the USDOT. In this agreement, the “**Administering Operating Administration**” means the FHWA.

#### **USDOT Program Contacts.**

FHWA Safe Streets and Roads for All Federal  
Highway Administration Office of Safety  
1200 New Jersey Avenue SE HSA-1, Mail  
Drop E71-117  
Washington, DC 20590 SS4A.FHWA@dot.gov  
(202) 366-2201

and

[enter FHWA Division Office lead point of contact] [enter address]  
[enter email address] [enter telephone]

## ARTICLE 9 RECIPIENT ROLE

### 9.1 **Statements on the Project.** The Recipient states that:

- (1) all material statements of fact in the Grant Application were accurate when that application was submitted; and
- (2) Attachment B documents all material changes in the information contained in that application.

### 9.2 **Statements on Authority and Capacity.** The Recipient states that:

- (1) it has the authority to receive Federal financial assistance under this agreement;
- (2) It has the legal authority to complete the Project, including either ownership and/or maintenance responsibilities over a roadway network; safety responsibilities that affect roadways; or has an agreement from the agency that has ownership and/or maintenance responsibilities for the roadway within the applicant's jurisdiction; if applicable.
- (3) it has the capacity, including institutional, managerial, and financial capacity, to comply with its obligations under this agreement;
- (4) not less than the difference between the "Total Eligible Project Cost" and the "SS4A Grant Amount" listed in section 3.3 are committed to fund the Project;
- (5) it has sufficient funds available, or an agreement with the agency that has ownership and/or maintenance responsibilities for the roadway within the recipient's jurisdiction, to ensure that infrastructure completed or improved under this agreement will be operated and maintained in compliance with this agreement and applicable Federal law; and
- (6) the individual executing this agreement on behalf of the Recipient has authority to enter this agreement and make the statements in this article 9 and in section 24.7 on behalf of the Recipient.

### 9.3 **USDOT Reliance.** The Recipient acknowledges that:

- (1) the USDOT relied on statements of fact in the Grant Application to select the Project to receive this award;
- (2) the USDOT relied on statements of fact in both the Grant Application and this agreement to determine that the Recipient and the Project are eligible under the terms of the NOFO;
- (3) the USDOT relied on statements of fact in both the Grant Application and this agreement to establish the terms of this agreement; and
- (4) the USDOT's selection of the Project to receive this award prevented awards under the NOFO to other eligible applicants.

**Project Delivery.**

- (a) The Recipient shall complete the Project under the terms of this agreement.
- (b) The Recipient shall ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.
- (c) The Recipient shall provide any certifications or assurances deemed necessary by the USDOT in ensuring the Recipient's compliance with all applicable laws, regulations, and policies.
- (d) The Recipient shall provide access to records as provided at 2 CFR 200.337.

**Rights and Powers Affecting the Project.**

- (a) The Recipient shall not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this agreement without written approval of the USDOT.
- (b) The Recipient shall act, in a manner acceptable to the USDOT, promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this agreement.

**9.4 Notification of Changes to Key Personnel.** The Recipient shall notify all USDOT representatives who are identified in Section 4.4 in writing within 30 calendar days of any change in key personnel who are identified in Section 4.3.

**ARTICLE 10**

**AWARD AMOUNT, OBLIGATION, AND TIME PERIODS**

**10.1 Federal Award Amount** The USDOT hereby awards a SS4A Grant to the Recipient in the amount listed in Section 2.2 as the SS4A Grant Amount.

**Federal Obligations.**

This agreement obligates for the period of performance listed in section 2.3 of the grant agreement.

### **Budget Period**

The budget period for this award begins on the date of this agreement and ends on the budget period end date that is listed in section 2.4, which shall be no later than 5 years from the date of grant execution. In this agreement, “budget period” is used as defined at 2 C.F.R. 200.1.

### **Period of Performance.**

- (a) The period of performance for this award begins on the effective date of award listed in page 1 item 2 and ends on the period of performance end date that is listed in Section 2.3.
- (b) In this agreement, “period of performance” is used as defined at 2 C.F.R. 200.1.

## **ARTICLE 11**

### **STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES**

- 11.1 Notification Requirement.** The Recipient shall notify all USDOT representatives who are identified in section 4.4 in writing within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project. In that notification, the Recipient shall describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this section 11.1 is separate from any requirements under this article 11 that the Recipient request amendment of this agreement.
- 11.2 Statement of Work Changes.** If the Project’s activities differ from the statement of work that is described in section 3.1 and Attachment B, then the Recipient shall request an amendment of this agreement to update section 3.1.
- 11.3 Schedule Changes.** If one or more of the following conditions are satisfied, then the Recipient shall request an amendment of this agreement to update the relevant dates:
  - (1) a substantial completion date for the Project or a component of the Project is listed in section 3.2 and the Recipient’s estimate for that milestone changes to a date that is more than six months after the date listed in section 3.2; or
  - (2) a schedule change would require the period of performance to continue after the period of performance end date listed in section 2.3.

For other schedule changes, the Recipient shall request an amendment of this agreement unless the USDOT has consented, in writing consistent with applicable requirements, to the change.

### **Budget Changes.**

- (a) The Recipient acknowledges that if the cost of completing the Project increases:



- (1) that increase does not affect the Recipient’s obligation under this agreement to complete the Project; and
  - (2) the USDOT will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B if, in comparing the Project’s budget to the amounts listed in section 3.3:
- (1) the “Non-Federal Funds” amount decreases; or
  - (2) the “Total Eligible Project Cost” amount decreases.
- (c) For budget changes that are not identified in section 11.4(b), the Recipient shall request an amendment of this agreement to update section 3.3 and Attachment B unless the USDOT has consented, in writing consistent with applicable requirements, to the change.
- (d) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3, then the Recipient may propose to the USDOT, in writing consistent with applicable requirements, specific additional activities that are within the scope of this award, as defined in sections 7.1 and 3.1, and that the Recipient could complete with the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs.
- (e) If the actual eligible project costs are less than the “Total Eligible Project Cost” that is listed in section 3.3 and either the Recipient does not make a proposal under section 11.4(d) or the USDOT does not accept the Recipient’s proposal under section 11.4(d), then:
- (1) in a request under section 11.4(b), the Recipient shall reduce the Federal Share by the difference between the “Total Eligible Project Cost” that is listed in section 3.3 and the actual eligible project costs; and
  - (2) if that amendment reduces this award and the USDOT had reimbursed costs exceeding the revised award, the Recipient shall request to add additional project work that is within the scope of this project.

In this agreement, “**Federal Share**” means the sum of the “SS4A Action Plan or Implementation Grant Amount” and the “Other Federal Funds” amounts that are listed in section 3.3.

- (f) The Recipient acknowledges that amounts that are required to be refunded under section 11.4(e)(2) constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

**11.4 USDOT Acceptance of Changes.** The USDOT may accept or reject amendments requested under this article 11, and in doing so may elect to consider only the interests of the SS4A grant program and the USDOT. The Recipient acknowledges that requesting an amendment under this article 11 does not amend, modify, or supplement this agreement unless the USDOT

accepts that amendment request and the parties modify this agreement under section 21.1.

## ARTICLE 12 GENERAL REPORTING TERMS

**Report Submission.** The Recipient shall send all reports required by this agreement to all USDOT contacts who are listed in section 4.4. Reports will be added to a central repository maintained by FHWA.

**Alternative Reporting Methods.** FHWA may establish processes for the Recipient to submit reports required by this agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient shall use the processes required by the FHWA.

### **Paperwork Reduction Act Notice.**

Under 5 C.F.R. 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (the “OMB”). Collections of information conducted under this agreement are approved under OMB Control No. 2125-0675.

## ARTICLE 13

### PROGRESS AND FINANCIAL REPORTING

**Quarterly Program Performance Reports.** Quarterly, on or before the 20th day of the first month of each calendar year (e.g., reports due on or before January 20<sup>th</sup>, April 20<sup>th</sup>, August 20<sup>th</sup>, and December 20<sup>th</sup>) and until the end of the period of performance, the Recipient shall submit to the USDOT a Quarterly Project Progress Report in the format and with the content described in Exhibit C (SF-PPR). If the date of this agreement is in the final month of a calendar year, then the Recipient shall submit the first Quarterly Project Progress Report in the second calendar year that begins after the date of this agreement.

**Quarterly Financial Status.** Quarterly, on or before the 20<sup>th</sup> day of the first month of each calendar year, the Recipient shall submit a Federal Financial Report using SF-425.

## ARTICLE 14 PERFORMANCE REPORTING

**Baseline Performance Measurement.** If the Designation in Section 2.5 is “Implementation,” then:

- (1) the Recipient shall collect data for each performance measure that is identified in the

Performance Measure Table in Attachment A, accurate as of the Baseline Measurement Date that is identified in Attachment A; and

- (2) on or before the Baseline Report Date that is stated in Attachment A, the Recipient shall submit a Baseline Performance Measurement Report that contains the data collected under this section 14.1 and a detailed description of the data sources, assumptions, variability, and estimated levels of precision for each performance measure that is identified in the Performance Measure Table in Attachment A.

**Section 24112(h) Report:** The Recipient shall submit to the USDOT, not later than 120 days after the end of the period of performance, a report that describes, consistent with section 24112(g) of BIL:

- (3) the costs of carrying out the project;
- (4) the outcomes and benefits that each eligible project generated as identified in the grant application and measured by data to the maximum extent practicable (i.e. number of fatalities and serious injuries that occurred within the limits of the project location); and
- (5) the lessons learned, and any recommendations related to future projects or strategies to prevent death and serious injuries on roads and streets.

**Performance Measurement Information.**

For each performance measure that is identified in the Performance Measure Table in Attachment A, not later than January 31 of each year that follows a calendar year within the period of performance during which data was collected, the Recipient shall submit to the USDOT a Performance Measurement Report containing the data collected in the previous calendar year and stating the dates when the data was collected.

**Performance Reporting Survival.**

The data collection and reporting requirements in this article 14 survive the termination of this agreement which is three years post period of performance.

**Program Evaluation.**

As a condition of grant award, the recipient may be required to participate in an evaluation undertaken by USDOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or USDOT staff.

## ARTICLE 15 NONCOMPLIANCE AND REMEDIES

### Noncompliance Determinations.

- (a) If the USDOT determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this agreement, the USDOT may notify the Recipient of a proposed determination of noncompliance. For the notice to be effective, it must be written and the USDOT must include an explanation of the nature of the noncompliance, describe a remedy, state whether that remedy is proposed or effective at an already determined date, and describe the process through and form in which the Recipient may respond to the notice.
- (b) If the USDOT notifies the Recipient of a proposed determination of noncompliance under section 15.1(a), the Recipient may, not later than 7 calendar days after the notice, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:
  - (1) accept the remedy;
  - (2) acknowledge the noncompliance, but propose an alternative remedy; or
  - (3) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response documentation or other information supporting the Recipient's compliance.

- (c) The USDOT may make a final determination of noncompliance only:
  - (1) after considering the Recipient's response under section 15.1(b); or
  - (2) if the Recipient fails to respond under section 15.1(b), after the time for that response has passed.
- (d) To make a final determination of noncompliance, the USDOT must provide a notice to the Recipient that states the bases for that determination.

### Remedies.

- (e) If the USDOT makes a final determination of noncompliance under section 15.1(d), the USDOT may impose a remedy, including:
  - (1) additional conditions on the award;
  - (2) any remedy permitted under 2 C.F.R. 200.339–200.340, including withholding of payments; disallowance of previously reimbursed costs, requiring refunds from the Recipient to USDOT; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or

- (3) any other remedy legally available.
- (f) To impose a remedy, the USDOT must provide a written notice to the Recipient that describes the remedy, but the USDOT may make the remedy effective before the Recipient receives that notice.
- (g) If the USDOT determines that it is in the public interest, the USDOT may impose a remedy, including all remedies described in section 15.2(a), before making a final determination of noncompliance under section 15.1(d). If it does so, then the notice provided under section 15.1(d) must also state whether the remedy imposed will continue, be rescinded, or modified.
- (h) In imposing a remedy under this section 15.2 or making a public interest determination under section 15.2(c), the USDOT may elect to consider the interests of only the USDOT.
- (i) The Recipient acknowledges that amounts that the USDOT requires the Recipient to refund to the USDOT due to a remedy under this section 15.2 constitute a debt to the Federal Government that the USDOT may collect under 2 C.F.R. 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

#### **Other Oversight Entities.**

Nothing in this article 15 limits any party’s authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

### **ARTICLE 16 AGREEMENT TERMINATION**

#### **USDOT Termination.**

- (a) The USDOT may terminate this agreement and all of its obligations under this agreement if any of the following occurs:
  - (1) the Recipient fails to obtain or provide any non-SS4A Grant contribution (all eligible project costs other than the SS4A Grant Amount, as described in section 3.2 table (a) of the grant agreement) or alternatives approved by the USDOT as provided in this agreement and consistent with article 3;
  - (2) a construction start date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (3) a substantial completion date for the Project or Strategy is listed in section 3.2 and the Recipient fails to meet that milestone by six months after the date listed in section 3.2;
  - (4) the Recipient fails to comply with the terms and conditions of this agreement, including a material failure to comply with the schedule in section 3.2 even if it is beyond the reasonable control of the Recipient; or,

- (5) the USDOT determines that termination of this agreement is in the public interest.
  - (6) the Recipient fails to expend the funds within 5 years after the date on which the government executes the grant agreement, which is the date funds are provided for the project.
- (b) In terminating this agreement under this section, the USDOT may elect to consider only the interests of the USDOT.
- (c) This section 16.1 does not limit the USDOT's ability to terminate this agreement as a remedy under section 15.2.
- (d) The Recipient may request that the USDOT terminate the agreement under this section 16.1.

**Closeout Termination.**

- (e) This agreement terminates on Project Closeout.
- (f) In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the award is closed out. Under 2 C.F.R. 200.344, Project Closeout should occur no later than one year after the end of the period of performance.

**Post-Termination Adjustments.** The Recipient acknowledges that under 2 C.F.R. 200.345–200.346, termination of the agreement does not extinguish the USDOT's authority to disallow costs, including costs that USDOT reimbursed before termination, and recover funds from the Recipient.

**Non-Terminating Events.**

- (g) The end of the period of performance described under section 10.4 does not terminate this agreement or the Recipient's obligations under this agreement.
- (h) The liquidation of funds under section 20.1 does not terminate this agreement or the Recipient's obligations under this agreement.

**Other Remedies.** The termination authority under this article 16 supplements and does not limit the USDOT's remedial authority under article 15 or 2 C.F.R. part 200, including 2 C.F.R. 200.339–200.340.

**ARTICLE 17**

**MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS**

**Recipient Monitoring and Record Retention.**

- (a) The Recipient shall monitor activities under this award, including activities under subawards and contracts, to ensure:

- (1) that those activities comply with this agreement; and
  - (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.
- (b) If the Recipient makes a subaward under this award, the Recipient shall monitor the activities of the subrecipient in compliance with 2 C.F.R. 200.332(d).
- (c) The Recipient shall retain records relevant to the award as required under 2 C.F.R. 200.334.

**Financial Records and Audits.**

- (d) The Recipient shall keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the project.
- (e) The Recipient shall keep accounts and records described under section 17.2(a) in accordance with a financial management system that meets the requirements of 2 C.F.R. 200.301–200.303, 2 C.F.R. part 200, subpart F, and title 23, United States Code, and will facilitate an effective audit in accordance with 31 U.S.C. 7501–7506.
- (f) The Recipient shall separately identify expenditures under the fiscal year 2022 SS4A grants program in financial records required for audits under 31 U.S.C. 7501–7506. Specifically, the Recipient shall:
- (1) list expenditures under that program separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including “FY 2022” in the program name; and
  - (2) list expenditures under that program on a separate row under Part II, Item 1 (“Federal Awards Expended During Fiscal Period”) of Form SF-SAC, including “FY 2022” in column c (“Additional Award Identification”).

**Internal Controls.** The Recipient shall establish and maintain internal controls as required under 2 C.F.R. 200.303.

**USDOT Record Access.** The USDOT may access Recipient records related to this award under 2 C.F.R. 200.337.

**ARTICLE 18 CONTRACTING AND SUBAWARDS**

**Build America, Buy America.** This award term implements § 70914(a) of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021) and Office of

Management and Budget (OMB) Memorandum M-22-11, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.”

*Requirement to Use Iron, Steel, Manufactured Products, and Construction Materials Produced in the United States.*

The Recipient shall not use funds provided under this award for a project for infrastructure unless:

- (1) all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; and
- (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

*Inapplicability.*

The domestic content procurement preference in this award term only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

*Waivers.*

When necessary, the Recipient may apply for, and the USDOT may grant, a waiver from the domestic content procurement preference in this award term.

A request to waive the application of the domestic content procurement preference must be in writing. The USDOT will provide instructions on the waiver process and on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Office of Management and Budget (OMB) Made in America Office.

When the USDOT has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the USDOT determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the



public interest;

- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

### *Definitions*

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Primarily iron or steel” means that the cost of the iron and steel content in the article, material, or supply exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

“**Project**” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

(a) Construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtitle A, 135 Stat. 429, 1294 (2021), as implemented by OMB, USDOT, and FHWA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(b) Under 2 C.F.R. 200.322, as appropriate and to the extent consistent with law, the Recipient should, to the greatest extent practicable under this award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. 200.322 in all subawards including

all contracts and purchase orders for work or products under this award.

**Small and Disadvantaged Business Requirements.** The Recipient shall expend all funds under this award in compliance with the requirements at 2 C.F.R. 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”).

**Engineering and Design Services.** The Recipient shall award each contract or sub- contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services with respect to the project in the same manner that a contract for architectural and engineering services is negotiated under 2 CFR 200.320 or an equivalent qualifications-based requirement prescribed for or by the Recipient.

**Foreign Market Restrictions.** The Recipient shall not allow funds provided under this award to be used to fund the use of any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** The Recipient acknowledges that Section 889 of Pub. L. No. 115-232, 2

C.F.R. 200.216 and 2 C.F.R. 200.471 prohibit the Recipient and all subrecipients from procuring or obtaining certain telecommunications and video surveillance services or equipment under this award.

**Recipient Responsibilities For Subawards.** If the Recipient makes a subaward under this award, the Recipient shall comply with the requirements on pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. 200.331–200.333.

#### **Subaward and Contract Authorization.**

If the USDOT Office for Subaward and Contract Authorization identified in section 5.1 is “FHWA Office of Acquisition and Grants Management,” then the Recipient shall obtain prior written approval from the USDOT agreement officer for the subaward or contracting out of any work under this agreement for Action Plan awards. This provision does not apply to the acquisition of supplies, material, equipment or general support services. That approval will be contingent upon a fair and reasonable price determination on the part of the Recipient and the agreement officer’s concurrence on that determination.

## **ARTICLE 19**

### **COSTS, PAYMENTS, AND UNEXPENDED FUNDS**

**Limitation of Federal Award Amount.** Under this award, the USDOT shall not provide funding greater than the amount obligated on the SS4A Grant cover page, Item 11, Federal Funds Obligated. The Recipient acknowledges that USDOT is not liable for payments exceeding that amount, and the Recipient shall not request reimbursement of costs exceeding that amount.

**Projects Costs.** This award is subject to the cost principles at 2 C.F.R. part 200 subpart E, including provisions on determining allocable costs and determining allowable costs.

**Timing of Project Costs.**

- (a) The Recipient shall not charge to this award costs that are incurred after the period of performance.
- (b) The Recipient shall not charge to this award costs that were incurred before the effective date of award of this agreement, unless there has been an approval pre-award costs under 2 C.F.R. 200.458. pre-award costs under 2 C.F.R. 200.458.

**Recipient Recovery of Federal Funds.** The Recipient shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if the USDOT determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this award. The Recipient shall not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by the USDOT.

**Unexpended Federal Funds.** Any Federal funds that are awarded at section 10.1 but not expended on allocable, allowable costs remain the property of the United States.

**Timing of Payments to the Recipient.** When reimbursement is used, the Recipient shall not request reimbursement of a cost before the Recipient has entered an obligation for that cost.

**Payment Method.** The USDOT may deny a payment request that is not submitted using the method identified in section 5.2.

**Information Supporting Expenditures**

- (c) If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then when requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit the SF 270 (Request for Advance or Reimbursement), shall identify the Federal share and the Recipient’s share of costs, and shall submit supporting cost detail to clearly document all costs incurred. As supporting cost detail, the Recipient shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, and travel.
- (d) If the Recipient submits a request for reimbursement that the USDOT determines does not include or is not supported by sufficient detail, the USDOT may deny the request or withhold processing the request until the Recipient provides sufficient detail.

**Reimbursement Frequency.** If the USDOT Payment System identified in section 5.2 is “DELPHI eInvoicing,” then the Recipient shall not request reimbursement more frequently than monthly.

## ARTICLE 20

### LIQUIDATION, ADJUSTMENTS, AND FUNDS AVAILABILITY

#### **Liquidation of Recipient Obligations.**

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory availability to eligible entities date, which shall be 5 years after the date on which the grant is provided.
- (b) Liquidation of obligations and adjustment of costs under this agreement follow the requirements of 2 C.F.R. 200.344–200.346.

## ARTICLE 21 AGREEMENT MODIFICATIONS

**Bilateral Modifications.** The parties may amend, modify, or supplement this agreement by mutual agreement in writing signed by the USDOT and the Recipient. Either party may request to amend, modify, or supplement this agreement by written notice to the other party.

#### **Unilateral Contact Modifications.**

- (a) The USDOT may update the contacts who are listed in sections 4.4 by written notice to all of the Recipient contacts who are listed in section 4.3.

#### **USDOT Unilateral Modifications.**

- (b) The USDOT may unilaterally modify this agreement to comply with Federal law, including the Program Statute.
- (c) To unilaterally modify this agreement under this section 21.3(a), the USDOT must provide a notice to the Recipient that includes a description of the modification and state the date that the modification is effective.

**Other Modifications.** The parties shall not amend, modify, or supplement this agreement except as permitted under sections 21.1, 21.2, or 21.3. If an amendment, modification, or supplement is not permitted under section 21.1, not permitted under section 21.2, and not permitted under section 21.3, it is void.

## ARTICLE 22

## CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

**Climate Change and Environmental Justice.** Consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad” (Jan. 27, 2021), Attachment C documents the consideration of climate change and environmental justice impacts of the Project.

## ARTICLE 23

### RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

**Racial Equity and Barriers to Opportunity.** Consistent with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (Jan. 20, 2021), Attachment D documents activities related to the Project to improve racial equity and reduce barriers to opportunity.

## ARTICLE 24

### FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

**Uniform Administrative Requirements for Federal Awards.** The Recipient shall comply with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201.

#### **Federal Law and Public Policy Requirements.**

- (a) The Recipient shall ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
- (b) The failure of this agreement to expressly identify Federal law applicable to the Recipient or activities under this agreement does not make that law inapplicable.

#### **Federal Freedom of Information Act.**

- (c) The USDOT is subject to the Freedom of Information Act, 5 U.S.C. 552.
- (d) The Recipient acknowledges that the Technical Application and materials submitted to the USDOT by the Recipient related to this agreement may become USDOT records subject to public release under 5 U.S.C. 552.

**History of Performance.** Under 2 C.F.R 200.206, any Federal awarding agency may consider the Recipient’s performance under this agreement when evaluating the risks of making a future Federal financial assistance award to the Recipient.

### **Whistleblower Protection.**

- (e) The Recipient acknowledges that it is a “grantee” within the scope of 41 U.S.C. 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.
- (f) The Recipient shall inform its employees in writing of the rights and remedies provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

### **External Award Terms and Obligations.**

- (g) In addition to this document and the contents described in article 29, this agreement includes the following additional terms as integral parts:
  - (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
  - (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
  - (3) 2 C.F.R. 175.15(b): Trafficking in Persons; and
  - (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.
- (h) The Recipient shall comply with:
  - (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
  - (2) 49 C.F.R. part 21: Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
  - (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
  - (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

**Incorporated Certifications.** The Recipient makes the statements in the following certifications, which are incorporated by reference:

- (1) Appendix A to 49 CFR part 20 (Certification Regarding Lobbying).

## **ARTICLE 25 ASSIGNMENT**

**25.1 Assignment Prohibited.** The Recipient shall not transfer to any other entity any discretion granted under this agreement, any right to satisfy a condition under this agreement, any remedy under this agreement, or any obligation imposed under this agreement.

## ARTICLE 26 WAIVER

### Waivers.

- (a) A waiver granted by USDOT under this agreement will not be effective unless it is in writing and signed by an authorized representative of USDOT.
- (b) A waiver granted by USDOT under this agreement on one occasion will not operate as a waiver on other occasions.
- (c) If USDOT fails to require strict performance of a provision of this agreement, fails to exercise a remedy for a breach of this agreement, or fails to reject a payment during a breach of this agreement, that failure does not constitute a waiver of that provision or breach.

## ARTICLE 27

### ADDITIONAL TERMS AND CONDITIONS

**Effect of Action Plan or Implementation Plan.** Based on information that the Recipient provided to the USDOT, including the Technical Application, at indicated in section 2.5, this agreement designates this award as an Action Plan award or a Implementation award, as defined in the NOFO. The Recipient shall comply with the requirements that accompany that designation on minimum award size, geographic location, and cost sharing.

**Disclaimer of Federal Liability.** The USDOT shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this agreement.

### Environmental Review

- (a) In this section, “**Environmental Review Entity**” means:
  - (1) if the Project is located in a State that has assumed responsibilities for environmental review activities under 23 U.S.C. 326 or 23 U.S.C. 327 and the Project is within the scope of the assumed responsibilities, the State; and for all other cases, the FHWA.
- (b) Except as authorized under section 27.3(c), the Recipient shall not begin final design; acquire real property, construction materials, or equipment; begin construction; or take other actions that represent an irretrievable commitment of resources for the Project unless and until:

- (1) the Environmental Review Entity complies with the National Environmental Policy Act, 42 U.S.C. 4321 to 4370m-12, and any other applicable environmental laws and regulations; and
  - (2) if the Environmental Review Entity is not the Recipient, the Environmental Review Entity provides the Recipient with written notice that the environmental review process is complete.
- (c) If the Recipient is using procedures for early acquisition of real property under 23 C.F.R. 710.501 or hardship and protective acquisitions of real property 23 C.F.R. 710.503, the Recipient shall comply with 23 C.F.R. 771.113(d)(1).
- (d) The Recipient acknowledges that:
- (1) the Environmental Review Entity's actions under section 27.3(a) depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to the Environmental Review Entity; and
  - (2) applicable environmental statutes and regulation may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.
- (e) Consistent with 23 C.F.R. 771.105(a), to the extent practicable and consistent with Federal law, the Recipient shall coordinate all environmental investigations, reviews, and consultations as a single process.
- (f) The activities described in this agreement may inform environmental decision-making processes, but the parties do not intend this agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align information in this agreement, then:
- (1) the parties may amend this agreement under section 21.1 for consistency with the selected build alternative; or
  - (2) if the USDOT determines that the condition at section 16.1(a)(5) is satisfied, the USDOT may terminate this agreement under section 16.1(a)(5).

The Recipient shall complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project.

**Railroad Coordination.** If the agreement includes one or more milestones identified as a "Railroad Coordination Agreement," then for each of those milestones, the Recipient shall enter a standard written railroad coordination agreement, consistent with 23 C.F.R. 646.216(d), no later than the deadline date identified for that milestone, with the identified railroad for work and operation within that railroad's right-of-way.



### **Relocation and Real Property Acquisition.**

- (g) The Recipient shall comply with the land acquisition policies in 49 C.F.R. part 24 subpart B and shall pay or reimburse property owners for necessary expenses as specified in that subpart.
- (h) The Recipient shall provide a relocation assistance program offering the services described in 49 C.F.R. part 24 subpart C and shall provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24 subparts D–E.
- (i) The Recipient shall make available to displaced persons, within a reasonable period of time prior to displacement, comparable replacement dwellings in accordance with 49 C.F.R. part 24 subpart E.

### **Equipment Disposition.**

- (j) In accordance with 2 C.F.R. 200.313 and 1201.313, if the Recipient or a subrecipient acquires equipment under this award, then when that equipment is no longer needed for the Project that entity shall request disposition instructions from the FHWA.
- (k) In accordance with 2 C.F.R. 200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. 200.313–200.316 and 2 C.F.R. 1201.313.
- (l) The Recipient shall ensure compliance with this section 27.6 for all tiers of subawards under this award.

## **ARTICLE 28 MANDATORY AWARD INFORMATION**

### **Information Contained in a Federal Award.** For 2 C.F.R. 200.211:

- (1) the “Federal Award Date” is the date of this agreement, as defined under section 30.2;
- (2) the “Assistance Listings Number” is 20.939 and the “Assistance Listings Title” is “Safe Streets and Roads for All Grant Program”; and
- (3) this award is not for research and development.

## **ARTICLE 29 CONSTRUCTION AND DEFINITIONS**

**Attachments.** This agreement includes the following attachments as integral parts: Attachment A  
Performance Measurement Information

Attachment B	Changes from Application
Attachment C	Racial Equity and Barriers to Opportunity Attachment D
	Climate Change and Environmental Justice Impacts
Attachment E	Labor and Workforce
Attachment F	Critical Infrastructure Security and Resilience

**Exhibits.** The following exhibits, which are in the document titled “Exhibits to FHWA Grant Agreements Under the Fiscal Year 2022 SS4A Grant Program”, dated February 8, 2023, and available at [URL to be inserted when posted online], are part of this agreement.

Exhibit A	Applicable Federal Laws and Regulations
Exhibit B	Additional Standard Terms
Exhibit C	Quarterly Project Progress Reports and Recertifications: Format and Content
Exhibit D	Form for Subsequent Obligation of Funds

**Construction.** If a provision in the exhibits or the attachments conflicts with a provision in articles 1–30, then the provision in articles 1–30 prevails. If a provision in the attachments conflicts with a provision in the exhibits, then the provision in the attachments prevails.

**Integration.** This agreement constitutes the entire agreement of the parties relating to the SS4A grant program and awards under that program and supersedes any previous agreements, oral or written, relating to the SS4A grant program and awards under that program.

**Definitions.** In this agreement, the following definitions apply:

“**Program Statute**” means the BIL section 24112 and statutory text under the heading “Safe Streets and Roads for All Grants” in title I of division J of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (November 15, 2021), and all other provisions of that act that apply to amounts appropriated under that heading.

“**Project**” means the project proposed in the Grant Application, as modified by the negotiated provisions of this agreement, including article 3 and Attachments A–D.

“**SS4A Grant**” means an award of funds that were made available under the NOFO.

“**Grant Application**” means the application identified in section 2.1, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

## ARTICLE 30

### AGREEMENT EXECUTION AND EFFECTIVE DATE

**Counterparts.** This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

**Effective Date.** The agreement will become effective when all parties have signed it. The date of this agreement will be the date this agreement is signed by the last party to sign it. This instrument constitutes a SS4A Grant when the USDOT’s authorized representative signs it.

APPENDIX A-1.

U.S. DEPARTMENT OF TRANSPORTATION EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE FISCAL  
YEAR 2022 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

**U.S. DEPARTMENT OF TRANSPORTATION**

**EXHIBITS TO FHWA GRANT AGREEMENTS UNDER THE  
FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL GRANT  
PROGRAM**

**February 8, 2023**

## **EXHIBIT A**

### **APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into this agreement for a FY 2022 Safe Streets and Roads for All Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

#### **General Federal Legislation**

Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.

Hatch Act – 5 U.S.C. 1501, et seq.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.

National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108

Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.

Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.

Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. 7401, et seq.

Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344

Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. 1536

Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. 1451, et seq.

Flood Disaster Protection Act of 1973 - Section 102(a) – 42 U.S.C. 4012a

Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.

American Indian Religious Freedom Act, P.L. 95-341, as amended

Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended – 42 U.S.C. 4541, et seq.

Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2

Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.

Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 – 42 U.S.C. 8373

Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.

Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145

National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.

Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.

Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376

Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.

Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.

Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687

Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794

Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.

Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C. 1101 -1104, 541, et seq.

Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352

Freedom of Information Act – 5 U.S.C. 552, as amended

Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855

Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.

Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.

ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.

Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525

Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.

mm. Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26

Wilderness Act – 16 U.S.C. 1131-1136

Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.

Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.

The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)

Cargo Preference Act of 1954 – 46 U.S.C. 55305 Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

## **Executive Orders**

Executive Order 11246 – Equal Employment Opportunity

Executive Order 11990 – Protection of Wetlands

Executive Order 11988 – Floodplain Management

Executive Order 12372 – Intergovernmental Review of Federal Programs

Executive Order 12549 – Debarment and Suspension

Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency

Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers

Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

## **General Federal Regulations**

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201

Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200

Investigative and Enforcement Procedures – 14 C.F.R. Part 13

Procedures for predetermination of wage rates – 29 C.F.R. Part 1

Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3

Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R.

Part 5

Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41

C.F.R. Parts 60, et seq.

New Restrictions on Lobbying – 49 C.F.R. Part 20

Nondiscrimination in Federally Assisted Programs of the Department of Transportation –

Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21

Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27

DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R.

Part 35

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28

Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30

Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49

C.F.R. Part 32

DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49

C.F.R. Parts 37 and 38

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)

### **Office of Management and Budget Circulars**

Any applicable OMB Circular based upon the specific FY 2022 Safe Streets and Roads for All Grant Recipient.

### **Highway Federal Legislation**

Agreements relating to the use of an access to rights-of-way—Interstate System, 23

U.S.C. 111

Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)

Tolls, 23 U.S.C. 301 (to the extent the recipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.

Efficient Environmental Reviews - 23 U.S.C. 139



Policy on lands, wildlife and waterfowl refuges, and historic sites - 49 U.S.C. 303

### **Federal Highway Regulations**

Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)

National Highway System Design Standards – 23 C.F.R. Part 625

Location and Hydraulic Design of Encroachments on Flood Plains – 23 C.F.R. Part 650 Subpart A

Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655

Length, Width and Weight Limitations – 23 C.F.R. Part 658

Environmental Impact and Related Procedures – 23 C.F.R. Part 771

Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) – 23 C.F.R. Part 774

Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122

Specific assurances required to be included in the FY 2022 Safe Streets and Roads for All Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

**EXHIBIT B ADDITIONAL STANDARD TERMS**

## **TERM B.1 TITLE VI ASSURANCE**

**(Implementing Title VI of the Civil Rights Act of 1964, as amended)**

### **ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

### **The United States Department of Transportation (USDOT)**

#### **Standard Title VI/Non-Discrimination Assurances**

#### **DOT Order No. 1050.2A**

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 Safe Streets and Roads for All (SS4A) grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), it is subject to and will comply with the following:

#### **Statutory/Regulatory Authorities**

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);

28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

#### **General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2022 SS4A grant program:

The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23

(b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2022 SS4A Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*

The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

the period during which the Recipient retains ownership or possession of the property.

The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. You must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2022 SS4A grant program. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2022 SS4A grant program.

## APPENDIX A

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:

**Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally- assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

**Solicitations for Subcontracts, 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 will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

**Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

**Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

withholding payments to the contractor under the contract until the contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.

**Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

**NOW, THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), 49

U.S.C. § 6702, the Regulations for the Administration of FY 2022 SS4A grant program, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that

(1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)



## APPENDIX C

### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

### **CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49

C.F.R. Parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

## **TERM B.2**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**

#### **2 C.F.R. Parts 180 and 1200**

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2022 SS4A grant program, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2022 SS4A Grant, as set out below.

#### **Instructions for Certification – First Tier Participants:**

The prospective first tier participant is providing the certification set out below.

The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, 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;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

The prospective lower tier participant is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:**

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



### TERM B.3

#### REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328 (Dec. 29, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

**Definitions.** For the purposes of this exhibit, the following definitions apply:

**“Covered Transaction”** means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

**“Felony Conviction”** means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

**“Participant”** means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

**“Tax Delinquency”** means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.

**Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

Certify whether the entity has a Tax Delinquency; and

Certify whether the entity has a Felony Conviction.

4 **Prohibition.** If the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;

an entity provides an affirmative response to either certification in section 3; or

an entity's certification under section 3 was inaccurate when made or became inaccurate after being made then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

**Mandatory Notice to the USDOT.**

If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.

If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.

If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

**Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

require the SAM check in section 2;

require the certifications in section 3;

include the prohibition in section 4; and

require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

## TERM B.4

### RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

*Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

*Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While

Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to: adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

*Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

## EXHIBIT C

### QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS: FORMAT AND CONTENT

**Purpose.** The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2022 SS4A grant program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.

**Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the USDOT, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and the USDOT. Some projects will have a more extensive quarterly status than others. For smaller projects, the USDOT may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.

**Project Overall Status.** This section provides an overall status of the project's scope, schedule and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.

**Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.

**Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

**Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.

**Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate

format to be agreed upon between the Recipient and the USDOT. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

Current overall project completion percentage vs. latest plan percentage.

Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.

Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

**Project Cost.** An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.

Transfer of costs to and from contingency line items, and reasons supporting the transfers.

Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.

Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.

Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

**Federal Financial Report (SF-425).** The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Project Progress and Monitoring Report. The form is available at <https://www.grants.gov/forms/post-award-reporting-forms.html>.

**Certifications.**

A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, Subpart F (Audit Requirements).

The certification required under 2 C.F.R. 200.415(a).

**EXHIBIT D**

**FORM FOR SUBSEQUENT OBLIGATION OF FUNDS**

The USDOT and **[recipient name]** entered a grant agreement for the **[project name]** that was executed by the USDOT on **[date of USDOT signature on original agreement]** (the “Agreement”).

This instrument obligates **[\$XXX]** for **[insert portion of project listed in the Agreement]**.

**[Recipient name]** states that:

- (1) the Agreement accurately describe the Project’s activities;
- (2) for each completion date listed in the Agreement, the Recipient’s estimate for that milestone is not more than six months after the date listed in the Agreement;
- (3) comparing the Project’s current budget with the amounts listed in the Agreement, the “Non-Federal Funds” amount has not decreased and the total eligible project costs amount has not decreased; and
- (4) under the terms of article 21 of the General Terms and Conditions, the Recipient is not presently required to request a modification to the Agreement.

**[Recipient name]** acknowledges that USDOT is acting in reliance on the Recipient’s statements above.

\_\_\_\_\_ By: \_\_\_\_\_  
Date Signature of Recipient’s Authorized Representative

\_\_\_\_\_  
Name **[insert name]**

**[insert title]**  
\_\_\_\_\_  
Title



The USDOT has determined that all applicable Federal requirements for obligating these funds are satisfied.

\_\_\_\_\_ By: \_\_\_\_\_  
Date Signature of USDOT's Authorized Representative

**[insert name]**

APPENDIX B

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).

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

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

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

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (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 B-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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
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 C-1

SAMPLE MASTER SERVICES AGREEMENT

SAMPLE ONLY, SUBJECT TO CHANGE

This Planning Professional Services Master Services Agreement (the “Agreement”) is by and between XXXXXXXXXX, a foreign business corporation authorized to do business in the State of New York, with its principal offices located XXXXXXXXXXXXXXXXXXXX, hereinafter called the “Vendor,” and **ONEIDA COUNTY**, a municipal corporation existing and organized under the laws of the State of New York, whose principal place of business is 800 Park Avenue, Utica, New York, hereinafter called the “County.” This Agreement includes any current or future statement(s) of work (the “SOW”) on the form attached hereto as Exhibit “A,” and executed by each party, and all such documents are incorporated by this reference.

The Vendor provides XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Professional Services, as hereinafter defined, related to **RFP Number XXXXXXXX, Oneida County “XXXXXXXXXXXXXXXXXXXX,”** attached hereto and incorporated herein as Exhibit “B.” The parties have agreed that the Vendor will provide such Professional Services as the parties may agree, now and pursuant to future SOWs. Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

**1. PROFESSIONAL SERVICES.**

- 1.1. Professional Services. The Vendor shall provide to the County the following services, as requested, and as provided for in the Vendor’s Proposal, a copy of which is attached hereto as Exhibit “C.” Any and all of these services shall hereinafter be referred to, collectively, as the “Professional Services.”
  - (a) *Service Categories.* The services constituting Professional Services within the meaning of this Agreement shall include, but not be limited to, a variety of media development and digital and internet-based advertising services to assist the County’s departments in their recruitment efforts, along with any services incidental to or in support of those services.
  - (b) *Multiple Vendors.* The County reserves the right to utilize as many different vendors as it, in its sole discretion, determines to be necessary for the performance of any individual Professional Service. The Vendor hereby acknowledges that it is aware of this, and it understands and acknowledges that the County is not guaranteeing any minimum number of hours the Vendor will be utilized, nor is the County making any promises as to the exclusivity of the assignment of the Vendor to any Professional Service.
- 1.2. Provision of Professional Services. The Vendor will provide the services as set forth in each SOW, and the County will provide any assistance and cooperation necessary or convenient to facilitate the Professional Services called for in any SOW. The process for submission and approval of an SOW is as follows:
  - (a) *Negotiation.* The Vendor and the County shall negotiate the Professional Services to be completed by the Vendor, based upon the needs of the County.
  - (b) *Quote & Proposed SOW.* Once the negotiations have been completed, the Vendor shall submit a detailed quote and proposed SOW to the County. The form of the proposed SOW shall conform to that of the aforementioned Exhibit “A,” attached hereto. A sample quote has been attached to this Agreement as Exhibit “D.” The quote and/or the proposed SOW

shall include a detailed description of the materials to be used, the nature of the labor to be provided (along with the rates thereof), and a statement declaring what subcontractors the Vendor intends to utilize in the performance of the work covered by the proposed SOW. If the quote and proposed SOW are unacceptable to the County, for any reason, further negotiations may be conducted.

- (c) *Signed SOW & Purchase Order.* If the quote and proposed SOW are acceptable to the County, the County shall execute the SOW, and shall return a signed copy of the SOW to the Vendor along with a purchase order.
- (d) *Performance of Work.* Once the signed SOW and purchase order have been received, the Vendor shall begin to perform the Professional Services covered by the SOW. Under no circumstances is any work to be undertaken without a signed SOW. The Vendor agrees and hereby acknowledges that any expenditures or costs incurred by the Vendor prior to their receipt of a signed SOW are undertaken entirely at their sole risk and expense.
- (e) *Certificate of Completion.* At the completion of all the Professional Services called for in a signed SOW, the Vendor shall provide the County with a certificate of completion, signed by a representative of the Vendor. A sample of this certificate of completion is attached hereto as Exhibit "E." Once the County has ensured that the work covered by the SOW has been completed to its satisfaction, the County shall also sign the certificate of completion, returning a fully executed copy to the Vendor.

### 1.3. Deliverables.

- (a) *Acceptance & Rejection.* Any software or other deliverable created pursuant to any Professional Services (the "Deliverables") will be considered accepted (the "Acceptance") (a) when the County provides Vendor written notice of acceptance or (b) thirty (30) days after delivery, if the County has not first provided the Vendor 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 in the applicable SOW and only via written notice setting forth the nature of such deviation. In the event of such rejection, the Vendor 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 1.3(a).
- (b) *License to Deliverables.* Effective upon Acceptance of each Deliverable, the Vendor grants the County a nonexclusive, fully paid, royalty-free license to reproduce, modify, and use such Deliverable as necessary for the County's internal business purposes, provided the County complies with the restrictions set forth below in Subsection 1.3(c).
- (c) *Restrictions on Deliverables Rights.* The County will not distribute, publicly display, publicly perform, or sublicense any Deliverables (including without limitation any derivative work thereof). The Vendor retains ownership of all Deliverables, and the County receives no right, title, or interest in or to Deliverables except as specifically set forth in Subsection 1.3(b) above.

## **2. FEES & REIMBURSEMENT.**

- 2.1. Payment. The County will pay Vendor the fees as set forth in each SOW and shall reimburse such expenses as the Vendor reasonably incurs in the provision of the Professional Services.
- 2.2. Vouchers. Such payment shall be made by the County after receipt of vouchers presented by the Vendor 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.

**3. CONFIDENTIAL INFORMATION.** "Confidential Information" refers to the following items that one party to this Agreement (the "Discloser") discloses to the other (the "Recipient"): (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.

- 3.1. Nondisclosure. The Recipient will not use Confidential Information for any purpose other than to facilitate the Professional 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 Article 2.1; 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.
- 3.2. Injunction. The Recipient agrees that breach of this Article 2.1 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.
- 3.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 3.1 above (*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.

- 3.4. 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.
- 3.5. 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:
  - (a) *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.
  - (b) *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.

#### **4. HIPAA DISCLOSURES**

- 4.1. HIPAA Assurances. In the event Vendor 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), Vendor shall:
  - (a) 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;
  - (b) Not use or further disclose the PHI, except as permitted by law;
  - (c) Not use or further disclose the PHI in a manner that had the County done so, would violate the requirements of HIPAA;
  - (d) 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;
  - (e) Comply with each of the applicable requirements of 45 C.F.R. Part 162 if the Vendor conducts standard transactions for or on behalf of the County;

- (f) Report promptly to the County any security incident or other use or disclosure of PHI not provided for by this Agreement of which Vendor becomes aware;
- (g) Ensure that any subcontractors or agents who receive or are exposed to PHI (whether in electronic or other format) are explained the Vendor's obligations under this paragraph and agree to the same restrictions and conditions;
- (h) Make available PHI in accordance with the individual's rights as required under the HIPAA regulations;
- (i) 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;
- (j) 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
- (k) 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.

4.2. Termination Upon Breach of Provisions. Notwithstanding any other provision of this Agreement, the County may immediately terminate this Agreement if it determines that the Vendor breaches any term in this Section. Alternatively, the County may give written notice to the Vendor in the event of a breach and give the Vendor five (5) business days to cure such breach. The County shall also have the option to immediately stop all further disclosures of PHI to the Vendor if the County reasonably determines that the Vendor has breached its obligations under this Section. In the event that termination of this Agreement is not feasible, the Vendor 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.

4.3. Return or Destruction of Protected Health Information upon Termination. Upon the termination of this Agreement, unless otherwise directed by the County, the Vendor shall either return or destroy all PHI received from the County or created or received by the Vendor on behalf of the County in which the Vendor maintains in any form. The Vendor shall not retain any copies of such PHI. Notwithstanding the foregoing, in the event that the Vendor determines that returning or destroying the Protected Health Information is infeasible upon termination of this Agreement, the Vendor shall provide to the County notification of the condition that makes return or destruction infeasible. To the extent that it is not feasible for the Vendor 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 the Vendor maintains such Protected Health Information.

4.4. 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.

- 4.5. Amendment. The Vendor 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.
- 4.6. 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.
- 4.7. Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them as outlined in HIPAA and its related regulations.
- 4.8. Survival. The obligations imposed by this Agreement shall survive any expiration or termination of this Agreement.

## **5. REPRESENTATIONS & WARRANTIES.**

- 5.1. From Vendor. The Vendor represents and warrants: (a) that all Professional Services will be performed in a professional and workmanlike manner; and (b) that all Deliverables will conform to their specifications set forth in the applicable SOW for a period of three (3) years following Acceptance (as defined in Subsection 1.3(a) above). In the event of a breach of either warranty in this Section 5.1, the Vendor, at its own expense, will promptly re-perform the Professional Services or repair and redeliver the Deliverable in question.
- 5.2. 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.
- 5.3. Warranty Disclaimers. Except as set forth above in this Article 4, the Vendor PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL BE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

## **6. INDEMNIFICATION.**

- 6.1. From Vendor. The Vendor will defend and indemnify the County and the County's Associates (as defined below in Section 6.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) direct infringement of any patent, copyright, trade secret, or other intellectual property right by

any Deliverable; or (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 the Vendor or of any of its agents, subcontractors, or employees. The Vendor's obligations set forth in Subsection 6.1(a) above do not apply to the extent that an Indemnified Claim arises out of: (i) the County's breach of this Agreement; (ii) revisions to the Deliverable made without the Vendor's written consent; (iii) the County's failure to incorporate updates or upgrades that would have avoided the alleged infringement, provided Vendor offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (iv) the Vendor's design or modification of the Deliverable in compliance with specifications provided by the County; or (v) use of the Deliverable in combination with hardware or software not provided by the Vendor, unless (A) the SOW, or other documentation provided by the Vendor 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). The Vendor's obligations set forth in Subsection 6.1(b) above do not apply to the extent that an Indemnified Claim arises out of the County's breach of this Agreement.

- 6.2. From County. The County will indemnify and defend the Vendor and the Vendor's Associates (as defined below in Section 6.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to 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 the County or of any of its agents, subcontractors, or employees. Indemnified Claims listed in Subsection 6.2 above include, without limitation: (i) claims by any of the County's employees, contractors, or other users (collectively, "Users"); and (ii) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information. Indemnified Claims listed above in Section 6.2 do not include any claim that would constitute an Indemnified Claim pursuant to Section 6.1(a) above.
- 6.3. Litigation & Additional Terms. The obligations of the indemnifying party (the "Indemnitor") pursuant to Section 6.1 or 6.2 above: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Indemnitor's expense and payment of judgments; and (b) will be excused to the extent that the other contracting party's ("Indemnified Party's") or any of such Indemnified Party's Associates' failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (A party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

## **7. INSURANCE**

- 7.1. The Vendor 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.



- (a) Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate.
    - (i) 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.
    - (ii) 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).
  - (b) Workers' Compensation and Employer's Liability: Statutory limits apply.
  - (c) 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. (An umbrella or excess liability policy may be utilized to attain these PL limits).
    - (i) The County and any other parties required by the County shall be included as additional insureds. PL 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).
- 7.2. Waiver of Subrogation: the Vendor waives all rights against the County and their 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.
- 7.3. Certificates of Insurance: Prior to the start of any work, the Vendor 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 the Vendor'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.

## **8. LIMITATION OF LIABILITY.**

- 8.1. Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 8.2. Exclusions. This Article 8.2 does not apply to: (a) claims pursuant to Article 3 (*Confidential Information*) or Article 6 (*Indemnification*) of this Agreement; or (b) claims for attorneys' fees or other litigation costs the County becomes entitled to recover as a prevailing party in any action.

## **9. TERM & TERMINATION.**

- 9.1. Term. The term of this Agreement will commence on the 10<sup>th</sup> day of November, 2020 (the “Effective Date”) and continue for an initial term of six (6) months. Up to two (2) renewal terms of one (1) year each will be considered upon the mutual written agreement of the parties.
- 9.2. 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.
- 9.3. Termination for Convenience. The County may terminate this Agreement for convenience upon 30 days’ advance written notice. On the date of such termination, County will pay Vendor for those services provided up to the date of such written termination.
- 9.4. Survival. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of County to pay fees incurred before termination; (b) Articles and Sections 1.3(c) (*Restrictions on Deliverables Rights*), 3 (*Confidential Information*), 5.3 (*Warranty Disclaimers*), 6 (*Indemnification*), 8 (*Limitation of Liability*), and 11.1 (*Feedback*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

## **10. INDEPENDENT CONTRACTORS**

- 10.1. It is expressly agreed that the relationship of the Vendor to the County shall be that of an independent contractor. None of the Vendor’s officers, agents, directors or employees shall be considered employees of the County for any purpose, including, but not limited to, claims for unemployment insurance, workers’ compensation, retirement, or health benefits. The Vendor, in accordance with the Vendor’s status as an independent contractor, covenants and agrees that none of the Vendor’s officers, agents, directors and employees will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the County by reason thereof, and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- 10.2. The Vendor warrants and represents it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Vendor and the County agree that the Vendor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
- 10.3. None of the Vendor’s officers, agents, directors or employees shall be eligible for compensation from the County due to illness, absence due to normal vacation, absence due to attendance at school or special training, or a professional convention or meeting.
- 10.4. The Vendor acknowledges and agrees that none of its officers, agents, directors or employees shall be eligible for any County employee benefits, including retirement membership credits.

- 10.5. The Vendor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Vendor under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Vendor's form of business organization. With respect to the Vendor's officers, agents, directors and employees, this responsibility shall include payroll deductions, workers' compensation insurance, and provision of health insurance, where required. The County shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Vendor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
- 10.6. The Vendor will indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- 10.7. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Vendor's independent contractor status, it is agreed that both the County and the Vendor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- 10.8. The Vendor agrees to comply with federal and state laws, as supplemented, with the United States Department of Labor regulations, and any other regulations of any federal and state entities relating to such employment and civil rights requirements.

## **11. MISCELLANEOUS.**

- 11.1. Feedback. The Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that the County or any user provides to the Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict the Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting the County or the User in question. Notwithstanding the provisions of Article 3 above, Feedback will not be considered Confidential Information, provided that information that the County transmits with Feedback, or is related to Feedback, may be considered Confidential Information. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)
- 11.2. Notices. Notices pursuant to this Agreement will be sent 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.
- (a) *For the Vendor:*
- (b) *For the County:* Oneida County Commissioner of Personnel, 800 Park Avenue, Utica, NY 13501 ***and***  
Oneida County Attorney, 800 Park Avenue, Utica, NY 13501

- 11.3. 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, other acts of God or of nature, 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.
- 11.4. Subcontractors. The Vendor shall not subcontract any work to be performed under this Agreement without the prior written consent of the County, and any permitted subcontractor shall agree, in writing, to be bound by the terms of this Agreement as if it were the Vendor under this Agreement. The Vendor shall be responsible to the County for any failure by any subcontractor to comply with the terms of this Agreement.
- 11.5. Assignment & Successors. The Vendor 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 Section 11.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 11.6. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.7. 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.
- 11.8. 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 parties' 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 Section 10.8 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 11.9. Conflicts. In the event of any conflict among any of the Exhibits to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; and (2) any SOW, with more recent SOW's taking precedence over later ones.
- 11.10. 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.
- 11.11. 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, Addendum I (Standard Oneida County Conditions). 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.

- 11.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 11.13. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.
- 11.14. 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.
- 11.15. 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.
- 11.16. Assignment. No party may assign this Agreement, or any part hereof, or any rights hereunder, without the written advance consent of all parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

**COUNTY OF ONEIDA**

**XXXXXXXXXXXXXX**

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: **Anthony J. Picente, Jr.**

Name:

Title: **Oneida County Executive**

Title:

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

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

Approved

\_\_\_\_\_

Assistant County Attorney

**EXHIBIT A**

**STATEMENT OF WORK NUMBER \_\_\_\_**

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

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

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

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

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

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

\_\_\_\_\_  
**CUSTOMER**

\_\_\_\_\_  
**VENDOR**

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

(signature)

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

(signature)

Name: \_\_\_\_\_

(print)

Name: \_\_\_\_\_

(print)

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

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

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

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



## APPENDIX D

### List of Documents Requiring Understanding or Compliance

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

- FHWA Planning and Environmental Linkages (PEL) Program
- National Roadway Safety Strategy (NRSS), Safe System Approach
- Highway Safety Improvement Program (HSIP)
- PROWAG- Public Right of Way Accessibility Guidelines
- Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619)
- Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009)
- Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative
- Justice40 Initiative
- A Policy on Design Standards - Interstate System, AASHTO
- A Policy on Geometric Design of Highways and Streets, AASHTO New York State Highway Safety Plan (NYSHSP)
- Manual of Uniform Traffic Control Devices (MUTCD) with New York State Supplement
- New York State Pedestrian Safety Action Plan (NYPSAP)
- New York State NEVI Plan
- NYS Highway Safety Strategic Plan (Governor's Traffic Safety Committee)
- NYS DOT Safety Investigation Procedures Manual (also known as the Yellow Book)
- Highway Design Manual
- Annual Report titled "Update of Accident Costs"
- Annual Report titled "Update of Accident Reduction Factors and Average Accident Rates"
- NYS DOT Procedures for Locally Administered Federal Aid Projects
- NYS DOT Project Development Manual
- NYS DOT Right Of Way Mapping Procedure Manual
- NYS DOT Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right of Way
- NYS Environmental Quality Review Act (Environmental Conservation Law Article 8) and accompanying regulations (6 NYCRR Part 617)
- Design Consultant Manual
- Standard Specifications for Construction and Materials
- Engineering Instructions and Directives
- TRNS\*PORT Estimator User's Guide
- The Environmental Manual (TEM)
- Environmental Procedures Manual
- HOCTC Long-Range Transportation Plan - Going Places 2040
- HOCTC Environmental Justice Analysis 2021
- HOCTC Electric Vehicle Charging Station Plan