

Request for Proposals for Professional Planning Services

RFP 2021-304

Community & Transportation Planning Services for the
Oneida County Main Streets Program
and
the Local Transportation Planning Assistance Program for the
Herkimer-Oneida Counties Transportation Council



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1. Introduction

The Oneida County Department of Planning and the Herkimer-Oneida Counties Transportation Council (HOCTC), as the Metropolitan Planning Organization, is requesting proposals from qualified community and transportation planning consultants to deliver two separate programs.

The Oneida County Main Streets Program is an initiative from the office of the Oneida County Executive and is based on the goal of supporting local municipalities as a mechanism to strengthen Oneida County as a whole. The principle objectives include providing support to local municipalities' downtown development to aid recovery of the local economy and to assist in the redesign of local main streets to be equitable, safe, and accessible for users of all ages and abilities utilizing all modes of travel.

The Local Transportation Planning Assistance Program is integrated into the Unified Planning Work Program of the HOCTC. The goal is to provide direct technical planning assistance to member municipalities to help further transportation planning. The principal objective is to ensure transportation investments are consistently planned, programmed, designed, operated, and maintained with all roadway users in mind.

The objective of this RFP is to select a qualified consultant to enter into an agreement to perform the two work programs described herein. A joint venture of firms or a single firm for all or part of the tasks described is acceptable to accomplish the anticipated scope of work outlined.

2. Oneida County & Herkimer-Oneida Counties Transportation Council Overview

Oneida County, NY, along with neighboring Herkimer County to the east, is home to the Utica urbanized area situated between Syracuse (approximately 50 mi. to the west) and Albany (roughly 80 mi. to the east). According to a 2020 U.S. Census count, Oneida County has a population of 232,125. The region's population centers are oriented primarily along the east-west Mohawk River Valley corridor, stretching from Rome in the west to Little Falls in the east. Oneida County contains 45 municipalities (3 cities, 16 villages, and 26 towns).

The Oneida County Department of Planning (OC Planning) staff serves as the staff of the Herkimer-Oneida Counties Comprehensive Planning Program (HOCCPP) and HOCTC collectively referred to herein as *Planning Staff*. Planning activities are conducted at both the county and regional levels with extensive local assistance provided to the area's cities, towns, and villages.

The HOCTC is the Metropolitan Planning Organization (MPO), charged with carrying out the federally required continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for Oneida and Herkimer counties.

3. Programs Overview and Background

The OC Planning/HOCTC is currently carrying out two transportation planning programs:

- Oneida County Main Streets Program
- HOCTC Local Transportation Planning Assistance Program

3.A. Oneida County Main Streets

The Oneida County Main Streets (Main Streets) program provides county-level support to local municipalities pursuing streetscape improvement projects in their downtowns. This program assists in the redesign of local main streets to achieve equitable and safe access for people of all ages and abilities. The Main Streets program accommodates all modes of travel and supports local businesses by facilitating pedestrian and bicycle safety enhancements, climate-smart investments, and placemaking in key areas.

There is no singular design format for the Main Streets project for local communities. Main Streets projects in rural hamlets, villages, and townships will look different from those found in larger cities. It is essential that each community responds to the unique needs of its residents as they design the Main Streets project.

The Main Streets program requires foundational elements reflective of current best practices in public realm design. Foundational elements include walking accommodations, bicycling accommodations, green space and public space, business accommodations, and placemaking. The redesign of main streets is aimed at creating equitable, safe, and accessible areas for all ages and abilities utilizing all modes of travel. Additional information regarding the program is located at <https://ocgov.net/planning>.

The Main Streets Program is being funded by Oneida County through the CARES Recovery Act funds to support local rebuilding post-Covid-19 Pandemic. The Main Streets program has a fixed budget of \$500,000 for planning services for the duration of the contract, with no cap on the number of individual projects. Oneida County would like to see all Main Streets plans completed within 18 calendar months from the date of contract execution.

3.B. Local Transportation Planning Assistance Program

The Local Transportation Planning Assistance Program (LTPAP) provides access to transportation planning and engineering expertise for local transportation projects. As part of this program, HOCTC is funding two transportation projects identified by its planning committee. To support this initiative, HOCTC is seeking professional transportation planning consulting services to assist municipalities, agencies, and HOCTC's staff on two complete streets projects: City of Rome (W Chestnut St.) and Town of New Hartford (Kellogg Rd.).

The studies are being funded by the HOCTC through HOCTC 2021-22 LTPAP. The study has a fixed budget of \$110,000 for consultant services. HOCTC would like to see this study completed within 12 calendar months from the date of contract execution.

4. Program Goals

4.A. Oneida County Main Streets

- 4.A.1 Provide planning and design support to local municipalities' downtown development projects seeking to improve key transportation corridors and business districts
- 4.A.2 Facilitate equitable access for all users including those of all ages and abilities

- 4.A.3 Safely accommodate various travel modes including walking, biking, and driving

4.B. *Local Transportation Planning Assistance Program*

- 4.B.1 To provide access to transportation planning and engineering expertise (on an as-needed basis), for eligible local transportation projects and proposals that are consistent with HOCTC goals.

5. Scope of Work

5.A. *Oneida County Main Streets*

- 5.A.1. Work with various local municipalities within Oneida County to develop plans and site designs that incorporate local priorities, respond to existing conditions, and are reflective of community vision
- 5.A.2. Implement best practices related to transportation safety, streetscape design, and creative placemaking throughout plans and site designs
- 5.A.3. Utilize strategies to support, maintain or expand commercial activity in the improvement district while minimizing disruptions to business activity during construction and upon project completion
- 5.A.4. Accommodate existing and emerging transportation modes and technologies of interest to the municipality feature such modes across planning and design work
- 5.A.5. Incorporate design elements aligned with current best practices in streetscape redesign in each of the following required categories of Oneida County Main Streets:
 - 5.A.5.i. Street markings (delineating areas for motor vehicle traffic, parking, bicycle routes, pedestrian crossings, etc.)
 - 5.A.5.ii. Pedestrian and sidewalk enhancements
 - 5.A.5.iii. Greenspace, landscaping, and green infrastructure
 - 5.A.5.iv. Signage and wayfinding
 - 5.A.5.v. Lighting
- 5.A.6. Develop plans, concepts, designs, reports, presentations, and/or conduct public engagement activities in support of program goals and project specifications provided by local municipalities and Planning Staff, including tasks such as:
 - 5A.6.i. Conducting safety assessments
 - 5A.6.ii. Identifying and visually communicating (via mapping, imagery, diagrams, infographics, etc.) infrastructure needs
 - 5A.6.iii. Developing streetscape designs that address identified needs
 - 5A.6.iv. Developing cost estimates for addressing infrastructure gaps
 - 5A.6.v. Assisting with applications for funding projects
 - 5A.6.vi. Implementing demonstrations and pilot projects

5.B. *Local Transportation Planning Assistance Program*

5.B.1 Complete Streets Study for Chestnut Street, City of Rome

The City of Rome, New York, has requested assistance from the HOCTC to acquire professional services for a Complete Streets Study for Chestnut Street, from Turin Road (State Route 26) to Black River Boulevard (State Route 46), including Merrick Road in its entirety, and the Potter Road Truck Route. This scope is intended to perform a Complete Streets Study of Chestnut Street and Merrick Road, from the Merrick Road northern terminus to Black River Boulevard (State Route 46). In addition, Chestnut Street is heavily used by trucks. The City is considering upgrading Potter Road, which is located slightly north so that it will function and be posted as a designated truck route. This study includes evaluating Potter Road roadway section and pavement structure and determines possible upgrades, which includes the intersections with Turin Road (State Route 26) and Ridge Mills Road (State Route 46).

The Complete Streets portion of the study will analyze the existing conditions and identify alternatives to provide for safe, attractive, and comfortable access and travel for all users of the road. Using a Complete Streets design approach, the study will consider the convenient access and mobility on the road network for motorists, pedestrians, bicyclists, and public transportation users.

5.B.2 Safety & Complete Streets Study Kellogg Road, Town of New Hartford

Kellogg Road (Oneida County Route 26) in the Town of New Hartford has been identified as a local roadway of concern due to operational and safety concerns. This scope is intended to perform a Complete Streets Study of Kellogg Road from the Oxford Road (western terminus) to the Oneida Street intersection (eastern terminus). Kellogg Road is a 0.6-mile road that serves as a connector between residential and commercial areas and the state roadway network. Development has created access management issues and created unsafe conditions for non-motorized users of the roadway.

The Complete Streets portion of the study will analyze the existing conditions and identify alternatives to provide for safe, attractive, and comfortable access and travel for all users of the road. Using a Complete Streets design approach, the study will consider the convenient access and mobility on the road network for motorists, pedestrians, bicyclists, and public transportation users. The intended outcome of the Study is a preferred corridor profile, based on a representative public input process that provides a clear implementation strategy to improve transportation operations, improve safety for all roadway users, and accommodate future growth and development.

6. Deliverables

6.A Oneida County Main Streets

Generally:

- 6.A.1 Universal planning/design document template.
- 6.A.2 Individual plans for each municipality with:
 - 6.A.2.i. Foundational elements
 - 6.A.2.ii. Illustrative renderings
 - 6.A.2.iii. Cost estimates for capital projects
 - 6.A.2.iv. Space programming recommendations

The following outlined approach is provided as an illustration of the potential range of services that could be necessary for the successful execution of the requested analysis. Responding consultants are encouraged to provide alternatives to this outline as warranted or beneficial to the overall work effort. It is anticipated that Planning Staff will take an active role in developing the Main Streets Plans report to allow consultant proposals to focus on the preparation of technical analyses, concept plan graphics, and cost estimates.

By task:

6.A.Task 1. Project Initiation, Management, and Administration

At the start of the project, the Consultant will meet with Oneida County staff to review and refine the scope of work, project objectives, process, and deliverables (work product). The consultant will establish a project work plan and schedule, identify potential issues, and coordinate with the Planning Staff concerning project management activities.

6.A.Task 2. Kick-off Meeting with Planning Staff and Local Municipality

The consultant will meet with Planning Staff and the local municipality to review and confirm the scope and objectives of the requested analysis, anticipated schedule, public outreach methods, and data collection strategies. The consultant is responsible for preparing the meeting agendas and minutes and other documents as appropriate. The consultant will document and categorize all comments and inputs received.

6.A.Task 3. Existing Conditions Analysis, Data Collection, and Review of Documents

The consultant will assemble existing information and collect field data as necessary to identify existing conditions related to pedestrian infrastructure, streetscape amenities, and any issues related to the creation of new streetscapes. The consultant will identify and integrate existing pertinent programs, projects, and community priorities. The consultant will develop an inventory of Main Street and adjacent properties. The inventory will document land uses, categorize existing businesses by type, define the

general character of component areas, delineate identified road sections, map existing infrastructure, and note existing infrastructure issues or deficiencies. A significant portion of data for this task will be provided by Oneida County. The consultant will be responsible for integrating task output into the final report.

6.A.Task 4. Public Meetings

Input should be collected from the general public including individual property/business owners. The consultant will set up and assist Planning Staff and the local municipality in organizing public meetings. The consultant should offer electronic media assistance to support the public outreach. The number and format of public meetings will be determined by Planning Staff and individual municipality, no more than three meetings per municipality are expected. Consultants are encouraged to identify innovative public outreach methods, taking into consideration the anticipated need for continued social distancing.

6.A.Task 5. Develop Conceptual Plan

Using the information collected in Tasks 3 & 4, the consultant will develop a draft plan including key goals, objectives, projects, and policy for the corridor. The plan should include illustrative graphics and maps as well as explore building configurations in a full build-out scenario. The conceptual plan should be present a visionary, long-term redevelopment strategy for the corridor. The conceptual plan should incorporate physical planning along with economic development strategies and the needed policy framework. Based upon the existing conditions analysis, the consultant will formulate, evaluate, and map recommended improvements including alternatives (if applicable). Conceptual graphics and planning level cost estimates associated with each of the recommended improvements will be developed by the consultant and presented to the municipality for evaluation and prioritization.

6.A.Task 6. Prepare Draft Plan

Prepare a draft Main Street Plan including in hard copy and electronic versions. The Draft Final Plan will present concepts in narrative form, photos, maps, renderings, detailed graphics to clearly and logically present the concept, and include cost estimates for implementation. It is anticipated that the Planning Staff will take an active role in developing the draft and final report to allow consultants to focus resources on the preparation of technical analyses, concept plan graphics, and cost estimates. The draft report will be presented to the municipality for review before finalization. The final report will be presented to the municipality and Oneida County by the consultant and/or Planning Staff.

6.A.Task 7. Final Plan

Prepare Final Plans in hard copy and electronic versions. The consultant will provide a total of one (1) digital Adobe PDF format and four (4) full-color copies for review and comment. The consultant will incorporate feedback received in Task 6 into a final document with all maps, drawings, goals, objectives, projects, and policies for the corridor clearly defined. The final document will also include an implementation plan that documents a timeline for implementation along with general cost estimates, project champions, and potential funding sources.

6.A.Task 8. Program Closeout

At the end of the project, the consultant will present the Plan to Planning Staff and the local municipality. The consultant will also provide all source files and final project files to Oneida County for the sustainability of the program.

6.B Local Transportation Planning Assistance Program

Generally:

6.B.1 Universal planning/design document template comprised of all foundational elements.

6.B.2 Individual plans will be developed for each municipality.

6.B.3 Individual plans will include a cost estimate for implementation.

Throughout the project, the consultant will meet with Planning Staff monthly to facilitate the development of the plan.

The following is a recommended outline intended to establish a framework for this project. The Consultant Team should use this outline as a guide and expand, modify, or arrange each task to present the most comprehensive scope necessary to perform the work. The Scope of Work for this program is organized under the following main tasks.

By task:

6.B.Task 1. Project Initiation, Management, and Administration

At the start of the project, the consultant will meet with Oneida County Staff to review and refine the scope of work, project objectives, process, and deliverables (work product). The consultant will establish a project work plan and schedule, identify potential issues, and coordinate with the Planning Staff concerning project management activities.

6.B.Task 2. Kick-off Meeting with Planning Staff and Local Municipality

The consultant will meet with Planning Staff and the local municipality to review and confirm the scope and objectives of the requested analysis, anticipated schedule, public outreach methods, and data collection strategies. The consultant is responsible for

preparing the meeting agendas and minutes and other documents as appropriate. The consultant will document and categorize all comments and inputs received.

6.B.Task 3. Existing Conditions Analysis, Data Collection, and Review of Documents

The consultant will assemble existing information and collect field data as necessary to identify existing conditions and shall include a descriptive summary of the context, existing conditions, collected traffic data, current land-uses, existing right-of-way, or other significant constraints. A significant portion of data for this task will be provided by Oneida County. The Consultant will be responsible for integrating task output into the final report.

6.B.Task 4. Public Meetings

Input should be collected from the general public including individual property/business owners. The Consultant will set up and assist Planning Staff and the local municipality in organizing public meetings. The Consultant should offer electronic media assistance to support the public outreach. The number and format of public meetings will be determined by Planning Staff, no more than three meetings are expected.

6.B.Task 5. Develop Conceptual Plan

Using the information collected in Tasks 3 & 4, the consultant will develop a draft plan including key goals, objectives, projects, and policy for the corridor. The plan should include illustrative graphics and maps as well as explore building configurations in a full build-out scenario. The conceptual plan should be present a visionary, long-term redevelopment strategy for the corridor. The conceptual plan should incorporate physical planning along with economic development strategies and the needed policy framework. Based upon the existing conditions analysis, the consultant will formulate, evaluate, and map recommended improvements including alternatives (if applicable). Conceptual graphics and planning level cost estimates associated with each of the recommended improvements will be developed by the consultant and presented to the municipality for evaluation and prioritization.

6.B.Task 6. Prepare Draft Plan

Prepare a draft Plan including hard copy and electronic versions. The draft Plan will present concepts in narrative form, photos, maps, renderings, detailed graphics to clearly and logically present the concept, and include cost estimates for implementation. It is anticipated that the Planning Staff will take an active role in developing the draft and final report to allow consultants to focus resources on the preparation of technical analyses, concept plan graphics, and cost estimates. The draft report will be presented to the municipality for review before finalization. The final report will be presented to the municipality and Oneida County by the consultant and/or Planning Staff.

6.B.Task 7. Final Plan

Prepare Final Concept Plans in hard copy and electronic versions. The consultant will provide a total of one (1) digital Adobe PDF format and four (4) full-color copies for review and comment. The consultant will incorporate feedback received in Task 6 into a final document with all maps, drawings, goals, objectives, and projects for the corridor clearly defined. The final document will also include an implementation plan that documents a timeline for implementation along with general cost estimates, project champions, and potential funding sources.

6.B.Task 8. Project Closeout

At the end of the project, the consultant will present the Plan to Planning Staff and the local municipality. The consultant will also provide all source files and final project files to Oneida County for the sustainability of the program.

7. Submission Instructions

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.

Each proposal packet shall include a Letter of Interest of no more than two (2) pages listing the prime consulting firm, project manager, point-of-contact for the proposal, subcontracted firms (if applicable), address of firm(s), a discussion as to why the firm is suited for this work, and cost proposal in a separate envelope.

The Table of Contents, modeled after the outline provided in section 6-A, shall provide for the standardized organization of the proposal, including enclosures and appendixes. All pages shall be numbered and correspond to the Table of Contents.

7.A. Qualifications and Capabilities

- 7.A.1. Business structure of the principal firm (corporation, partnership, sole proprietorship, joint venture)
 - Indicate the number of full-time personnel employed by the firm
- 7.A.2. Parent company (if applicable)
- 7.A.3. Participating division or branch office (if applicable)
 - State the division or branch offices that shall be providing the proposed services (office name, and address)
- 7.A.4. Experience and expertise of the firm (one-page summary)
 - 7.A.4.i. State the number of years of experience the firm has in providing professional transportation planning consulting
 - 7.A.4.ii. Provide a brief overview of any experience the firm has in streetscape design and/or complete streets planning
- 7.A.5. Experience and expertise of project manager and key staff of principal firm & sub-consultant firm
 - 7A.5.i. Qualifications and experience - Provide a brief description of the qualifications, experience, and areas of expertise of the Project Manager and key staff assigned to this project (not to exceed one page per person).
 - 7A.5.ii. Include an explanation of the approach the firm shall take in completing the Tasks outlined in this RFP with a supporting work plan and schedule. When developing the work plan, the Consultant is encouraged to expand upon the general tasks and steps provided in the RFP Scope of Work to provide a superior final product. Alternative tasks, revised, or expanded tasks, from the RFP scope, are allowed. Consultants are encouraged to incorporate out-of-the-box approaches, value-added processes, utilize technology, and draw from similar best practices to deliver the products of each task successfully.
 - 7A.5.iii. The Consultant shall provide an estimate of the project schedule by task, key meetings, and product deliverables for both programs.

7.A.6. Project references – not to exceed one page per project

7.A.6.i. Identify three (3) project references that involve studies similar in type, size, or scope to that described in this RFP.

7.A.6.ii. Include the name of the reference, contact person, the title of contact person, telephone number, duration of the contract, description of contract work, and dollar value of the contract.

7.A.6.iii. Oneida County Department of Planning/HOCTC reserves the right to seek references beyond those supplied by the Proposer, which may be used as part of the evaluation process.

7.B. Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) and Disadvantaged Business Enterprise (DBE) Programs

Oneida County Department of Planning/HOCTC will make every effort to comply with U.S. DOT 49 CFR Part 26, to ensure that equal opportunity to participate is afforded to all entities. The Federal Disadvantaged Business Enterprise (DBE) program promotes the use of DBEs in all types of federally assisted contracts and procurement activities and does not apply to 100% state or locally funded contracts. The Federal DBE program is a separate program and subject to different requirements than the New York State (NYS) Minority Business Enterprise (MBE) and Women-owned Business Enterprise Program (WBE). NYS M/WBE applies to projects funded by NYS.

Only those M/WBE firms that are certified by the New York State through Empire State Development and the Division of Minority and Women’s Development (DMWD) qualify under this provision. To obtain a listing of certified M/WBE firms or information, the New York State Contract System (NYSCS) enables users to search for NYS M/WBE certified firms through Empire State Development and the Division of Minority and Women’s Development (DMWBD) at <https://ny.newnycontracts.com/>

- The Oneida County M/WBE goal for Oneida County is 1.6 %
- The NYSDOT DBE goal for FHWA projects 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/DBE goals are not met, the proposal shall include documentation provided to verify a good faith effort was made to utilize certified M/WBE/DBE firms to attain these goals.

7.C. Cost Proposals (in a separate envelope)

- 7.C.1. The cost proposals shall specify the proposed costs to provide the professional services for the project scopes as stated in this RFP.
- 7.C.2. Two (2) separate costs proposals should be included:
 - 7.C.i. One (1) cost proposal for Oneida County Main Streets
 - 7.C.ii. One (1) cost proposal for the Local Transportation Planning Assistance Program
- 7.C.3. The cost proposals shall include all of the costs and expenses associated with the proposal, including indirect costs, overhead rates, fringe benefits, documents constructed, mailings, transportation, interview(s), office support, and fees.
- 7.C.4. The proposal shall include the information required to support the reasonableness of submitted cost and price quotations.
- 7.C.5. Cost proposals must be submitted in a separate sealed envelope clearly marked "Cost Proposal - RFP # 2021-304", but should be submitted in the same package as the Proposal.

7.D. Evaluation Criteria

The proposal including qualifications, experience, quality, approach, and cost shall be evaluated based on the following criteria:

- 7.D.1. (25%) Demonstrated experience/ knowledge/ history of completing similar programs
- 7.D.2. (25%) Demonstrated experience/ knowledge of consultant team
- 7.D.3. (20%) Project understanding and approach
- 7.D.4. (15%) Innovation/ Creativity of approach
- 7.D.5. (10%) General knowledge of Oneida County
- 7.D.6. (5%) Cost

Proposers may be asked to provide additional written information beyond that contained in their proposals. Planning Staff has established a Selection Committee whose role shall be to evaluate each proposal based on the evaluation criteria and make a recommendation for consultant selection to Oneida County Department of Planning/HOCTC.

7.E. Consultant Selection

Based upon the pre-screening for completeness of proposals and evaluation criteria, the highest-scoring Proposers will be invited to interview. It is anticipated that no more than three firms will qualify to be interviewed. Firms not selected for interviews will be notified via email within one month of the RFP submission deadline. The following general evaluation criteria will be used during the interview process to score the proposers:

- 7.E.1. Demonstrated understanding of program goals
- 7.E.2. Relevant experience of the firm and ability to commit resources

- 7.E.3. Qualifications of staff assigned to program tasks
- 7.E.4. Creativity in approach to program delivery
- 7.E.5. Integration of technology in program delivery
- 7.E.6. Dynamic nature of program team

After the interview phase, the Selection Committee will make a final selection for a consultant. Final selection of consultant and justification of contract awards will be presented to the Oneida County Board of Legislators and Oneida County Executive, for final review and approval. The contract will be conditionally awarded until final approval is granted *and* the contract documents are fully executed by Oneida County.

7.F. Submission Packets

7.F.1. Three (3) originals and one (1) electronic copy in Adobe PDF (CD or USB flash drive) of the completed proposal must be received by 1:00 pm local time on November 22, 2021.

7.F.2. Proposals should be addressed to:

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

7.F.3. Please note the RFP # 2021-304 on all correspondence.

7.G. Timeline

Approximate timeline for solicitation through the award of contract.

October – November 2021	Request for Proposals Active
November – December 2021	Evaluation of Proposals/ Technical Interviews
December 2021	Tentative Consultant Selection
January 2022	Estimated Award of Contracts
January 2022	Estimated Start Date of Contracts
March 2023	Estimated End Date of Contracts

7.H. Questions

- 7.H.1. There will be no pre-submission meeting. All questions will be addressed in writing using the methodology contained herein.
- 7.H.2. Proposers are welcome to submit questions up until November 17, 2021, at 4:00 pm EST.
- 7.H.3. Questions submitted will be answered weekly. All questions submitted by 4:00 pm on Wednesday will have answers posted in the FAQ Log the Friday of the same week, by 1:00 pm.

<i>Question submitted by 4:00 pm:</i>	<i>Answer posted in FAQ Log Posted by 1:00 pm:</i>
October 27	October 29
November 3	November 5
November 10	November 12
November 17	November 19

- 7.H.4. All questions and answers will be posted under the link RFP # 2021-304 FAQ Log on <http://www.ocgov.net/oneida/planning/HOCTC>.
- 7.H.5. To ensure fairness of process to all proposers, with the exception of any technology, internet, or nature-based unforeseen delays to posting, all questions will be answered in chronological order, as submitted.
- 7.H.6. Questions specifically relating to this RFP shall be directed in writing to:
Preferred contact method, email:
Transportation Program Manager, Oneida County Department of Planning
transplan@ocgov.net

or hard copy:

Transportation Program Manager
Oneida County Department of Planning/ HOCTC
Boehlert Center at Union Station
321 Main Street, 3rd Floor
Utica, New York 13501
- 7.H.7. Please note the RFP # 2021-304 on all correspondence.
- 7.H.8. Oral answers to questions relative to interpretation of specifications or the proposal process will not be binding on Oneida County/HOCTC.

7.I. Miscellaneous

- 7.I.1. All information and materials submitted will become the property of Oneida County/HOCTC. Proposers should not submit proprietary or confidential business information unless they believe such information is critical to the proposal. Such information should be clearly identified. Oneida County/HOCTC will protect such proprietary information only to the extent that the law allows.
- 7.I.2. Oneida County/HOCTC shall not pay any costs incurred in the preparation of a proposal in response to this request.
- 7.I.3. Oneida County/HOCTC reserves the right to accept or reject any or all proposals received as a result of this request; to negotiate with selected Proposers, or to cancel in part(s) or its entirety this RFP, if it is determined to be in the best interest of the Oneida County/HOCTC to do so. If a low number of proposals are submitted, the right to extend the deadline is reserved.
- 7.I.4. Low bid does not necessarily guarantee the award of bid. All the factors listed in this RFP are evaluated for each complete proposal.
- 7.I.5. The awarded Proposer shall enter into a contract with Oneida County, as the HOST agency for HOCTC, and be subject to legal requirements established by Oneida County.
- 7.I.6. The Oneida County Transportation Program Manager or HOCTC Director will manage the contract; this includes the finalization of the project scope, deliverables, public outreach, milestones, and all other project-related tasks.
- 7.I.7. The awarded Proposer shall comply with the Oneida County Clauses attached as Appendix C.
- 7.I.8. The awarded Proposer shall comply with the New York State Clauses and Certifications attached as Appendix A.
- 7.I.9. The awarded Proposer shall comply with the Federal Clauses and Certifications attached as Appendix B.
- 7.I.10. Oneida County, in order to promote its established Affirmative Action Plan, invites sealed bids from minority groups. This policy regarding sealed bids and contracts applies to all persons without regard to race, creed, color, national origin, age, sex, or handicap.

7.J. Standards of Conduct for this Proposal

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 www.ocgov.net/purchase.

8. Appendices

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

APPENDIX A

**STANDARD CLAUSES FOR NEW YORK STATE
CONTRACTS**

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his

office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have

violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where

the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

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

20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

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

NYS Department of Economic Development

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

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

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbcertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if

their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

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

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

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

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

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

APPENDIX A-1

**SUPPLEMENTAL TITLE VI PROVISIONS
(CIVIL RIGHTS ACT)
(To be included in all contracts)**

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

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

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

APPENDIX B

**REQUIREMENTS FOR FEDERALLY-AIDED
TRANSPORTATION PROJECTS**

(June 2016)

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

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

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

² <http://www.cfda.gov/>

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

THE CFDA IDENTIFICATION NUMBER

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.

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

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

PROMPT PAYMENT MECHANISMS

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

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

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

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

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

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

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

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

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

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

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

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

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

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

APPENDIC C

**ADDENDUM -- 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:

transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

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

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

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

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

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

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

1) The dangers of drug abuse in the workplace;

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

- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
 - 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;
- D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:
- 1) Abide by the terms of the statement; and
 - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;
- E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:
- Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;
- 1) Taking appropriate personnel action against such an employee, up to and including termination,

consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

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

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

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

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

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

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

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

When applicable to the services provided pursuant to the Contract:

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

- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
 - i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
 - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
 - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

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

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of

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

7. NON-DISCRIMINATION REQUIREMENTS.

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

8. WAGE AND HOURS PROVISIONS.

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

9. NON-COLLUSIVE BIDDING CERTIFICATION.

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

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

10. RECORDS.

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

12. CONFLICTING TERMS.

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

13. GOVERNING LAW.

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

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

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

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

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

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

16. GRATUITIES AND KICKBACKS.

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

Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

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

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

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

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

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the

responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

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

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

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

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

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

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

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

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

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

APPENDIX D

SAMPLE MASTER SERVICES AGREEMENT

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 Vendor reasonably incurs in 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 10th 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 party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.
- 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

Robert E. Pronteau
Assistant County Attorney

EXHIBIT A

STATEMENT OF WORK NUMBER ____

Project 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.]

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.]

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

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

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

CUSTOMER

VENDOR

By: _____

(signature)

By: _____

(signature)

Name: _____

(print)

Name: _____

(print)

Title: _____

Title: _____

Date: _____

Date: _____