

**MEMORANDUM**

**TO:** GTC Planning Committee Members & Alternates  
**FROM:** James Stack, Executive Director JS  
**DATE:** November 10, 2021  
**SUBJECT:** [Proposed Council Resolution 21-91, affirming the 2022 Genesee Transportation Council Host Agency Agreement between the State of New York and GTCS, Inc.](#)

The Federal Highway Administration Metropolitan Planning (FHWA PL) and Federal Transit Administration Metropolitan Planning (FTA MPP) funds that are programmed in the annual Unified Planning Work Program (UPWP) and pay for Genesee Transportation Council (GTC) staff activities and initiatives undertaken by member agencies and communities throughout the region are provided on a reimbursement basis.

GTC requires a Host Agency to first instance monies for reimbursement of expenses (e.g., operating, professional services, etc.) incurred by GTC and other agencies through the UPWP. Since 1977, GTCS, Inc. whose Board of Commissioners is identical to that of the Rochester Genesee Regional Transportation Authority (RGRTA) has served as the Host Agency for GTC. The New York State Department of Transportation (NYSDOT) reimburses GTCS, Inc. for eligible expenses incurred by GTC as the metropolitan planning organization (MPO) for the Genesee-Finger Lakes Region.

Accordingly, a Host Agency Agreement between GTCS, Inc. and NYSDOT is necessary to allow for and structure the financial obligations assumed by GTCS, Inc. on behalf of GTC. The current agreement was executed on August 18, 1977 and as has been extended multiple times with the most recent being on April 1, 2012 extending through March 31, 2022. A new Host Agency Agreement is necessary to continue the operations of GTC.

GTC and RGRTA staffs have worked with NYSDOT-Main Office to develop the new Host Agency Agreement that will take effect April 1, 2022 and run through March 31, 2032 (i.e., a 10-year agreement). The GTCS, Inc. Board of Commissioners will consider whether to continue in its role as the Host Agency for GTC and enter into the new Host Agency Agreement at its December 2, 2021 meeting. There is no reason to think that a new Agreement will not be approved.

The following items are provided for your consideration:

- 1. Proposed Council Resolution 21-91** (Affirming the 2022 Genesee Transportation Council Host Agency Agreement between the State of New York and GTCS, Inc.)
- 2. MPO Host Agency Federal Aid Project Agreement** (Draft)

***Recommended Action:***

*Recommend action by the GTC Board on proposed Council Resolution 21-91.*

**GENESEE TRANSPORTATION COUNCIL**

**RESOLUTION**

**Resolution 21-91 Affirming the 2022 Genesee Transportation Council Host Agency Agreement between the State of New York and GTCS, Inc.**

**WHEREAS,**

1. The Genesee Transportation Council (GTC) is the designated Metropolitan Planning Organization (MPO) responsible for the transportation policy, planning, and programming processes for the nine-county Genesee-Finger Lakes Region, including the Rochester Metropolitan Planning Area;
2. GTC and GTCS, Inc. ratified a memorandum of understanding (MOU) on May 1, 1999 that defines the principles and roles of GTC as the MPO and GTCS, Inc. as its Host Agency in the advancement of the annual Unified Planning Work Program to maintain the certified metropolitan transportation planning process for the Genesee-Finger Lakes Region;
3. The State of New York and GTCS, Inc. executed a Host Agency Agreement in 2012 and said agreement expires on March 31, 2022;
4. The State of New York desires to execute a new Host Agency Agreement with GTCS, Inc. to update references to relevant Federal transportation laws and regulations, provide consistency in Host Agency Agreements across the state, and otherwise update the language and understandings of the agreement; and
5. GTC wishes that GTCS, Inc. continue to serve as the Host Agency for GTC.

**NOW, THEREFORE, BE IT RESOLVED**

1. That the Genesee Transportation Council (GTC) hereby acknowledges and supports the execution of a new Host Agency Agreement between the State of New York and GTCS, Inc.;
2. That GTC hereby extends its appreciation to GTCS, Inc. for acting as the Host Agency under a new agreement that will take effect April 1, 2022 and cover the period through March 31, 2032;
3. That GTC and GTCS, Inc. will monitor developments, internal and external, that may require revisions to the current MOU and make necessary changes to said MOU following their respective established operating structures
4. That this resolution takes effect immediately.

**CERTIFICATION**

The undersigned duly qualified Secretary of the Genesee Transportation Council certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Genesee Transportation Council held on December 9, 2021.

Date \_\_\_\_\_

\_\_\_\_\_  
CHRISTOPER T. REEVE, Secretary  
Genesee Transportation Council

**MPO HOST AGENCY FEDERAL AID PROJECT AGREEMENT**  
COMPTROLLER'S CONTRACT NO. C040360

This Agreement is made between the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State"),

and

GTCS, Inc ("Host Agency"), acting by and through William C. Carpenter, Chief Executive Officer of the Rochester Genesee Regional Transportation Authority (a duly-designated member of the metropolitan planning organization whose Board of Commissioners also serves as the Board of Directors of the Host Agency), its duly authorized representative, whose office is located at 1372 East Main Street, Rochester, NY, 14609, on behalf of itself and as a duly-designated member of the below-mentioned Metropolitan Planning Organization.

This agreement provides for the funding of transportation planning activities described in an approved Unified Planning Work Program (UPWP) more fully described by Schedules A and B annexed to this agreement or one or more duly executed and approved Supplemental Schedules to this agreement (as more specifically described in such Schedules A and B or supplemental Schedules A and B, the "Project").

WITNESSETH:

**WHEREAS**, the Governor, with the concurrence of the units of local governments composing and representing the entirety of the Rochester urbanized area has designated the Genesee Transportation Council (GTC) as the metropolitan planning organization for the Rochester urbanized area (hereinafter, "the MPO"); and

**WHEREAS**, the United States has provided Federal funds to the State for the purpose of carrying out Federal-Aid Highway and public transit projects pursuant to various Transportation Acts as administered by the Federal Highway Administration ("FHWA") and the Federal Transit Administration ("FTA") including, but not limited to those listed below; and

**WHEREAS**, the New York State Highway Law authorizes the NYSDOT Commissioner to use federal aid available under the Federal-aid highway acts; and

**WHEREAS**, 23 USC §134 requires and provides for designated metropolitan planning organizations to develop transportation plans and programs for urbanized areas, including long range plans, transportation improvement programs, and congestion management systems for those areas which constitute transportation management areas under §134; provides for coordination between metropolitan planning organizations, sets forth factors to be considered in planning, sets requirements for federal certification of the metropolitan planning process, provides for MPO consultation in Transportation Plan and TIP coordination and also provides for the selection of projects from TIPs, authorizes abbreviated plans and programs for smaller urbanized areas, and imposes additional requirements for certain non-attainment areas, under §134; and

**WHEREAS**, 23 USC §142, authorizes, and provides that Federal funds apportioned under 23 USC §104 shall be available to finance high occupancy vehicle (HOV) lane, "park and ride" facility, and other projects on federal-aid highways, in order to encourage the use of buses to increase the traffic capacity of Federal-aid systems; carry out any capital transit project eligible for assistance under chapter 5303 of Title 49, provide access and coordination between intercity and rural bus service, and provide connections between highway transportation and other modes of transportation; and

**WHEREAS**, 23 USC §142 also makes Federal Highway Trust Fund moneys and Federal funds apportioned under 23 USC §104 and administered by the FTA, available for capital improvements to carry out any capital transit project eligible for assistance under chapter 5303 of Title 49, provide access and coordination between intercity and rural bus service, and to provide connections between highway transportation and other modes of transportation; and

**WHEREAS**, 23 USC §142 also provide for the accommodation of passenger, commuter, or high speed rail, magnetic levitation system, and other types of highway and non-highway public mass transit facilities within the existing rights-of-way of federal-aid highways, if such accommodation will not adversely affect automotive safety; and authorize federal approval of the use of sums apportioned under 23 USC §142; and

**WHEREAS**, 23 USC §142(d) and 49 USC app §1607 provide that the designated projects carried out in an urbanized area shall be subject to the metropolitan planning requirements of 23 USC §134; and

**WHEREAS**, 23 USC §104 provides for the apportionment of certain FHWA and FTA Federal-aid funds to the State for the purpose of carrying out the provisions of 23 USC §134 as described above; and

**WHEREAS**, 23 USC §104 further provides that the State shall, in turn, make these funds available to the metropolitan planning organizations designated by the Governor and by units of local government representing no less than 75% of the affected population, as being responsible for carrying out the provisions of 23 USC §134 for each urbanized area; and

**WHEREAS**, the MPO determines the distribution and appropriate use of FHWA and FTA funds for the metropolitan area as provided by 23 USC §105 and §134, and applicable Federal and State regulations, as described in the annual UPWP; and

**WHEREAS**, the MPO is a consortium of governmental agencies and transportation providers that acts through Member Agencies for purposes of necessary financial and contractual arrangements; and

**WHEREAS**, the MPO and its constituent Member Agencies, has designated the Host Agency to undertake certain transportation planning activities as described in the annual UPWP and thereafter seek reimbursement by NYSDOT for Project work performed by or through the Host Agency in accordance with this Agreement;

NOW, THEREFORE, the parties agree as follows:

**1. Documents forming this Agreement:** The Agreement consists of the following —

*Agreement Form:* this document titled "MPO Host Agency Federal Aid Project Agreement;"

*Schedule A:* Description of Project Funding;

*Schedule B:* Description of Scope of Work, Tasks, Products and Duration;

*Exhibit A:* Host Agency Record Keeping Guidelines;

*Appendix A:* New York State Required Contract Provisions; and

*Appendix A-1:* Supplemental Title VI Provisions (Civil Rights Act)

*Appendix B:* Requirements for Federally Aided Transportation Projects

**2. Funding:** For Project work performed by or through the Host Agency in accordance with this Agreement, NYSDOT will reimburse eligible Project costs in accordance with NYSDOT policy and procedures and this agreement.

**2.1.1 Federal Aid:** NYSDOT will administer federal-aid funds and will fund federal participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A.

**2.1.2** In no event shall this Agreement create any obligation to the Host Agency for funding or reimbursement of any amount in excess of the lesser of the amount stated in Schedules A (or duly executed Supplemental Schedules A), or actual eligible Project costs.

**3. General Description of Work:** The Host Agency shall perform or cause the performance of the Scope of Work described in Schedule B by one or more supplemental Schedules B as may hereafter be executed by the parties hereto and approved as required for a State contract.

**3.1 FHWA and FTA Approval.** The UPWP shall be subject to review and approval by FHWA and FTA.

**4. Funding of Project Costs:** Project costs as set forth in Schedule A will be funded or reimbursed as follows:

**4.1 Federal Aid:** NYSDOT will reimburse Member agencies 100% of the Federally reimbursable costs incurred in connection with the work covered by this agreement, subject to limitations set forth in Schedule A and in accordance with NYSDOT policy and procedures, net of Host Agency in-kind-service costs committed to as the local match in the UPWP.

**4.1.1 Participating Items:** NYSDOT shall apply Federal funds only for that work and those items that are approved activities described in the annual UPWP and performed in accordance with the approved UPWP budget. Included among the participating items are the actual cost of employee personal services, leave and fringe benefit additives are eligible for Federal participation. Other participating costs include materials and supplies, equipment use charges or other Federal allowable participating costs directly identifiable with the eligible project as provided in OMB circular A-87.

**4.1.2 Periodic Reimbursement:** If the Host Agency finds it desirable to have reimbursement made periodically, upon the request and certification therefore by the Host Agency NYSDOT may make Federal-aid progress payments based on billings prepared by the Host Agency in accordance with NYSDOT requirements, based on costs incurred as disclosed by the records thereof, as required by the Project, with adjustments to be made after audit by NYSDOT, FHWA or FTA. These payments shall be made as moneys become available therefore.

**4.2 Local Match:** The Host Agency shall document local matching funds and local matching in-kind services in the amount(s) identified in Schedule A, and as further described in Schedule B. In-kind-service cost requirements as stated in OMB Circular A-87 include necessary and reasonable costs for proper and efficient administration of the program, must be attributable to, and properly allocable to the project or program, be applied in a consistent manner under generally accepted accounting principles appropriate to the circumstances, be permissible under federal and state laws and regulations, and cannot be claimed against more than one grant.

**4.3** If Project work, including oversight thereof, is performed by NYSDOT, NYSDOT will provide in-kind service in accordance with the UPWP.

**4.4** All items included by the Host Agency in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT (See Exhibit A) the FHWA and the FTA. Such items shall be subject to audit by the State, the FHWA and the FTA.

**4.5** If the non-federal match share of Project work is funded by NYSDOT, NYSDOT will reimburse the Host Agency subject to limitations set forth in Schedule A and in accordance with the UPWP and with NYSDOT policy and procedures.

**5. Supplemental Agreement or Supplemental Schedule A:** Supplemental Agreements or supplemental Schedules A may be entered by the parties and must be approved in the manner required for a State contract.

**6. State Recovery of Ineligible Reimbursements:** NYSDOT shall be entitled to recover from the Host Agency any moneys paid to the Host Agency pursuant to this Agreement which are subsequently determined to be ineligible for Federal Aid hereunder.

**7. Loss of Federal Participation:** If the Host Agency takes other action that results in the loss of federal participation for the costs incurred pursuant to this agreement, the Host Agency shall refund to the State all funding received from the State and shall reimburse the State for 100% of all costs funded or reimbursed hereunder. The State may offset any other State or federal aid due to the Host Agency by such amount and apply such offset to such repayment obligation of the Host Agency.

**8. Host Agency Liability:**

**8.1** The Host Agency shall be deemed the employer of the MPO staff connected with the performance of the work; and the Host Agency shall be responsible for any and all obligations attendant with performance of the ministerial duties and any and all obligations as an employer. If the Host Agency performs transportation planning work under this agreement with its own forces, the Host Agency specifically agrees that its agents or employees shall possess the experience and knowledge necessary to qualify them individually for the particular duties they perform; and therefore, the Host Agency shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Host Agency, its agents or employees arising from the duties performed.

**8.2** The Host Agency shall require its Contractors engaged to perform MPO-related work via a written contract executed by and through the Host Agency for transportation planning services to protect, indemnify and save harmless the Host Agency and the State of New York from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorney's fees and expenses) imposed upon or incurred by or asserted against the Host Agency or the State of New York resulting from, arising out of or relating to the performance of this Agreement.

**9. Intellectual Property:** In any contract, activity or project funded hereunder that involves the use or development of intellectual property hereunder the Host Agency shall provide for intellectual property rights as follows:

**9.1 Identification of Intellectual Property of Contractors:** Contractors are responsible for identifying

and segregating in advance intellectual property which was or will be developed by such Contractor(s) or its/their subcontractors solely with non-federal funding.

**9.2 Copyright:** In accordance with Federal Government policy, the copyright of work produced under this Agreement, the copyrights to which are not otherwise acknowledged or provided for in this Agreement, shall remain with the authors. However, NYSDOT and the Host Agency reserve a royalty-free, perpetual, transferrable, nonexclusive and irrevocable license to reproduce, publish, modify or otherwise use for government purposes, in any media which exists currently or in the future, and to authorize others to use for government purposes any such copyrightable work produced under this Agreement with government funds.

**9.3 Patents:** For a contract for the performance of experimental, developmental or research work funded in whole or part by Federal funds, and the contractor is a small business firm or nonprofit organization, rights to inventions made under this Agreement shall be determined in accordance with 37 C.F.R. §401. The standard patent rights clause at 37 C.F.R. §401.14, as modified below, is hereby incorporated by reference.

(i) The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from paragraph (g) (1) of the clause;

(ii) paragraphs (g) (2) and (g) (3) of the clause shall be deleted; and

(iii) paragraph (l) of the clause, entitled "Communications" shall read as follows: "(l) Communications. All notifications required by this clause shall be submitted to the FHWA Division Office."

**9.4 Trade Secrets:** The parties shall not publicly disclose information they obtain as a result of this Agreement which is marked and identified as proprietary or confidential, and which consists of information such as trade secrets or commercial or financial information that is privileged or confidential within the meaning of §552(b)(4) of Title 5, U.S.C.

**10. Independent Contractor:** For the purposes of this Agreement, the officers and employees of the Host Agency, in accordance with the status of the Host Agency as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as nor claim to be an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

**11. Contract Executory; Required Federal Authorization:** It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

**12. Assignment or Other Disposition of Agreement:** The Host Agency agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

**13. Term of Agreement:** The Term of this Agreement is identified in Schedule(s) A executed herewith and incorporated herein. This agreement takes effect as to the Project and phase(s) established in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This agreement shall remain in effect so long as federal aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this agreement shall remain in effect



for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a federal or State budgetary hiatus will not by itself be construed to lapse this agreement, provided any necessary federal or State appropriations or other funding authorizations therefor are eventually enacted.

**14. NYSDOT Obligations:** NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Host Agency assert, make, or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this agreement.

**15. Required Clauses:** Attached hereto and made a part of this agreement as if set forth fully herein are Appendix A, standard clauses for all New York State contracts, Appendix A-1, Supplemental Title VI Provisions, and Appendix B, Requirements for Federally Aided Transportation Projects.

**16. Reporting Requirements:** The Host Agency agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement, the Procedures for Locally Administered Federal Aid Projects manual and in accordance with current Federal and State laws, rules, and regulations.

**17. Notice Requirements:**

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
  - (a) Via certified or registered United States mail, return receipt requested;
  - (b) By personal delivery;
  - (c) By expedited delivery service; or
  - (d) By e-mail

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**New York State Department of Transportation (NYSDOT)**

**Name:** Korie McAllister  
**Title:** Transportation Analyst, New York State Department of Transportation  
**Address:** Statewide Planning Bureau, Sixth Floor, 50 Wolf Rd., Albany, NY 12232  
**Telephone Number:** (518) 485-0990  
**E-Mail Address:** [Korie.McAllister@dot.ny.gov](mailto:Korie.McAllister@dot.ny.gov)

**Host Agency**

**Name:** William C. Carpenter  
**Title:** Chief Executive Officer, Rochester Genesee Regional Transportation Authority  
**Address:** 1372 East Main Street, Rochester, NY 14609  
**Telephone Number:** (585) 654-0220  
**E-Mail Address:** [bcarpenter@rgta.com](mailto:bcarpenter@rgta.com)

**Metropolitan Planning Organization (MPO)**

**Name:** James Stack  
**Title:** Executive Director, Genesee Transportation Council  
**Address:** 50 West Main Street, Suite 8112, Rochester, NY 14614  
**Telephone Number:** (585) 232-6240  
**E-Mail Address:** [jstack@gtcmpo.org](mailto:jstack@gtcmpo.org)

2. Any such notice shall be deemed to have given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile or

email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for the purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**18. Electronic Contract Payments:** The Member Agency shall provide complete and accurate supporting documentation of eligible Local expenditures as required by this contract, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Member Agency shall be rendered electronically, unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting Local sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at <http://www.osc.ny.gov>, by email at [epunit@osc.ny.gov](mailto:epunit@osc.ny.gov), or by telephone at 518-402-4067. When applicable to State Marchiselli and other State reimbursement by the NYS Thruway, registration forms and instructions can be found at the NYSDOT Local Programs website at <https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau>. The Member Agency herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller and/or NYS Thruway Authority's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

**19. General Responsibility Language:** The Host Agency shall at all times during the Contract term remain responsible. The Host Agency agrees, if requested by the NYSDOT Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity experience, ability, prior performance, and organizational and financial capacity.

**20. Suspension of Work (for Non-Responsibility):** The NYSDOT Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Host Agency. In the event of such suspension, the Host Agency will be given a written notice outlining the particulars of such suspension. Upon issuance of such notice, the Host Agency must comply with the terms of the suspension order. Host Agency activity may resume at such time the NYSDOT Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

**21. Termination (for Non-Responsibility):** Upon written notice to the Host Agency, and a reasonable opportunity to be heard with appropriate NYSDOT officials or staff, the Contract may be terminated by the NYSDOT Commissioner or his or her designee at the Host Agency's expense where the Host Agency is determined by the NYSDOT Commissioner or his or her designee to be non-responsible. In such event, the NYSDOT Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officials, Contract No. C040360

Host Agency: NYSDOT

BY: \_\_\_\_\_  
\_\_\_\_\_
Print Name

Title: Chief Executive Officer

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

By: \_\_\_\_\_  
For Commissioner of Transportation

Agency Certification: In addition to the acceptance of this contract I also certify the original copies of this signature page will be attached to all other exact copies of this contract.

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

APPROVED AS TO FORM:  
STATE OF NEW YORK ATTORNEY GENERAL

BY: \_\_\_\_\_  
Assistant Attorney General

COMPTROLLER'S APPROVAL:

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
For the New York State Comptroller Pursuant to State Finance Law §112.

STATE OF NEW YORK )  
) ss.:  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally came William C. Carpenter to me known, who, being by me duly sworn did depose and say that they reside at 1372 East Main Street, Rochester, NY, 14609, that they are the Chief Executive Officer described in and which executed the above instrument; and that they executed the above instrument pursuant to authority vested in them.

\_\_\_\_\_

Notary Public

**FEDERAL AID/LOCAL AGREEMENT - SCHEDULE A**  
**Contract No. C040360**

**Beginning Eligibility Date for Project Expenditure Reimbursement: 04/01/2022**

**Project Completion Date: 03/31/2032**

**AGREEMENT PURPOSE:**  **MAIN** (Master) Agreement  **SUPPLEMENTAL** Schedule No. \_\_\_\_  Administrative Correction

<b>PROJECT DESCRIPTION:</b> Develop and implement UPWP (Further detail in Schedule B)				
<b>SOURCES OF PROJECT FUNDING<sup>1</sup></b>				
Project Period - Federal Aid PIN	FHWA Funds	FTA Funds	Projected Local Non-Federal Match	Total
Carryover Savings pursuant to formula in accordance with Title 23 United States Code	\$2,597,085	\$399,402	\$187,280	\$3,183,768
SFY 2022-23 pursuant to formula in accordance with Title 23 United States Code - PH23.02.881, PT23.02.80A	\$1,754,036	\$414,717	\$135,547	\$2,304,300
SFY 2023-24 pursuant to formula in accordance with Title 23 United States Code - PH24.02.881, PT24.02.80A	\$1,841,738	\$435,453	\$142,324	\$2,419,515
SFY 2024-25 pursuant to formula in accordance with Title 23 United States Code - PH25.02.881, PT25.02.80A	\$1,933,824	\$457,225	\$149,441	\$2,540,490
SFY 2025-26 pursuant to formula in accordance with Title 23 United States Code - PH26.02.881, PT26.02.80A	\$2,030,516	\$480,087	\$156,913	\$2,667,515
SFY 2026-27 pursuant to formula in accordance with Title 23 United States Code - PH27.02.881, PT27.02.80A	\$2,132,041	\$504,091	\$164,758	\$2,800,891

<sup>1</sup> Amounts subject to Federal and State appropriations for the applicable periods. This contract is executory to the extent of amounts so authorized and available and no obligation by the State is created hereunder in excess thereof.

<sup>2</sup> Amount includes a carryover of funds from savings from prior program years that are eligible for current and future program costs.

SFY 2027-28 pursuant to formula in accordance with Title 23 United States Code - PH28.02.881, PT28.02.80A	\$2,238,643	\$529,296	\$172,996	\$2,940,935
SFY 2028-29 pursuant to formula in accordance with Title 23 United States Code - PH29.02.881, PT29.02.80A	\$2,350,576	\$555,760	\$181,646	\$3,087,982
SFY 2029-30 pursuant to formula in accordance with Title 23 United States Code - PH30.02.881, PT30.02.80A	\$2,468,104	\$583,548	\$190,728	\$3,242,381
SFY 2030-31 pursuant to formula in accordance with Title 23 United States Code - PH31.02.881, PT31.02.80A	\$2,591,510	\$612,726	\$200,265	\$3,404,500
SFY 2031-32 pursuant to formula in accordance with Title 23 United States Code - PH32.02.881, PT32.02.80A	\$2,721,085	\$643,362	\$210,278	\$3,574,725
<b>TOTAL:</b>	\$24,659,158	\$5,615,668	\$1,892,177	\$32,167,002

## SCHEDULE B: Project Scope of Work

### General Requirements

The Host Agency:

- shall perform specific tasks, with the MPO Central Staff, for projects as established in the UPWP;
- may contract for with third parties for the accomplishment of the Project in accordance with laws governing the Host Agency, applicable State and Federal law and requirements, including those of this contract;
- shall submit vouchers for payment under this contract in accordance with requirements of the State Comptroller therefore.

DESCRIPTION OF PROJECT TASKS		
	DELIVERABLES	ELIGIBLE COSTS
<ul style="list-style-type: none"> <li>• Provide staffing, necessary and appropriate office space, equipment, and other resources for the performance of the Project.</li> </ul>	<p><b>As per project(s) scope(s) as stated in approved <i>(MPO)</i> Unified Planning Work Programs.</b></p>	<p><b>Eligible costs must follow the requirements in:</b></p> <p><b>OMB Circular A-87, OMB Circular A-133, or any successor circulars &amp; State requirements;</b></p> <p><b>2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (US DOT's regulations implementing Circular A-102); and</b></p> <p><b>23 CFR Part 420, 450, and 500, and 49 CFR Part 613 (FHWA and FTA's regulations for Statewide and Metropolitan Transportation Planning</b></p> <p><b>FHWA reserves the right to determine which activities are eligible for funding.</b></p> <p><b>Eligible costs include reasonable, allowable direct costs such as compensation of employees for time devoted specifically to the performance of those awards, cost of materials expended specifically for the purpose of those awards, equipment, travel expenses incurred specifically to carry out the award and indirect costs as approved and certified in a cost allocation plan in the Operating Plan.</b></p>
<ul style="list-style-type: none"> <li>• Provide progress reporting of the activities undertaken. These activities include participation in the development and implementation of the UPWP, and the development of the core products and related necessary studies and activities - metropolitan transportation plan and the transportation improvement program - in a timely manner.</li> </ul>	<p><b>Reporting on a periodic basis consistent with <i>MPO procedures and the requirements of 23 USC and 49 CFR.</i></b></p>	
<ul style="list-style-type: none"> <li>• Provide for financial reporting of the activities undertaken.</li> <li>• Provide support for the UPWP, the program of transportation planning activities.</li> </ul>	<p><b>Billing on a periodic basis commensurate with reporting (<i>minimum once per year</i>) consistent with <i>MPO procedures and the requirements of 23 USC and 49 CFR.</i></b></p> <p><b>UPWP on a periodic basis consistent with the requirements of 23 USC and 49 CFR for approval by the Council</b></p>	

**EXHIBIT A**  
**Host Agency Record Keeping Guidelines**

The following are the record keeping requirements for State reimbursement of participating direct costs on Federal-Aid/State Aid projects:

1. *Progress Billings* — After approval of the Agreement, the Host Agency may submit progress billings to NYSDOT for the Federal share, and the applicable State share of approved costs shall be supported as follows:
  - a) *Contracts/Consultant Agreements* - Billings for payments made on contracts or consultant agreements will be made on NYSDOT's Form FIN 421, as it may be amended, and supported by a copy of the applicable payment estimate(s) for contracts or consultant agreements.
  - b) *Work by Municipal Employees* - Billings for Municipal employees will be on NYSDOT's Form FIN 421, supported by Host Agency records for the period(s) covered by the billings. Only those Project costs as defined in applicable Federal regulations and incurred subsequent to the date of Federal Highway Administration authorization can be included in billings.
2. *Non-Personal Service Costs* — Copies of invoices or documentation showing amounts and notations as may be required to clearly identify the purpose of each item. Copies of employee reimbursement vouchers for travel or similar costs are not required with progress billings but must be retained by the Host Agency for subsequent audit.
  - a) NYSDOT will reimburse Municipal personal service, fringe benefits, non-personal service, and related costs which are clearly identifiable to a specific project. Local claims for reimbursement of such expenditures utilizes the same Form "FIN 421" processing procedure as is routinely used for reporting Consultant Payment Requests.

**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](mailto:opa@esd.ny.gov)

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

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

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

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

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

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

manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/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, color, 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 subcontract or procurement as NYSDOT, the FTA, 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 agency<sup>1</sup> the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO).

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

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<sup>1</sup> 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.

## **THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

The Catalog of Federal Domestic Assistance (CFDA<sup>2</sup>), 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 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

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<sup>2</sup> <http://www.cfda.gov/>

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.