

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

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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

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

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

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, 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.

KELLY M. PARIISI
Notary Public - State of New York
No. 019482574
Qualified in Monroe County
My Commission Expires March 13, 2018

MPO Host Agency Federal-Aid Project Agreement No. C040360

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

Host Agency:

NYS DOT

BY:

[Handwritten Signature]

William Carpenter
Print Name

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.

Title: Chief Executive Officer

Date:

Date: 12-7-21

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 7 day of December, 2021 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.

[Handwritten Signature]

Notary Public

KELLY M. PARISI
Notary Public - State of New York
No. 01PA6355774
Qualified in Monroe County
My Commission Expires March 13, 2025