

**Tioga County Department of Public Works**

477 Route 96  
Owego, New York 13827  
**(607) 687-0302**  
**Fax (607) 687-4453**

*Gary Hammond, P.E.*  
Commissioner of Public Works

*Richard Perkins, P.E.*  
Deputy Commissioner of Public Works

**PROPOSAL**

**BITUMINOUS ASPHALT CONCRETE**

**NON-CAPITAL PROJECTS PAVING**

The Tioga County Commissioner of Public Works will receive sealed proposals at the Tioga County Public Works Department, 477 Route 96, Owego, New York, until 11:00 A.M. Wednesday, April 5, 2023.

All bids shall be submitted in accordance with the attached instruction sheets.

All bids shall be made on the attached proposal sheets. Exceptions may be rejected. All bids shall be submitted in a sealed envelope marked:

**“BITUMINOUS ASPHALT CONCRETE NON-CAPITAL PROJECTS PAVING BID”**

**“DO NOT OPEN UNTIL 4-5-23 AT 11:00 AM”**

All bidders shall submit signed copies of the required NON-COLLUSION CERTIFICATES with their bid proposals. Failure to do so may constitute grounds for rejection.

The County Commissioner of Public Works or his agents reserves the right to reject any or all proposals.

Tioga County reserves the right to reject or accept all or any part of any bid solely as it deems in the best interest of Tioga County.

The successful bid contract may be extended for a period of one (1) year if it is mutually agreeable to both the Commissioner and the low bid contractor.

Any Town, Village, or School District in Tioga County may participate in the bid.

The award of this contract shall be based on the lowest responsible bid. Bidders must bid on all components of each section and all items bid must be from a single manufacturer to be eligible for award. An award will be based on all products meeting Tioga County’s specifications as outlined in the bid document. A no bid on any item within a group may disqualify the bidder from the group award. Considerations will be made to availability of material, delivery, and past history as well as the current standing of the supplier within the industry.

There shall be no assignment of this contract to any other party by the successful bidder without County authorization.

**CONTRACT TERM:**

The term of this contract will extend through April 3, 2024.

**DETAILED SPECIFICATIONS:**

The undersigned proposes and agrees to furnish and load into Tioga County Trucks at the proposed plant site - Hot Mix Asphalt - as required by the department for non-capital project paving through April 3, 2024 with the right to extend the contract for one (1) year, by mutual consent, reserved by the Tioga County Commissioner of Public Works. The proposer also is to provide a price per ton of the various types of Hot Mix Asphalt with paver and operator.

The Bituminous materials shall generally conform to the material requirements attached heron. However, final determination of acceptability of the mix will be as determined by the Tioga County Commissioner of Public Works.

Plant location relative to job site will be a consideration in determining the lowest “In-Place” price.

**HOT MIX ASPHALT (HMA)**

**1.0 - DESCRIPTION.** These general specifications apply to plant mixed Hot Mix Asphalt (HMA). Appropriate mix types with corresponding friction aggregates and Performance Graded Binder (PG Binder) grades must be specified and used based on the traffic levels and the project location.

**2.0 - MATERIALS**

**2.01 General.** Use all materials for HMA production such as aggregates, PG Binder, Reclaimed Asphalt Pavement (RAP), mineral filler or any other materials meeting the County’s requirements.

**2.02 Composition of Mixtures.** The HMA plant mix will generally be composed of a mixture of aggregate, Reclaimed Asphalt Pavement (RAP), filler if required, and PG Binder. For any HMA required by the plans or itemized proposal, formulate a job mix formula that satisfies the General Limits imposed by Table 1, Composition of Hot Mix Asphalt Mixtures. In addition, the formula will state the mineral aggregate sources, and the PG Binder used in the mixture. For Type 6F2, 6F3, 7F2, and 7F3 mixtures, determine the optimum asphalt content for the proposed gradation using the Marshall Mix Design Method (50 blows).

The resultant mixture shall meet the following Marshall Mix Properties:

Mix Property	Type 6F2, 6F3	Type 7F2, 7F3
Air Voids, %	3.0 - 5.0	3.0 - 5.0
Voids in Mineral Agg. (VMA), %, min	14	16
Voids Filled with Binder (VFB), %	65 - 78	65 – 78

Produce, deliver to the work site, and incorporate the mixture into the work within 20°F of the temperature specified by the Engineer but within the mixing and placing temperature range imposed by Table 1, Composition of Marshall Designed Plant Mixtures. The aggregates will be those noted in the job mix formulas. The PG Binder will be accepted on the basis of PG Binder supplier’s certification.

Perform quality control tests during HMA production to ensure specification compliance. The plant mixed material will be accepted after blending and mixing at the plant. The pavement courses will be accepted after all paving operations are completed.

**2.03 Aggregates.** Fine aggregate may consist of screenings, free from deleterious materials and manufactured from sources of stone, gravel, or slag. Coarse aggregate will consist of crushed stone, crushed gravel, or crushed slag.

When aggregates from approved natural fine sand sources are combined with coarse aggregates in the mixture, aggregate particles will meet additional requirements as follows:

- Particles in the No. 1A and No. 1 primary sizes will have a minimum of 85 percent, by weight, of the particles with at least two fractured faces.
- Particles in the No. 2, No. 3 and No. 3A primary sizes will have a minimum of 75 percent, by weight, of the particles with at least one fractured face.

Aggregates for all mixtures specified in Table 1, including Type 6 or 7 (F9), shall meet the requirements of Coarse Aggregate. In addition, the aggregate requirements for Type 6F2, 6F3, 7F2, and 7F3 mixtures shall meet one of the following requirements based on the mix type specified:

*A. Coarse Aggregate Type F2 Conditions*

1. Limestone, dolomite, or a blend of the two having an acid-insoluble residue content of not less than 20.0%.
2. Sandstone, granite, chert, traprock, ore tailings, slag or other similar non-carbonate materials.
3. Gravel, or a natural or manufactured blend of the following types of materials: limestone, dolomite, gravel, sandstone, granite, chert, traprock, ore tailings, slag or other similar materials, meeting the following requirements:
  - a. Type 6F2 Mixes. Non-carbonate plus 1/8 inch particles must comprise a minimum of 10.0% of the total aggregate (by weight with adjustments to equivalent volumes for materials of different specific gravities). Additionally, a minimum of 20.0% of plus 1/4 inch particles must be noncarbonate.
  - b. Type 7F2 Mixes. Non-carbonate plus 1/8 inch particles must comprise a minimum of 10.0% of the total aggregate (by weight with adjustments to equivalent volumes for materials of different specific gravities). Additionally, a minimum of 20.0% of plus 1/8 inch particles must be noncarbonate.

**TABLE 1 - COMPOSITION OF HOT MIX ASPHALT MIXTURES**

Mixture Requirements	Base				Binder		Shim		Top			
	Type 1		Type 2		Type 3		Type 5		Type 6, 6F2, 6F3		Type 7, 7F2, 7F3	
Screen Sizes	General Limits % passing	Job Mix Tol. %	General Limits % passing	Job Mix Tol. %	General Limits % passing	Job Mix Tol. %	General Limits % passing	Job Mix Tol. %	General Limits % passing	Job Mix Tol. %	General Limits % passing	Job Mix Tol. %
2"	100	-	100	-	-	-	-	-	-	-	-	-
1 1/2"	90-100	-	75-100	±7	100	-	-	-	-	-	-	-
1"	78-95	±5	55-80	±8	95-100	-	-	-	100	-	-	-
1/2"	57-84	±6	23-42	±7	70-90	±6	-	-	95-100	-	100	-
1/4"	40-72	±7	5-20	±6	48-74	±7	100	-	65-85	±7	90-100	-
1/8"	26-57	±7	2-15	±4	32-62	±7	80-100	±6	36-65	±7	45-70	±6
No. 20	12-36	±7	-	-	15-39	±7	32-72	±7	15-39	±7	15-40	±7
No. 40	8-25	±7	-	-	8-27	±7	18-52	±7	8-27	±7	8-27	±7
No. 80	4-16	±4	-	-	4-16	±4	7-26	±4	4-16	±4	4-16	±4
No. 200	2-8	±2	-	-	2-8	±2	2-12	±2	2-5	±2	2-6	±2
PGB Content %	4.0-6.0	0.4	2.5-4.5	0.4	4.5-6.5	0.4	7.0-9.5	0.4	5.4-7.0	n/a	5.7-8.0	n/a
Mixing & Placing Temp Range (°F)	250-325		225-300		250-325		250-325		250-325		250-325	

**NOTES:**

1. All aggregate percentages are based on the total weight of the aggregate.
2. The asphalt content is based on the total weight of the mix. When using slag aggregates in the mix, increase the PGB content accordingly, a minimum of 25 percent for an all slag mix.
3. 6F2, 6F3, 7F2, 7F3 mix types require friction coarse aggregates, and are required for mainline driving surface courses.
4. For Type 6 and Type 7 (F9) aggregate requirements, Marshall design will not be required.. These mix types are suitable where the State's requirements for F9 aggregate apply.
5. Introduce the PG Binder into the pugmill between 225°F and 350°F, or as recommended by the PG Binder supplier.

*B. Coarse Aggregate Type F3 Conditions*

1. Limestone or a blend of limestone and dolomite having an acid-insoluble residue content of not less than 20.0%.

2. Dolomite

3. Sandstone, granite, chert, traprock, ore tailings, slag or other similar non-carbonate materials.

4. Gravel, or a natural or manufactured blend of the following types of materials: limestone, dolomite, gravel, sandstone, granite, chert, traprock, ore tailings, slag or other similar materials, meeting the following requirements:

- a. Type 6F3 Mixes. Non-carbonate plus 1/8 inch particles must comprise a minimum of 10.0% of the total aggregate (by weight with adjustments to equivalent volumes for materials of different

specific gravities). Additionally, a minimum of 20.0% of plus 1/4 inch particles must be noncarbonate.

b. Type 7F3 Mixes. Non-carbonate plus 1/8 inch particles must comprise a minimum of 10.0% of the total aggregate (by weight with adjustments to equivalent volumes for materials of different specific gravities). Additionally, a minimum of 20.0% of plus 1/8 inch particles must be noncarbonate. When coarse aggregates for these mixes are from more than one source or of more than one type of material, proportion and blend them to provide a uniform mixture.

**2.04 Mineral Filler.** Mineral filler, if required in the mix to meet gradation requirements, will conform to the following requirements. Mineral filler shall conform to the requirements of the standard specification for Mineral Filler for Bituminous Paving Mixture, ASTM D242. When dry, the mineral filler shall meet the following gradation requirements:

Sieve Size No. 30 No. 50 No. 200

Percent Passing by Weight 100 95-100 70-100

Acceptance of this material will be based on the producer's certification of compliance with these specification requirements.

**2.05 Performance-Graded Binder.** The PG Binder will meet the requirements of 2.04, Performance Graded Binder. Use PG64-22, or other suitable PG Grade as approved by the County.

**2.06 Reclaimed Asphalt Pavement.** Reclaimed Asphalt Pavement (RAP) will meet the requirements as written in Materials Method (MM) 5.16, Superpave Hot Mix Asphalt Mixture Design and Mixture Verification Procedures.

The provisions shall apply and in addition the undersigned proposes and agrees to furnish a Hot-Asphalt Paver with Operator to place material on any municipal or school district road within Tioga County; based on a minimum order of 600 Tons and minimum 8 hours usage of the paver and operator.

It is understood that all the Towns, Villages and School Districts in Tioga County, N.Y. may participate in the awarded bid prices by dealing directly with the low bid contractor. The paver name and model shall be submitted with the bid.

The proposer shall also provide a competent operator who will perform his work under the direct supervision of the appropriate municipal official or their representative.

The proposer shall meet all the provisions of the New York State Labor Laws, prevailing wage rates apply.

The successful bidder, at its own cost and expense, agrees to the insurance, indemnification, and general terms and conditions set forth as attached hereto entitled "Tioga County, New York – General Contract and Insurance Specifications", which are to be incorporated herein by reference as if fully set forth.

#### **CANCELLATION:**

Tioga County reserves the right to cancel the contract for unsatisfactory workmanship or unsatisfactory service at any point in the contract year, upon issuance of ten (10) days written notice to that effect.

**AWARD:**

Award shall be made to the responsible bidder proposing the lowest prices of Bituminous Asphalt Concrete whose proposal complies with all provisions to render it formal and legal and whose proposal is considered adequate to the best interests of Tioga County.

The bidder agrees to comply with the relevant provisions of Standard Clauses for Tioga County Contracts, attached hereto, which will be made a term and condition of any agreement, sale or provision of services between Tioga and the successful bidder.

**WARRANTY:**

All materials supplied by the contractor shall carry the standard manufacturer’s warranty.

**BITUMINOUS ASPHALT CONCRETE NON-CAPITAL PROJECTS PAVING BID PRICES:**

<b>Item</b>	<b>Hot Mix Asphalt per Ton</b>	<b>Hot Mix Asphalt W/ Paver &amp; Operator per Ton</b>
Type 1 Base		
Type 2 Base		
Type 3 Binder		
Type 6 F2 Top		
Type 6 F3 Top		
Type 6 Top		
Type 7 F2 Top		
Type 7 F3 Top		
Type 7 Top		
True & Leveling		

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(Name & Model Number of Proposed Paver)

PRICE ADJUSTMENTS

1. Price adjustments allowed will be based on the March 1, 2023 average of the F.O.B. terminal price per ton of AC-10 or AC-20 asphalt cement (base average F.O.B. terminal price), at the following locations:

- Chevron, Perth Amboy, NJ                      Sun, Company Inc. Philadelphia, PA
- Chevron, Troy, NY                                United Refinery, Warren, PA
- Citgo, Albany, NY                                United Refinery, Buffalo, NY
- Citgo, Bayonne, NY                              United Refinery, Rochester, NY
- Marathon, Tonawanda, NY

The March 1, 2023 average is \$617.00/English ton.

NOTE: The same grade of asphalt cement used in establishing the base average F.O.B. terminal price shall be used in establishing the new average F.O.B. terminal price.

In the event that one or more of the above named sources discontinue posting a price for asphalt cement, the base average F.O.B. terminal price shall be recalculated by removing that location from the original base average F.O.B. terminal price. All new average F.O.B. terminal prices calculated from that date shall reflect the reduction in the number of reporting locations.

2. The new average F.O.B. terminal price will be determined based on the above F.O.B. terminal prices on the third Wednesday of each month, hereafter known as the "Adjustment Date", during the contract period starting with March 1, 2023. However, price adjustments, in accordance with the formula below, will be effective for deliveries made on and after the first of the month (i.e., March 1, 2023) following the adjustment date.

3. The unit prices per ton of bituminous concrete material purchased from any Award based on this specification will be subject to adjustment based on the following formula:

$$\text{Price Adjustment-New Average F.O.B. (per ton)} = \frac{\text{New Average F.O.B. Terminal Price} - \text{Base Average F.O.B. Terminal Price}}{\text{Base Average F.O.B. Terminal Price}} \times \text{Total \% Asphalt Plus Fuel Allowance}$$

NEW AVERAGE F.O.B. TERMINAL PRICE:

The average F.O.B. terminal price for AC-10 or AC-20 asphalt cement at the above mentioned seven locations as determined by this Department on the third Wednesday of the month.

BASE AVERAGE F.O.B. TERMINAL PRICE :

The average F.O.B. terminal price of AC-10 or AC-20 asphalt cement as of March 1, 2023 at \$617.00/English ton.

TOTAL % ASPHALT PLUS FUEL:

The percentage of total allowable asphalt and fuel for each item is as follows:

<u>Item</u>	<u>% Asphalt</u>	<u>Total % Asphalt</u>	
		<u>Fuel Allowance</u>	<u>plus Fuel Allowance</u>
Type 1 Base Course	5.00	1	6.00
Type 2 Base Course	3.50	1	4.50
Type 3 Top Course	5.50	1	6.50
Type 6 Top Courses	6.20	1	7.20
Type 7 Top Courses	6.85	1	7.85

EXAMPLE: Type 1 Base Course

Base Ave. Price - \$150.00

New Ave. Price - \$160.00

Total % Asphalt plus Fuel -6.0%

$\$160.00 - \$150.00 \times .06 = + \$0.60$  per ton.

Positive Price Adjustment number shall be added to original per ton Bid Price.

Negative Price Adjustment number shall be subtracted from original per ton Bid Price.

4. Price adjustments allowed by this contract shall be calculated and applied to the original bid price. There will not be a price adjustment unless the change amounts to more than \$.10 per ton from the original bid price.

5. If at any time after March 1, 2023 the average posted price of asphalt cement at the aforementioned terminals increases or decreases by \$4.00 per ton or more over or under the last average F.O.B. posted price utilized by the State for adjustment purposes, the State shall publish a special price adjustment which shall be effective eight (8) days subsequent to the date on which the change in the average F.O.B. posted price became effective.

6. All price adjustments will be computed by calculator to three decimal places.

7. Regardless of price revisions allowed, at no time shall prices charged a County contractor participant be higher than those offered commercial or governmental accounts for similar or lower quantities.

8. Should these provisions result in a price structure which becomes unworkable, detrimental or injurious to the County or in prices which are not truly reflective of market conditions or which are deemed by the Commissioner to be reasonable or excessive, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten (10) days written notice mailed to the contractor to terminate any contract resulting from this bid opening.

Any introduction or withdrawal of a temporary voluntary allowance, terminal operator's allowance, or other discount offered to the trade in general, from the posted price of asphalt cement at any of the above terminals will be considered, for purposes of price adjustment, as a change in the F.O.B. terminal price.



The undersigned proposes and offers to furnish, to Tioga County, Bituminous Asphalt Concrete material which complies with the Specifications for which are attached. This proposal and offer is fully guaranteed to fulfill, in all respects, the minimum specifications as prepared by Tioga County. It is hereby certified that, in accordance with Section 103-D of the General Municipal Law, THERE HAS BEEN NO COLLUSION IN THIS BIDDING.

Municipalities should not use the county bid for any items involving labor.

Name of Company: \_\_\_\_\_

Address of Company: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Name of Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

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

THE REQUIRED NON-COLLUSION FORM MUST ACCOMPANY BID.

**Gary Hammond, P.E.**

**Commissioner**

**Tioga County Public Works**

**TO ALL BIDDERS**

In accordance with the New York State General Municipal Law the following Non-Collusion form must accompany each proposal.

**NON-COLLUSIVE BIDDING CERTIFICATE**

By submission of this bid or proposal, the bidder certifies that:

- (A) this bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor;
- (B) or proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the opening of bids or proposals for this project, to any other bidder, competitor or potential competitor;
- (C) no attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- (D) the person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalty of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf;
- (E) that attached hereto (if a corporate bidder) is a certified copy of resolution authorizing the execution of this certificate by the signature of this bid or proposal in behalf of the corporate bidder.

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(Authorized Representative)

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(Signature)

**TIOGA COUNTY, NEW YORK**  
**General Contract and Insurance Specifications**

<b>Project Description or Contract Number:</b>	2023 Bituminous Asphalt Concrete Non-Capital
<b>Date Issued:</b>	Wednesday, March 15, 2023 12:02 PM
<b>Vendor name (“Contractor”):</b>	TBD
<b>County Department:</b>	Tioga County Department of Public Works

**Please read these specifications very carefully.** These specifications are part of your contract with Tioga County. It is advisable that you forward a copy of these specifications to your insurance agent. Tioga County’s waiver of any requirement(s) set forth herein shall not constitute a waiver of any other contract provision.

**Part I. General Provisions**

1. The Contractor shall procure and maintain during the term of this contract, at the Contractor’s expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
2. Every required policy, including any required endorsements and any umbrella / excess policy, shall be primary insurance. Insurance carried by Tioga County, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Contractor.
3. Every required coverage type shall be on an “occurrence basis” unless otherwise specified or allowed.
4. The Contractor may utilize a combination of primary and umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage.
5. Proof of insurance coverage shall be provided on an ACORD 25 form or acceptable equivalent. All insurance certificates must be approved by the County Department of Law or its designee.
6. The amount of self-insured retention or deductibles must be disclosed on the certificates of insurance. The contractor shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
7. Tioga County reserves the right to request a certified copy of any policy and any endorsement thereto.
8. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated “A–, XI” or better by A.M. Best (Current Rate Guide).
9. If the Contractor fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon Tioga County may exercise any rights it has in law or equity, including but not limited to the following:
  - (a) immediate termination of the contract;
  - (b) withholding any / all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
  - (c) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by Tioga County shall be repaid upon demand, or at the County’s option, may be offset against any monies due to the Contractor.

**Part II. Required Insurance – Minimum coverage types and amounts**

1.

Coverage Type	Minimum Limits										
<p><b><u>General Liability per standard ISO form or equivalent with no modification of coverage for contractual liability</u></b></p> <ul style="list-style-type: none"> <li>All endorsed policy exclusions shall be disclosed by submittal of forms</li> <li>Tioga County shall be named Additional Insured, on a primary, non-contributory basis. The additional insured requirement shall be provided by ISO endorsement forms CG 20 10, CG 20 37 and CG 20 01 (or equivalent forms) and shall not contain any exclusion for bodily injury or property damage arising from completed operations. Submittal of the specified Additional Insured forms is required with the ACORD 25.</li> </ul>	<table> <tr> <td>General Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Products &amp; Completed Operations Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Personal &amp; Advertising Injury</td> <td>\$1,000,000</td> </tr> <tr> <td>Each Occurrence</td> <td>\$1,000,000</td> </tr> <tr> <td>Medical Expense</td> <td>\$5,000</td> </tr> </table>	General Aggregate	\$2,000,000	Products & Completed Operations Aggregate	\$2,000,000	Personal & Advertising Injury	\$1,000,000	Each Occurrence	\$1,000,000	Medical Expense	\$5,000
General Aggregate	\$2,000,000										
Products & Completed Operations Aggregate	\$2,000,000										
Personal & Advertising Injury	\$1,000,000										
Each Occurrence	\$1,000,000										
Medical Expense	\$5,000										
<p><b><u>Automobile Liability (Comprehensive Form)</u></b> Must cover owned, non-owned, leased and hired vehicles.</p>	<p>\$1,000,000 Combined Single Limit</p>										
<p><b><u>Umbrella / Excess Liability (Following Form)</u></b></p> <ul style="list-style-type: none"> <li>To extend over CGL, Auto</li> </ul>	<p>\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>										
<p><b><u>Workers' Compensation and Employer's Liability</u></b> If you have no employees (sole proprietor) a NYS Workers' Compensation Board issued waiver of the Workers' Compensation requirement is acceptable</p>	<p>Part 1 – Statutory Part 2 – (Unlimited in NYS) \$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Disease Each Employee</p>										
<p>(Proof of either Workers' Compensation Insurance or a NYS Workers' Compensation Board issued waiver of the Workers' Compensation insurance requirement is mandated by state law. There are no exceptions to this law.</p>											

2. The certificate face shall:

- indicate coverages and minimum amounts required in part II.1
- provide that the coverage(s) shall not be cancelled, terminated or materially changed (including an insurance limits reduction) unless prior written notice has been given to the Tioga County.

3. The Additional Insured & Certificate Holder should read:

County Of Tioga  
**Attn: Law Department**  
 56 Main Street, Owego, NY 13827

**Part III Defense and Indemnification**

**The following provisions concerning indemnification shall not be construed to indemnify the County for damages arising from bodily injury to persons or property contributed to, caused by or resulting from the sole negligence of the County or its employees.**

The Contractor agrees to indemnify and hold the County of Tioga and any officer, employee and/or agent thereof free and harmless from any and all losse(s), penalty(ies), damages, settlement(s), cost(s), charge(s), professional fee(s) or other expense(s) or liability(ies) of every kind arising from

or relating to any and all claim(s), lien(s), demand(s), obligation(s), action(s), proceedings or causes of action of any kind in connection with, or arising directly or indirectly from the negligent error(s) and/or omission(s) and/or act(s) of the Contractor (including Contractor's employees, agents and/or subcontractors) in the performance of this agreement.

Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute (including specifically but not limited to New York State Labor Law §§ 200; 202; 240 & 241), ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Contractor, as aforesaid,.

#### **Part IV     Safety**

Tioga County specifically reserves the right to suspend or terminate all work under this contract whenever Contractor and/or contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of contractor's employees, subcontractor's employees, county employees or member(s) of the general public on county property. This reservation of rights by Tioga County in no way obligates Tioga County to inspect the safety practices of the Contractor.

If Tioga County exercises its rights pursuant to this part, the contractor shall be given three days to cure the defect, unless Tioga County, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to Tioga County's legal obligation to continuously provide contractor's service to the public or Tioga County's immediate need for completion of the Contractor's work. In such case, Contractor shall immediately cure the defect.

If the Contractor fails to cure the identified defect(s), Tioga County shall have the right to immediately terminate this contract. In the event that Tioga County terminates this contract, any payments for work completed by the Contractor shall be reduced by the costs incurred by Tioga County in re-bidding the work and /or by the increase in cost that results from using a difference vendor.

# **STANDARD CLAUSES FOR TIOGA COUNTY CONTRACTS**

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

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**STANDARD CLAUSES FOR TIOGA COUNTY**  
**CONTRACTS**

The parties to the attached contract, license, lease, amendment, renewal 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 County of Tioga ("the County"), whether a contractor, vendor, licensor, licensee, lessor, lessee or any other party):

**1. RELATIONSHIP OF PARTIES.** Contractor shall have the status of an independent contractor, and in accordance with such status, agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim that any of its officers or employees are officers or employees of the County by reason of this Agreement. Contractor further agrees that it will not make against the County any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

**2. EXECUTORY CLAUSE.** (A) **All Contracts.** In accordance with § 362 of the County Law, the County shall have no liability under this contract to Contractor or to anyone else beyond funds appropriated and available for this contract. (B) **Certain Installment Purchase Contracts.** Further, in the case of an installment purchase contract, pursuant to General Municipal Law § 109-b, any such installment purchase contract is not a general obligation of the County. Neither the full faith and credit nor the taxing power of the County of Tioga are pledged to the payment of any amount due or to become due under such installment purchase contract. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract. Further, no liability on account thereof shall be incurred by the state of New York municipal bond bank agency beyond the amount of such monies. It is understood that neither this contract nor any representation by any employee or officer of such agency creates any legal or moral obligation to appropriate or make state monies available for the purpose of the contract.

**3. EXTENSIONS, RENEWALS, MODIFICATIONS.** Extensions or renewals to the Agreement or any modification including new products, terms, or price changes to the Agreement shall be submitted by the Contractor to the County for approval by the County Legislature of the County in order to be effective. No provision of a contract which states that the term of the contract shall be deemed renewed for a specified

additional period shall be effective against the County, absent a subsequent resolution of the County legislature, specifically authorizing such renewal.

**4. NON-ASSIGNMENT CLAUSE.** In accordance with § 109 of the General Municipal Law, this contract may not be assigned by Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and attempts to do so without such consent are null and void.

**5. INSURANCE AND INDEMNIFICATION, HOLD HARMLESS.** (A) **Insurance.** (i) (a) Contractor covenants and agrees to maintain in full force and effect during the term of this Agreement, and any subsequent term, comprehensive insurance in form, term and content satisfactory to the annexed standards of the County, which are incorporated herein (*Appendix B: General Contract and Insurance Specifications*) and, to prove as evidence of such compliance, insurance certificate(s) which shall be annexed to and made part of this Agreement and shall name the County of Tioga Attention: Law Department, as Additional Insured and certificate holder (not simply "certificate holder") (except Worker's Compensation/Disability Benefits) in connection with the work being performed. (b) Said certificate(s) shall be annexed hereto prior to or at the time of execution of this Agreement by the County. (c) Contractor acknowledges that failure to obtain or maintain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the municipality. The County shall, if it deems it necessary, have the right to ask for additional certification at different points throughout the life of the contract.

(B) **Indemnification, Hold Harmless.** Notwithstanding the limits of any policy of insurance provided or maintained by Contractor, Contractor shall defend, indemnify and hold harmless the County of Tioga and its officers, employees and agents from all claims, actions, suits, liabilities, damages, awards, costs and expenses (including, without limitation, attorneys' fees) of every nature and description arising out of or related to the services provided by Contractor under



this Agreement and arising out of or caused by any act, omission, breach or negligence of Contractor or its officers, employees, volunteers, or agents. Contractor's duties and obligations pursuant to this paragraph shall survive the termination or expiration of this Agreement.

**6. WORKERS' COMPENSATION BENEFITS.** This contract shall be void and of no force and effect unless 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 (WCL). Contractor understands and agrees that pursuant to WCL § 57 (workers' compensation requirements), Contractor must provide one of the following forms to the government entity issuing the permit or entering into a contract: (A) Form CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; (B) Form C-105.2, Certificate of Workers' Compensation Insurance; or (C) Form SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance. Pursuant to WCL § 220(8) (disability benefits requirements), Contractor must provide one of the following forms to the entity issuing the permit or entering into a contract: (A) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage (see above); (B) DB-120.1, Certificate of Disability Benefits Insurance; or (C) DB-155, Certificate of Disability Benefits Self-Insurance. (In the case of NYS Agencies acceptable proof consists of a letter from the NYS Department of Civil Service indicating the applicant is a New York State government agency covered for workers' compensation). Contractor acknowledges and agrees that, pursuant to the New York State Workers' Compensation Board, ACORD forms are not acceptable proof of such coverage.

**7. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Art. 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with § 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 § 230 of the Labor Law, then, in accordance with § 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 § 220-e or § 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation. It is the sole responsibility of Contractor to determine if Contractor is subject to this contract provision and to ensure compliance with same.

**8. WAGE AND HOURS PROVISIONS FOR CERTAIN CONTRACTS.** If this is a public work contract covered by Art. 8 of the Labor Law or a building service contract covered by Art. 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 Art. 8 of the Labor Law, Contractor understands and agrees that the filing of payrolls in a manner consistent with Subd. 3-a of § 220 of the Labor Law shall be a condition precedent to payment by the County of any State approved sums due and owing for work done upon the project. It is the sole responsibility of Contractor to determine if Contractor is subject to this contract provision and to ensure compliance with same.

**9. SET-OFF RIGHTS.** The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to the County 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 County for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County 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 County agency, its representatives, or the County Treasurer.

**10. RECORDS.** 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 County Legislature, County Treasurer 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 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 County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under § 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform an appropriate County 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 County's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (A) Pursuant to Tax Law § 5, Contractor understands and agrees that, notwithstanding any other provision of law, the County shall, at the time the County contracts to purchase or purchases goods or services or leases real or personal property from any person, require that each such person provide to the County such person's federal social security account number or federal employer identification number, or both such numbers when such person has both such numbers, or, where such person does not have such number or numbers, the reason or reasons why such person does not have such number or numbers. Such numbers or reasons shall be obtained by the County as part of the administration of the taxes administered by the New York State Tax Commissioner for establishing the identification of persons affected by such taxes. (B) Contractor further understands and agrees that, notwithstanding any other provision of law, the County shall, upon request of the commissioner, furnish to the commissioner the following information with respect to each person covered by this section: (1) business name or the name under which the applicant for a license or licensee will be licensed or is licensed; (2) business address or whatever type of address the County requires the applicant for a license or the licensee to furnish to it; and (3) federal social security account number or federal employer identification number, or both such numbers where such person has both such numbers, or the reason or reasons, furnished by such person, why such person does not have such number or numbers. Notwithstanding

Art. 6 of the Public Officers Law or any other provision of law, the report to be furnished by the County to the commissioner pursuant to this section shall not be open to the public for inspection. (C) For the purposes of this section, "Person" shall mean an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the foregoing. However, such term shall not include any public corporation, corporation formed other than for profit or unincorporated not-for-profit entity, except such term shall include an education corporation of the type dealt with in § 221 of the Education Law, an education corporation subject to Art. 101 of the Education Law and a cooperative corporation.

**12. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** Contractor certifies and warrants that any and all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of § 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 subd. (including the County) or public benefit corporation. 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. Except as might be specifically authorized by State Finance Law § 165, any bid, proposal or other response to a solicitation for bid or proposal which proposes or calls for the use of any tropical hardwood or wood product in performance of the contract shall be deemed non-responsive.

**13. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** In the event Contractor conducts business in New York state, and owns or licenses computerized data which includes private information, Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa) as applicable.

**14. NON-COLLUSIVE BIDDING CERTIFICATION FOR CERTAIN CONTRACTS.** In accordance with General Municipal Law § 103-d(1), if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury: (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under

penalty of perjury, that to the best of knowledge and belief: (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

**15. IRAN DIVESTMENT ACT REQUIREMENTS FOR CERTAIN CONTRACTS.**

In accordance with General Municipal Law § 103-g, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury: By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of Subd. 3 of § 165-a of the State Finance Law.

**16. HIPAA REQUIREMENTS FOR CERTAIN CONTRACTS.**

In the event that Protected Health Information is used or disclosed in connection with or in the course of the performance of the Agreement, a "Business Associate Agreement" ("*Business Associate Agreement*"), shall be attached to and incorporated by reference in the contract, in a form and content approved by the County and shall apply in the event that Protected Health Information is used or disclosed in connection with or in the course of the performance of the Agreement by the party signing this Agreement as Business Associate, and pursuant to which Business Associate may be considered a "business associate" of the County as such term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations issued by the U.S. Department of Health and Human Services, as amended.

**17. PROMPT AUDITING OF VOUCHERS AND LATE PAYMENT PROVISIONS.**

Consistent with accepted business practices and with sound principles of fiscal management, the County shall audit vouchers and make payments expeditiously and subject to proper and reasonable financial oversight activities designed to ensure that the County receives the quality of goods and services to which it is entitled and to ensure that public funds are spent in a prudent and responsible manner. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by General Municipal Law § 3-a and General Municipal Law Art. 5-a, to the extent required by law.

**18. 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.

**19. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise. Pursuant to Civil Practice Law and Rules 504(1), the place of trial of all actions related to this contract by or against the County or any of its officers, boards or departments shall be in such county.

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

**21. GIVING OF NOTICES.** Any notice, request, or other communication required to be given pursuant to the provisions of this agreement shall be in writing and shall be deemed to have been given when delivered in person or five days after being deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, and addressed to the address listed on the face sheet of this contract. The address of either party to this agreement may be changed by notice in writing to the other party served in accordance with this provision.

**22. COUNTY ATTORNEY'S APPROVAL.** Contractor understands and agrees that the Tioga County Attorney's office may approve and make or require modifications, other than price and dates, prior to execution by the County to ensure compliance with applicable federal, state and local laws and with all provisions of the county's contract policy manual and insurance standards.

**23. DESCRIPTIVE HEADINGS FOR CONVENIENCE ONLY.**

Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Contract.

**24. ACCURACY OF CONTRACTOR REPRESENTATIONS.**

Contractor understands, acknowledges and agrees that this Contract will be relied upon by, and filed with, registered or recorded in or otherwise become a part of the records of, the County of Tioga. Contractor affirms, under penalty of perjury, to the best of his/her/its knowledge, information and belief, that the representations, agreements and promises made by Contractor in this Contract, and all attachments thereto, including any and all exhibits or appendices, is true, complete and accurate.

**25. SEXUAL HARASSMENT POLICY VENDOR ACKNOWLEDGEMENT**

1. Vendor represents and warrants that:
  - a) It has received and understands Tioga County's Sexual Harassment Prevention Policy ("Policy"), which is also available on the Tioga County website at <https://www.tiogacountyny.com>
  - b) It has provided each employee who provides a service to Tioga County with a copy of the Policy;
  - c) All Vendor employees have received training on the Policy, including how to file a complaint of sexual harassment against Tioga County under the Policy;
  - d) A Vendor employee who has not received a copy of the Policy and/or received training on the Policy shall not be assigned to work at a Tioga County facility or with Tioga County employees; and
  - e) Vendor shall not retaliate against a Vendor employee who exercises a right protected under the Policy or law. Upon request, Vendor shall provide Tioga County with a Vendor employee's written acknowledgement of the Policy and training received.
2. To the fullest extent provided by law, and without prejudice to any rights Tioga County may have against Vendor, Vendor shall fully cooperate with Tioga County's investigation into any claim(s) of sexual harassment by a Vendor employee against Tioga County and shall further indemnify and hold Tioga County harmless from any (a breach of this provision, to include the representations and warranties made in paragraph 1 above; and b) the cost and expense of any investigation undertaken by Tioga County which pertains to or arises from the filing of a Vendor employee's claim against Tioga County under this policy.

**26. CLAUSES FOR NYSDOT FUNDED 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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when

the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Recipient Federal Highway Administration and Federal Transportation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or Federal Highway Administration and Federal Transportation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration and Federal Transportation Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration and Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.