



October 1, 2021

RE: Request for Qualifications (RFQ) to secure the services of an qualified Architecture and Engineering Firm.

To All Proposers;

The Harbor Transit Multi-Modal Transportation System (Harbor Transit), provides public transit services in the northwest county of Ottawa which includes, the cities of Grand Haven and Ferrysburg, Grand Haven Charter Township, Spring Lake Township and Spring Lake Village, is seeking to contract with a professional architectural and engineering (A/E) firm as a primary provider of consultant services for a proposed New Maintenance and Administrative facility.

A non-mandatory pre-proposal meeting is scheduled for October 6, 2021 at 11:00 am EST.

Via Zoom meeting

<https://us06web.zoom.us/j/83382600713?pwd=QlF1aFZ2WmZTRVRic1REL0s5VFE5QT09>

The current facility, located at 440 North Ferry Street in Grand Haven, is no longer adequate for the needs of a rapidly growing community. The most qualified A/E consultant will assist Harbor Transit in designing and construction of a new maintenance and administrative facility approximately 38,000 square feet with an estimated project cost of \$13,800,000.

Funding for the facility will come mainly from the Federal Transit Administration (FTA) and as such, must adhere to the guidelines of the FTA.

The HT Board reserves the right to postpone, accept or reject any and all proposals, in whole or in part, on such basis as the HT Board deems to be in its interest to do so, subject to the rules and regulations set forth by the Federal Transit Administration and the Michigan Department of Transportation.

Scott Borg
Harbor Transit
sborg@harbortransit.org

Transportation Director
440 N. Ferry Street
Grand Haven, MI 49417

REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL/ENGINEERING (A/E) SERVICES



Scott Borg
Transportation Director
Harbor Transit
440 N. Ferry Street
Grand Haven, MI 49417

SCHEDULE OF EVENTS

Issue RFP	October 1, 2021
Pre-Proposal Meeting	October 6, 2021 at 11:00 a.m.
Proposals Due	October 22, 2021 at 2:00 p.m. local time.
Interviews	November 1-5, 2021
HT Board Actions/Contract Award	November 17, 2021

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SECTION 1: PUBLIC NOTICE
REQUEST FOR QUALIFICATIONS (RFQ)
FOR
ARCHITECTURAL/ENGINEERING (A/E) SERVICES

Harbor Transit (HT) is requesting sealed proposals for professional A/E Services for a bus maintenance and administration facility project. This project entails building a new administration/maintenance facility at a new location that will allow for future and greater maintenance capabilities. Copies of the RFQ may be obtained by going to the Harbor Transit Website at harbortransit.org.

Sealed proposals will be accepted by the HT Transportation Director until Friday, October 22, 2021 at 2:00 P.M., local time.

The HT Board reserves the right to postpone, accept or reject any and all proposals in whole or in part, on such basis as the HT Board deems to be in its interest to do so, subject to the rules and regulations set forth by the Federal Transit Administration (FTA).

No proposal may be withdrawn for at least sixty (60) days after the scheduled closing time for receipt of proposals. An original and four (4) copies of the proposal plus one electronic copy shall be submitted in the format prescribed in this procurement.

Scott Borg
Transportation Director
(616) 842-3220 Ext 5
sborg@harbortransit.org

Harbor Transit
440 N. Ferry Street
Grand Haven, MI 49417



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SECTION 2: SCOPE OF WORK

Purpose

HT is seeking to contract with a professional architectural and engineering (A/E) firm as a primary provider of consultant services. The A/E firm will be required to perform all services described in the Project Description and Scope of Work.

Project Description

HT's current Maintenance Facility and Administration Building has a number of liabilities that impact operations from that facility. Some of the key issues are:

- ☒ Growth in fleet does not allow adequate storage for all buses;
- ☒ Existing facility does not allow sufficient space for maintenance needs and office space;
- ☒ Vehicle flow is not ideal for internal bus movements; and
- ☒ Employee parking is limited.

Scope of Work

The selected A/E firm will be responsible for the following:

- 1) All work submitted to HT shall be approved by an Architect or Engineer licensed in the State of Michigan unless otherwise permitted by HT.
- 2) Firm shall be fully capable and qualified to update HT's facility drawings and transfer same into Auto Cad computer software.
- 3) Firm or its subcontractor(s) shall have at a minimum the capabilities to design and engineer projects described in this RFQ. Capabilities should include, but are not limited to:
 - Landscape and Building Architecture
 - Civil Engineering
 - Structural Engineering
 - Mechanical Engineering
 - Electrical Engineering
 - Environmental Engineering
 - Construction Management
 - Sustainable Design
- 4) Firm or its subcontractor(s) shall provide professional project management services.

5) For this project, the A/E firm **shall provide** the following services:

- Consult HT staff on design and engineering alternatives including evaluations of alternatives.
- Prepare technical specifications including all design and engineering work and preparation of drawings. Prepare all bid documents including required Federal certificates and clauses.
- Preparations of pre-bid cost estimates for the project and any significant modification to the project scope.
- Preparation of reports or correspondence regarding the project per HT request.
- Word process and publish project manuals and drawings, including documents furnished by HT.
- Attend pre-bid meetings and address issues related to the technical specifications and drawings.
- Prepare addenda to bid documents and distribute to bidders.
- Prepare documents as required to respond to protest of technical specifications or drawings.
- Prepare documents required to certify building LEED status at HT's direction.
- Attend bid openings
- Investigate bid submitted and make reference checks on bidders, as required.
- Review bids and recommend firms for contract award.
- Perform on-site inspections with the HT Facility Manager and meet with prime and subcontractors as required.
- Prepare and issue Project Field Bulletins and Change Orders as required, including cost estimates and cost analysis.
- Review requests for payment by contractors and recommend payment amounts.
- Perform final inspection with the HT Facility Manager and contractors and project close out.
- Prepare and issue punch list(s).
- Attend meeting with HT staff and contractors including but not limited to pre-construction, progress and project close-out meetings.

Project Organization and Responsibilities

The HT Transportation Director will be the point of contact to initiate work on any project. The specific scope of work furnished by the Transportation Director or Designee will be used by the A/E firm to develop a cost proposal based on rates established in a contract between HT and the A/E firm. The Transportation Director and the Finance Director will then negotiate a firm price for the cost of the required A&E services. If this number is below \$20,000 (authorization level without Board approval) design work may begin immediately after an agreement is made. If higher than \$20,000, the HT Board must act on the A&E costs. After an agreement is reached on

the project's scope of work and cost, the Finance Director will issue a Purchase Order for the project.

The Purchase Order may be modified based on changes in the scope of work (change order). All change orders shall be submitted to the Finance Director, as well as the Transportation Director for review and approval. Requests for payment by the A/E firm should be submitted directly to the Accounts Payable staff for approval and processing.

Project Timetable

SCHEDULE OF EVENTS

<u>Activity/Action</u>	<u>Date</u>
Issue RFP	October 1, 2021
Pre-Proposal Meeting	October 6, 2021 at 11:00 a.m.
Proposals Due	October 22, 2021 at 2:00 p.m. local time.
Interviews	November 1-5, 2021
HT Board Actions/Contract Award	November 17, 2021, June 1, 2014

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SECTION: 3 CONTENTS OF PROPOSAL

The following information, at a minimum, shall be included as part of the proposal. **This procurement is governed by the Brooks Act, which requires selection solely on the basis of qualifications.**

Firm And Staff Qualifications

The proposal shall include a general description of the firm and its background. Specific information about the firm and staff shall also be provided to include:

- A. Information regarding the firm's previous experience with similar or related projects.
- B. Information demonstrating the firm and staff capabilities to perform all aspects of this particular project.
- C. Information demonstrating the firm and staff commitment to the needs of a public transit operator.
- D. Information regarding the expertise and experience of staff person(s) to be assigned to work on the project. It should also contain specific proposed responsibilities of the project staff person(s), and coordination of activities with HT staff.
- E. References for all similar or related projects if firm has not performed work previously for HT.

Financial Proposal

The Financial proposal shall be submitted in a separate sealed envelope. The financial proposal will only be opened for the proposer deemed to have the best overall proposal. Since the HT is bidding a specific project at this point, a precise bid sheet is attached. The following information is required.

- A) Schedule of average direct labor rates (without fringe benefits) for the following categories of personnel to be used on the project. Respondents should adhere to the categories stated below:
 - Principal (Partner or Senior Officer)
 - Project Manager (responsible professional)
 - Planner/Architect (registered)
 - Civil Engineer (registered)
 - Electrical engineer (registered)
 - Designer/Technician (non-registered)
 - Draftsman
 - Clerical (typist, work processor, printer, assembly)
 - Other (specify)

- B) Proposed fringe benefit rate, overhead rate on direct labor, provide rate, costs of printing, or other direct project costs. Specify if overhead will vary by employee category, office use, or project phase.
- C) Any other information available to show pricing methods.

Proposed rate and costs will be used in the negotiation of fees for individual projects and shall remain in effect through the length of the project.

As a guideline, proposed overhead rates should conform to the Federal Acquisition Regulations as established by a governmental audit or certified by a Certified Public Accountant. Profit rate shall be applied only to direct labor plus overhead **and shall not exceed ten percent (10%).** No mark up or profit shall be paid on non-labor related job costs, reimbursable, or on services, provided by subcontractors.

Prior to any negotiation, the selected consultant will be required to provide written confirmation of proposed overhead rates as well as proposed total compensation utilizing the rates shown in the proposal and detailing man-hours needed for each activity, number of sheets required for drawings, amount proposed for surveys, related investigations, and all other costs associated with this project.

It is understood that HT will not be responsible for payment of additional work (change order) unless a written estimate is provided and a written authorization is obtained from Harbor Transit. Under no circumstances shall additional charges be allowed without prior written authorization.

Proposal Price

Proposals shall include price or cost information in a sealed envelope. Firms will be rated based on qualifications alone. The firm with the highest qualification based score will have its price proposal opened and negotiations will commence to secure a contract. If negotiations are unsuccessful, the HT will then open the price proposal of the second highest scoring firm and attempt to negotiate a successful contract with that firm, and so on. Price proposals of unsuccessful proposers will be returned unopened.

SECTION 4: EVALUATION OF PROPOSALS

Proposals will be evaluated according to the following criteria. All criteria will be weighted in the evaluation of proposals.

Firm And Staff Qualifications

The qualifications of each responding firm will be evaluated in these specific areas in **their relative order of importance**: The most important factor will be listed first, the next most important factor will be listed second and so on.

- A. Capability and experience of the firm and any subcontractors in comparable previous projects. Ability of the firm to perform similar work within budget and time constraints; and the quality of similar finished projects.
- B. Expertise and experience of staff person(s) to be assigned to the project and subcontractors, particularly the Project Manager.
- C. Capabilities of the firm and staff (and subcontractors) to perform all aspects of the project.
- D. Relevant experience from other projects.

Certifications

Failure to submit the attached certificates will lead to a firm being judged to be non-responsive.

- * Attachment 1: Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters.
- * Attachment 2: Certification Of Lower-Tier Participants (subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion.
- * Attachment 3: Certification of Restrictions on Lobbying.
- * Attachment 4: DBE Certification

Process

Step 1: The evaluation procedure will be a two-step process. All initial proposals received will be scored by an evaluation committee. Those proposals which are judged to be the strongest will be short-listed. Short listing will not be arbitrary. Those firms that have a reasonable expectation of winning the competition will be advanced to the second step of the process. Those proposers who lack sufficient points will be rejected at the end of Step 1.

Step 2: Those short-listed firms will be allowed to make oral presentations to the evaluation committee. Each presentation will be scored by the committee. The firm which receives the highest combined score from both the proposal and the presentation will be judged to be the most technically qualified.

HT will initially negotiate with the most technically qualified firm to establish fair and reasonable compensation for A/E services. If a fair and reasonable price cannot be

negotiated, the firm will be eliminated from consideration for contract award. HT will then negotiate with the next most technically qualified firm to arrive at a fair and reasonable price. This process will continue until HT is able to negotiate a fair and reasonable price with a qualified firm.

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offense enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

If the above named Primary Contractor is unable to certify to any of the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

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**CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY
EXCLUSION**

The Lower Tier Participant (Subcontractor to the Primary Contractor), _____, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the above named Lower Tier Participant (Subcontractor) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

The Lower-Tier participant (Subcontractor), _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31. U.S.C. Sections 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ hereby certifies that the _____ has authority under State and Local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

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CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, _____, hereby certify on

(Name) (Title)

behalf of _____ that:
(Firm)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated _____

(Name)

(Title)

(Firm)

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BLANK forms are NOT acceptable. If DBE subcontractor opportunities are available, please fill out sections 1 thru 5. If no subcontractor opportunities available fill out section 6. SIGNATURES ARE REQUIRED.

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1. DBE Firm Name: _____

Address: _____

2. Dollar amount awarded: _____

3. Description of work to be performed: _____

4. **CONTRACTOR'S COMMITMENT TO USE DBE FIRM**

_____ is committed to utilize the DBE contractor

(Name of Contractor)

to utilize the above-named DBE subcontractor/supplier in the manner and amount described on this form.

Dated _____

(Authorized Signature)

5. **DBE'S COMMITMENT TO PARTICIPATE**

_____, as a DBE firm, is committed to perform the work as

(Name of subcontractor/supplier)

described above for the amount specified.

Dated _____

(Authorized Signature)

6. **NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.**

_____, has no subcontractor opportunities available for

(Name of subcontractor/supplier)

work to be performed.

Dated _____

(Authorized Signature)

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1.DBE Firm Name: _____

Address: _____

Sub contractor
name and address

2.Dollar amount awarded: _____

Amount awarded to Sub contractor

3.Description of work to be Performed: _____

Work description.

1. CONTRACTOR'S COMMITMENT TO USE DBE FIRM

Prime contractor fills out.

_____, is committed to utilize the DBE contractor to
(Name of Contractor)
utilize the above-named DBE subcontractor/supplier in the manner and amount described on this form.

Dated _____

(Authorized Signature)

2. DBE'S COMMITMENT TO PARTICIPATE

Sub contractor fills out.

_____, as a DBE firm, is committed to perform the
(Name of subcontractor/supplier)
work as described above for the amount specified.

Dated _____

(Authorized Signature)

3. NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.

Prime contractor fills out.

_____, has no subcontractor opportunities
(Name of subcontractor/supplier)
available for work to be performed.

Dated _____

(Authorized Signature)

SECTION 5: INSTRUCTIONS TO BIDDERS

EQUIPMENT & SERVICES - RFP

1) FUNDING

This Project will be funded with the assistance of capital improvement grants from the Federal Government under the Federal Transit Act and the Michigan Department of Transportation (MDOT). The successful bidder will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and HT. This grant contract is available for examination by prospective bidders at the HT offices.

2) PROJECT BUDGET

The budget for this Project will be funded through financial assistance grants from the Federal Transit Administration (FTA) and Michigan Department of Transportation (MDOT). The total Project budget will be determined by the final negotiated price between HT and the successful bidder.

3) PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held for all interested bidders on Wednesday, October 6, 2021, at 11:00 am via Zoom Call. <https://us06web.zoom.us/j/83382600713?pwd=QlF1aFZ2WmZTRVRic1REL0s5VFE5QT09> HT reserves the right to postpone answers to any questions raised at this meeting until a later date. Any oral explanations provided by HT during this meeting will not be binding upon HT until they are reduced to a written form by HT and given to all interested bidders. Bidders seeking a written response by HT to their questions at the Pre-Proposal Conference are requested to submit their questions in writing to HT in advance. HT will make every effort available to respond at the Pre-Proposal Conference. Attendance at the Conference is not mandatory, but is encouraged by HT.

4) TYPE OF CONTRACT

The Contract for this project shall be a **firm fixed price type**.

5) PROJECT NUMBER(S)

All bidders and Contractors will include the FTA Project Number in all correspondence with HT and with the FTA. The FTA Project Number for this Project is 2021-09

6) USE OF "HARBOR TRANSIT" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

HT reserves the right to review and approve any advertising copy related to this project in any way prior to publication. The successful bidder will not allow such copy to be published in their advertisements or public relations programs until submitting such copy and receiving prior written approval from HT. The successful bidder agrees that published information relating to this project will be factual and in no way imply that HT endorses the successful bidder's firm, service or product.

7) INTENT OF SPECIFICATIONS

It is the intent of these specifications to provide a completed project of substantial and durable construction in all respects, which will be most suitable and advantageous for HT. Experimental or unproven equipment, materials or design will not be accepted without prior review and written acceptance by HT.

8) APPROVED EQUALS AND DEVIATIONS

All Proposals must be in strict compliance with the requirements and provisions of these specifications, including the provisions herein regarding "approvals", "approved equals", and "deviations". Where a feature, component or item is specified by brand name in these specifications, the words "or approved equal" will apply. Where the approval of HT is specifically required by these specifications in connection with a particular feature, or if the bidder proposes to submit a proposal containing "approved equals" or "deviations" from specific requirements of these specifications, the bidder must obtain such approval, confirmed in writing, prior to the date for the receipt of proposals. With respect to "approved equals" or "deviations", the details of same and the reasons and justifications therefor must be submitted to HT, including a statement whether the bidder has previously furnished or offered to furnish the item in question, is herein specified. Proposals may be submitted containing such "approvals", "approved equals", or "deviations", as are specifically approved by HT, confirmed in writing, prior to the date for receipt of proposals. Each proposal must be accompanied by documentation regarding any such approvals granted by HT for the proposal. Notice of any such approvals required by and/or granted to a bidder shall be furnished by HT to other prospective bidders prior to the date for receipt of proposals. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be cause for its rejection. The decision of HT, as represented by the Transportation Director, shall be final with respect to whether any proposed deviations from the specifications are acceptable. It should be understood that specifying a brand name, components, and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying HT of any inappropriate brand name, component, and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

9) PROTEST PROCEDURES

The following terms, conditions and appeal procedures will apply:

- (a) HT reserves the right to postpone the bid opening or receipt of proposals for its own convenience.
- (b) Changes to the specifications will be made by addendum only.
- (c) Prime Contractors and subcontractors may make appointments to discuss the Project specifications. This, however, does not relieve them from the written documented requests required by paragraphs (d) and (f), following.
- (d) Requests for approved equals, clarification of specifications, and protest of specifications must be received by HT in writing not less than nine (9) working days before the date of the scheduled bid opening or closing date for receipt of proposals. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.
- (e) HT's replies to requests under paragraph (d) above will be postmarked at least four (4) working days before the date scheduled for the bid opening or receipt of proposal.

(f) A protest by any adversely affected person regarding restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the HT Finance Director two (2) working days before the date scheduled for bid opening or receipt of proposal. The formal written protest shall state the name of the protester, a description of the Project, and the facts and law upon which the protest is based, and a statement as to what relief is requested.

(g) Upon receipt of a protest, HT shall immediately determine if the date for the bid opening or closing date for receipt of proposals should be postponed. If the bid opening or closing date is postponed, HT will contact all Contractors and subcontractors who were furnished a copy of the specifications by HT that an appeal has been filed and that the bid opening or receipt of proposals is postponed until a decision has been issued. Notice of the postponement will be made in writing by addendum.

(h) Representatives of HT and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such a time as mutually agreed, to discuss all substantive issues raised in the protest. Upon completion of discussion between HT and the protester, the HT Transportation Director will transmit a final decision in writing to the protester within five (5) working days. The final decision will respond to each substantive issue raised in the protest. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension. Upon issuance of the written decision, HT will then issue appropriate addendum to reschedule the date for the bid opening or closing date for the receipt of proposal.

(i) Protests by any adversely affected person for reasons other than for restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the HT Finance Director not more than three (3) working days after the posting of the Notice of Award is made to the participating bidders. Upon receipt of a protest after Contract award, HT shall immediately determine if work on the protested Project should be suspended until such time as the protest is resolved.

(j) Representatives of HT and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such time as mutually agreed to by both parties to discuss the protest. Upon completion of discussions between HT representatives and the protester, HT will issue a written decision to the protester within five (5) working days. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension.

(k) Except as noted in paragraph (l), HT will not open bids, receive proposals or award a contract if a formal written protest has been received and no final decision has been issued by the HT Transportation Director. After the issuance of a final decision, HT will wait a minimum of five (5) working days before opening bids or proposals or before awarding a Contract for a Project.

(l) HT may open bids, receive proposals and award a Contract for a Project while a protest is pending final disposition when the HT Transportation Director determines that:

- * The items to be procured are urgently required;
- * Delivery or performance will be unduly delayed by failure to make an award promptly; or,
- * Failure to make prompt award will otherwise cause undue harm to HT or the Federal Government.

(m) Protester may request a reconsideration after a final decision has been issued by the HT Transportation Director within five (5) working days after the issuance of a final decision if new data or information becomes available that was not previously known, or there has been an error of law or regulation.

(n) The provisions of Chapter V of FTA Circular 4220.1F. (11/01/2008), are hereby incorporated and made part of the rules of HT. Protests to the FTA by a protester must be made in accordance with FTA Circular 4220.1F. FTA will only consider a protest that alleges failure of HT to have a written protest procedure or failure to follow such procedure. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.

Any appeal or protest may be withdrawn at any time

10) SUBMISSION OF PROPOSALS

Sealed proposals will be accepted until Friday, October 22, 2021, at 2:00 pm, local time. They shall be submitted to:

Finance Director
Dana Appel
440 North Ferry Street
Grand Haven, MI 49417

Proposals submitted to HT shall include one (1) original and four copies *plus one electronic copy*.

11) SEALED PROPOSAL LABEL

The bidder should complete the enclosed "Sealed Proposal" label and attached it to the envelope containing the bid or proposal. HT assumes no responsibility for the premature opening of sealed bids or proposals which do not have this label attached to the outside of the envelope. Template for label attachment B. **If label is not included, please mark envelope "Sealed Proposal and Project number"**.

12) MAILING BIDS/PROPOSALS

Bids or proposals submitted by mail shall be mailed a minimum of three (3) days prior to the bid opening date or date scheduled for receipt of proposals. Postmarks by the U.S. Postal Service or other mail delivery service is required. Postage meter dates are not acceptable. Bids or proposals which are not mailed in a timely manner and received after the scheduled bid opening or proposal submittal date will not be accepted.

13) DURATION OF OFFER

All bids or proposals shall remain in effect for a minimum of 60 days from the bid opening date or scheduled date for receipt of proposals. Offers that allow less than 60 days for acceptance by HT will be considered non-responsive and will be rejected.

14) PROPOSAL PRICE

(a) Proposal prices shall be submitted in the prescribed form. Prices submitted in any other form may be considered non-responsive and may be rejected.

(b) Proposal prices shall be based on F.O.B. HT, Grand Haven, Michigan. The price stated in any proposal submitted shall include all items of labor, materials, equipment, tools and other costs necessary to fully complete and deliver this Project pursuant to the specifications. It is the intention of these specifications to provide and require a complete Project of the type prescribed. Any item or items omitted from such specifications which are clearly necessary for the completion of such Project and its appurtenances shall be considered a portion of such Project although not directly specified or called for in these specifications.

15) TAX EXEMPTION

The HT is exempt from payment of all Federal, State, and local taxes in connection with this Project. Said taxes shall not be included in the bid or proposal prices. The HT will provide necessary tax exemption certificates. This provision does not relieve the Contractor from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.

16) DISCOUNTS

Prompt payment discounts will not be considered in the evaluation of proposals or bids. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the bidder. As an alternative to offering a prompt payment discount in conjunction with the offer, bidders awarded Contracts may include prompt payment discounts on individual invoices.

17) PAYMENT TERMS

HT will make payment within thirty (30) days after delivery and final acceptance of the project. The Contractor may submit invoices to HT prior to or upon delivery. Payment will not be made without an invoice.

18) PROJECT COMPLETION DATE (Not Applicable)

Bidders shall state in the bid or proposal the earliest possible date offered for completion of the Project. The date cannot exceed _____ calendar days from the date of the Notice to Proceed with the Project.

19) LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS

a) Any proposal received at the HT offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the bidder unopened.

A proposal may be withdrawn in person by the bidder or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

20) DETERMINATION OF SUCCESSFUL PROPOSER

This procurement is a "qualifications-based procurement". Pricing cannot be used to determine "most qualified" status. In determining the successful proposer, consideration is given only to the proposer's qualification and content of proposal as described in the evaluation criteria. Only after a most qualified firm is selected, may negotiations on price take place. Failure to come to a reasonable negotiated price with the most qualified firm will conclude negotiations with that firm. Then, negotiations will commence with the second most qualified (and so on) firm until an acceptable negotiated price can be made with that firm.

21) BIDDER QUALIFICATIONS

In order to be eligible for award, bidders must be responsive and responsible.

(a) Responsive offers are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Bids or proposals which do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.

(b) Responsible bidders are those prospective Contractors who, at a minimum, must:

- 1) Have adequate financial resources, as required during performance of the Contract.
- 2) Are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- 3) Have a satisfactory record of past performance.

- 4) Have necessary technical capability to perform.
- 5) Provide evidence satisfactory to HT that the bidder will comply with the DBE requirements.
- 6) Certify that they are not on the U.S. Comptroller General's list of ineligible Contractors.
- 7) Are qualified as a manufacturer or regular dealer of the items being offered.
- 8) Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

All prospective bidders may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible Contractor. Refusal to provide requested information may cause rejection of the bid or proposal.

22) ACCEPTANCE OF PROPOSAL

Each proposal shall be submitted with the understanding that the acceptance in writing by HT of the offer to furnish any or all goods or services described therein shall bind the bidder on its part to furnish and deliver at the proposal price, in accordance with the conditions of said accepted proposal and specifications

23) WITHHOLDING AWARD

This solicitation for bids or proposals does not commit HT to award a contract, pay any costs incurred in preparation of bid or proposals in response to this solicitation, or to procure or contract for good or services. Bidder shall be responsible for all costs incurred as part of their participation in the pre-award process.

24) PROPOSAL ACCEPTANCE, REJECTION, AND POSTPONEMENT

HT reserves the right to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the HT Board deems to be in its best interest to do so, subject to the rules and regulations set forth by the U.S. Department of Transportation. Also, HT reserves the right to accept an original offer or proposal without negotiation or without calling for a "best and final" offer.

25) USDOT/FTA CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project may be subject to review and concurrence by the U.S. Department of Transportation, Federal Transit Administration

26) SINGLE BID RESPONSE

If only one (1) bid is received in response to the Invitation for Bids, a detailed cost proposal may be requested of the single bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

27)
DBE PARTICIPATION

In connection with the performance of this Contract, the successful bidder agrees to cooperate with HT in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises (DBE). The policy and obligations for maximum utilization of DBE's are herein set forth:

(a) Policy - It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.

(b) DBE Obligation - HT or its Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, HT or its Contractors shall take all necessary and reasonable steps in accordance with 49 CF, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. HT and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

Requirements and goals for Disadvantaged Business Enterprise participation in this Project are as follows:

A minimum of zero percent (0%) of the total contract price, as awarded, shall be established as a goal to be made available to certified DBE's. Compliance with the percentage goal may be fulfilled by DBE's performing as either:

- 1) A member of a joint venture as a prime contractor;
- 2) An approved subcontractor;
- 3) An owner-operator of equipment;
- 4) A renter of equipment to a prime contractor;
- 5) A firm manufacturing and supplying goods used in the project;
- 6) A firm supplying goods used in the project (when supplying goods, only 60 percent (60%) will be counted).

Prior to Contract award, the apparent successful bidder shall submit a written assurance of meeting the above goals and shall include names of DBE subcontractors, addresses of contact persons, a description of work to be performed and dollar values of each proposed DBE subcontract. This information shall be submitted on the attached 'DBE Participation Form' furnished with this solicitation.

If the goals were not met, the bidder must demonstrate that sufficient good faith efforts were made to meet the DBE contract goals and shall document the steps he has taken to obtain DBE participation.

Failure to provide required documentation of good faith efforts may be reason for disqualification of the Bid / Proposal.

Bidders' good faith efforts will include the following actions.

- ☒ Soliciting through all reasonable and available means the interest of all certified DBE's who have the capability to perform work under the contract. This shall include attendance at pre-bid meetings, advertising and /or written notices. The bidder shall allow sufficient time to permit the DBE's to respond to the solicitation.
- ☒ Selecting portions of the work to be performed by DBE's.
- ☒ Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- ☒ Negotiations in good faith with interested DBE's. It will be the responsibility of the bidder to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or materials consistent with the available DBE's. Evidence of negotiations shall include the names, addresses, and telephone numbers of DBE's that were considered and a description of the

information provided regarding the plans and specifications for the work selected for subcontractors, and evidence as to why additional agreements could not be reached for DBE's to perform the work.

- ☑ Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- ☑ Efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance as required.
- ☑ Efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.
- ☑ Use of services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The prime contractor agrees not to terminate for convenience a DBE subcontractor, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without HT's prior written consent. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the prime contractor agrees to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated.

28) DEBARMENT AND SUSPENSION

Bidders shall complete and submit as part of their bid, the Certification of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$25,000. The bidder shall also submit a list of subcontracts and subcontractors which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project. A Certification of Lower-Tier Participants Regarding Debarment, Suspension, And Other Ineligibility and Voluntary Exclusions shall be submitted by the bidder to HT for each listed subcontractor prior to contract award.

During the term of the Contract the successful bidder will be required to immediately notify HT of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

29) LOBBYING CERTIFICATION

Bidders shall complete and submit as part of their bid the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractors which will exceed \$100,000. A Certification of Restrictions on Lobbying shall be submitted by the bidder to HT for each listed subcontractor prior to contract award.

30) PRODUCT DESCRIPTION

Bids or proposals must be accompanied by a comprehensive description of bidder's product. This description shall include drawings, overall dimensions and photographs which show the construction characteristics and explain the operation of the bidder's product. The descriptive literature shall also include information on design details, components, performance characteristics, methods of manufacture and assembly. The descriptive literature is required for the purpose of evaluation and award. Failure of the descriptive literature to show that the product proposed conforms to the specifications and other requirements of this solicitation may result in rejection of the bid or proposal. Additionally, failure to submit the descriptive literature will require rejection of the bid or proposal. The quality of standard components not covered by the language of these specifications will be a factor in determining an award. No advantage shall be taken by the bidder or manufacturer in the omission of any part or detail which goes to make the product complete and ready for service, even though such part is not mentioned in this specification. All units or parts not specified shall be Contractor's standard units or parts and shall conform in materials, design and workmanship to the best practices known in the industry. All

parts will be new and in no case will used, reconditioned, or obsolete parts be accepted without prior review and written acceptance by HT.

31) DEMONSTRATION

Bidder may be requested to demonstrate to HT the capability of their proposed product to perform and function as herein called for by this specification. The demonstration shall be at no expense to HT in compliance with provisions outlined in the technical specifications contained herein.

32) PAYMENT TERMS (Not Applicable for this procurement)

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SECTION 6: CONTRACT PROVISIONS

EQUIPMENT AND SERVICES

1) DURATION OF CONTRACT

This Contract shall become effective on November 17, 2021 by HT Board approval and shall remain in effect through completion of the project.

2) PROJECT STARTUP

The Contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice to Proceed by HT

3) PROJECT COMPLETION (HT Board)

This Project shall be completed _____ days after execution of this Contract by both parties and issuance of a Notice to Proceed by HT.

4) PROJECT COMPLETION (Notice to Proceed)

This Project shall be completed _____ days after Contract award by the HT Board.

5) CONTRACT AMOUNT AND PAYMENT (Lump Sum)

HT agrees to pay and the Contractor agrees to accept as payment in full the amount of \$ _____.

6) CONTRACT AMOUNT AND PAYMENT (Payment in Full)

HT agrees to pay and the Contractor agrees to accept as payment in full the amounts shown in Exhibit _____, Payment Schedule.

7) CONTRACT AMOUNT AND PAYMENT (Payment Schedule)

HT agrees to make payments for this Project in accordance with the Payment Schedule included as Exhibit _____. The Contractor agrees to accept these amounts as payment in full.

8) PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by HT, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work of any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instruction of these Contract requirements and specifications, or are not equal the samples submitted to and approved by HT, will be rejected and shall be replaced by the Contractor without delay.

9) LIQUIDATED DAMAGES (Not Applicable)

In the event of delay in the completion of deliveries of _____ beyond the dates specified in the Contract

(Description of item or product)

And not subject to the Contract's Unavoidable Delay provision, HT shall assess, as liquidated damages, \$100.00 per calendar day. These damages shall be deducted from any monies due, or which may thereafter become due to the Contractor under this Contract. Further, the Contractor agrees that sums assessed as liquidated damages shall not be considered penalties but reflect the cost to HT for

(State basis for determining damages.)

10) AGREEMENT CHANGES

Additions, deletions or modifications to this Agreement may be made only in accordance with a written agreement between the parties, signed on behalf of HT by its Transportation Director.

11) DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement shall be decided by the HT Transportation Director who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the HT Transportation Director shall be final, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with HT Transportation Director's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

11) PATENT, TRADEMARK, COPYRIGHT, AND TRADE SECRET INFRINGEMENT

The Contractor warrants that the goods and services do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold HT, its officers, agents, employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this Contract. HT shall promptly notify the Contractor of any such claim. HT makes no warranty that the production, sale or use of goods or services under this Contract will not give rise to any such claim and HT shall not be liable to the Contractor for any such claim brought against the Contractor.

12) INDEMNIFICATION

The Contractor agrees to indemnify and hold HT, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against HT and from any and all damages, losses, expenses, attorneys' fees, costs and liabilities sustained by HT arising out of any claimed defect in the goods or services supplied by the Contractor, any claimed improper manufacture, design, design drawings, specifications, materials or repairs provided by the Contractor pursuant to the Contract, and any claim by a third

party for patent, trademark, copyright, or trade secret infringement. The Contractor's obligation under this paragraph shall include the obligation to indemnify and hold HT harmless for its own negligence whether active, passive or concurrent, in the performance of HT's duties and obligations pursuant to the Contract.

13) PATENT RIGHTS

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor shall notify HT immediately and provide a detailed report. The rights and responsibilities of HT, the Contractor, and FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

14) RIGHTS IN DATA

The Contractor agrees to comply with the following provisions:

(a) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

(b) The following restrictions apply to all subject data first produced in the performance of this Agreement:

- (1) Except for its own internal use, HT may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may HT authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
- (2) As authorized by 49 CFR Part 18.34, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- a) Any subject data developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third-party contract, irrespective of whether or not a copyright has been obtained; and
- b) Any rights of copyright to which HT, sub-recipient, or a third-party contractor purchases ownership with Federal assistance.

c) When FTA provides assistance to HT for a project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FTA determines otherwise, the recipient of FTA assistance to support planning, research, development, or a demonstration financed under the Federal Transit Act as amended, understands and agrees that, in addition to the rights set forth in paragraph (b)(2) of this Agreement, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Agreement or a copy of the subject data first produced under this Agreement. In the event that the Project, which is the subject of this Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in paragraph (a) of this Agreement and shall be delivered as the Government may direct. Paragraph (a) of the Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for HT's use which costs are financed with capital funds (Sections 3, 9, 16, 18, or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).

d) Unless prohibited by State law, HT agrees to indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by HT of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement. HT shall not be required to indemnify the Government for any such liability arising out of the wrongful acts of employees or agents of the Government.

e) Nothing contained in this section shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

Paragraphs (2) b), (2) c), and (2) d) of this Agreement do not apply to material furnished to HT by the Government and incorporated in the work carried out under the Agreement; provided that such incorporated material is identified by HT at the time of delivery of such work.

15) COVENANT AGAINST GRATUITIES

The Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of HT with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of Contract.

16) ASSIGNABILITY

The terms and provisions of the Contract documents shall be binding upon HT and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without HT's prior written consent. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval by HT of the subcontractor.

HT may assign its rights and obligations under the Contract to any successor to the rights and functions of HT or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent HT deems necessary or advisable under the circumstances.

17) PRICE WARRANTY AND COMMISSIONS

The price to be paid by HT shall be that stated in this Contract which the Contractor warrants to be no higher than the Contractor's current prices on orders by others for goods similar to those covered by this Contract for similar quantities under similar conditions and methods of purchase. In the event the Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by others, or in the alternative at HT's sole discretion, HT may cancel this Contract without liability to the Contractor for breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, HT shall have the right in addition to any other rights, to cancel this Contract without liability and to deduct from the Contract price or otherwise recover from the Contractor the full amount of such commission, percentage, brokerage or contingent fee.

18) RECORD RETENTION

During the course of the Project and for three (3) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the Government may require. Reporting and record keeping requirements for governmental recipients are set forth

in 49 CFR Part 18. Reporting and record keeping requirements for private nonprofit and for-profit recipients, are set forth in OMB Circular A-110. Project close out does not alter these requirements.

19) CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall maintain such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from the Contractor's operations under the Contract, or from any subcontractor or anyone directly or indirectly employed by either of them. This insurance shall be written for not less than the limits specified below. HT shall be named as additionally insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to HT prior to termination, cancellation or reduction in coverage in the policy. Certificates of such insurance shall be filed with HT prior to the start of the Contract.

- (a) Worker's compensation insurance shall be in the amount and coverage required by the State of Michigan to protect it from claims under the Worker's Compensation Act and other employee benefit acts.
 - (b) General comprehensive liability insurance, including bodily injury and death, and property damage insurance in the minimum amount of \$1,000,000 per occurrence.
 - (c) Automobile liability and garage keeper's liability, including bodily injury and property damage, insurance in the minimum amount of \$2,000,000 per occurrence.
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20) UNAVOIDABLE DELAYS

If delivery of completed Project under this Contract should be unavoidably delayed, the HT Transportation Director will extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonable expected to occur in connection with or during the Contractor's performance; was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents; was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

21) NOTIFICATION OF DELAY

The Contractor will notify the HT Transportation Director as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay completion of this Project. Within five (5) working days, the Contractor will confirm such notice in writing, furnishing as much detail as is available.

22) REQUEST FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the HT Transportation Director to make a decision on any request for extension. The HT Transportation Director will examine the request and any documents supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. The HT Transportation Director will notify the Contractor of the decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to damages or compensation and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

23) CONTRACTOR'S REPRESENTATIVE

Prior to the start of Contract performance, the Contractor shall advise HT in writing of the primary and alternate representatives (including phone numbers) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

24) HARBOR TRANSITS REPRESENTATIVES

Prior to the start of Contract performance, the HT Transportation Director will furnish a letter to the Contractor indicating the personnel who will represent HT in the administration of this Contract to insure successful performance. Such letter shall include the specific duties of each individual and their limits of authority.

25) INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS

In accordance with the Contract Changes provision of the Contract, The HT Transportation Director or his/her authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to the Contractor by someone other than the HT Transportation Director or his/her authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract Change. Any action on the part of the Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

26) TERMINATION OF AGREEMENT

This agreement may be terminated for reasons of convenience or default.

a) Termination For Convenience: HT may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to or paid for by HT, the Contractor will account for same, and dispose of it in the manner HT directs.

b) Termination For Default: If the Contractor does not deliver the complete Project in accordance with this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, HT may terminate, revoke or rescind this Agreement for default. Termination, revocation or rescission shall be effected by serving notice on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for the portions of the Project furnished, accepted, and found in compliance with the terms and conditions of this Agreement.

If it is later determined by HT that the Contractor has an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the Contractor, HT, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Termination, revocation or rescission of this Agreement for default shall not affect or impair any rights or claims of HT to damages for breach of any covenants of this Agreement by the Contractor. Further, should the Contractor fail to comply with the conditions of the Agreement or fail to complete the specified work or furnish the specified services as stipulated in the Agreement, HT reserves the right to purchase on the open market, or to complete the required work at the expense of the Contractor and to pursue all other recoveries available to HT under Michigan law.

In the event of a dispute under this Agreement, HT and the Contractor agree that proper venue for purposes of litigation shall be in Ottawa County, Michigan.

27) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to receive any benefit therefrom.

28) DBE PARTICIPATION

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as HT deems appropriate.

A minimum of zero percent of the total contract price, as awarded, shall be awarded to certified DBE's by the Contractor.

29) DEBARMENT AND SUSPENSION

The Contractor agrees to comply with U. S. Department of Transportation regulations, "Government Debarment and Suspension (Non-procurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the bidder to submit the Certification Of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matter for all projects when the total aggregate value of the Contract exceeds \$25,000 and to submit a Certification Of Lower Tier Participation Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions for each subcontractor which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project.

During the term of the Contract the Contractor agrees to immediately notify HT of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

The Contractor shall submit with each request for payment a list of all subcontractors to this contract which have a financial interest in this Project which exceeds \$25,000 or have had a critical influence on or substantive control over the Project and submit evidence that the appropriate certificate has been submitted and that they remain valid.

HT will not make payment to the Contractor or a subcontractor which 1) does not comply with this contract provisions, or, 2) is not in compliance with the above-cited federal requirements.

30) ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

Environmental Protection. The Contractor agrees to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq.; section 14 of the Federal Transit Act, as amended, 49 USC app. §§ 1610; Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact And Related Procedures" at 23 CFR Part 771 and 49 CFR Part 622. Air Quality. The Contractor agrees to comply with applicable requirements of EPA regulations, "Conformity To State Or Federal Implementation Plans Of Transportation Plan, Programs, And Project Developed, Funded Or Approved Under Title 23 USC Or The Federal Transit Act", 40 CFR Part 51, Subpart T; and "Determining Conformity Of Federal Actions To State Or Federal Implementation Plans", 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor agrees that any Project

identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP. EPA also imposes requirements pertaining to the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Contractor should be aware that the following EPA regulations, among others, may apply to its Project; "Control Of Air Pollution From Motor Vehicles And Motor Vehicle Engines", 40 CFR part 85; "Control Of Air Pollution From New And In-Use Motor Vehicles And New And In-Use Motor Vehicle Engines: Certification And Test Procedures", 40 CFR Part 86; and "Fuel Economy Of Motor Vehicles", 40 CFR Part 600. Use Of Public Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for the Project unless specific findings required by 49 USC § 303 are made by U.S. DOT. Historic Preservation. The Contractor agrees to assist the Government (FTA) to comply with section 106 of the National Historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation by:

- a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic And Cultural Properties", 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register Of Historic Places that may be affected by the Project, and notifying the Government (FTA) of the existence of any such properties; and,
- b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

Energy Conservation. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy And Conservation Act, 42 USC §§ 6321 et seq.

Mitigation of Adverse Environmental Effects. Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 USC app. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 USC § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Agreement by reference. As soon as the Government and the Contractor reach agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.

31) LABOR PROVISIONS: NON-CONSTRUCTION CONTRACTS

Pursuant to regulations set forth in 29 CFR, Part 5, the Contractor agrees to comply with applicable labor provisions for non-construction contracts. Requirements for compliance are as follows.

- a) Overtime Requirements: No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- b) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in Subparagraph (b)(1), 29 CFR, Section 5.5, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a Territory, to such District or such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each employed in violation of the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5, in the sum of \$10 for each calendar day in which such individual was required or permitted to work in excess of the standard

work week of forty (40) hours without payment of the overtime wages required by the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5.

c) Withholding For Unpaid Wages And Liquidated Damages: FTA or HT shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold, or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Subparagraph (b)(2) of 29 CFR, Section 5.5.

d) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Subparagraph (a) through (d) of this provision and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Subparagraphs (a) through (d) of this paragraph. Non-Construction Contracts: The requirements clauses contained in 29 CFR, Section 5.5 (b) or paragraphs (a) through (d), are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR, Section 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security Number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of FTA, DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

32) TITLE VI COMPLIANCE OF THE CIVIL RIGHTS ACT OF 1964

The Contractor agrees to comply, and assure the compliance by its subcontractors under this Project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d; U.S. DOT regulations, "Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation -- Effectuation Of Title VI Of The Civil Rights Act", 49 CFR Part 21.

33) COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor warrants that it is and will remain in compliance with all federal, state, and local laws, regulations, and ordinances relating to the manufacture, sales, and delivery of the goods and services sold to HT in connection with this Contract.

34) NOTICE OF FEDERAL REQUIREMENTS

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date an Agreement was executed may be modified from time to time. The Contractor agrees that the changed requirements will apply to the Project as required. All standards or limits set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

35) PROHIBITED INTEREST

No HT employee, officer, or agent, including any member of an evaluation committee for a HT project, may participate in the selection, award, or administration of a HT contract if a real or apparent conflict of interest

would exist. Such a conflict would exist when any of the parties set forth below has a material financial or other interest in a firm selected for award:

- any employee, officer, or agent of HT; any member of his/her immediate family;
- his/her partner; or an organization employing or about to employ any of the above.

Any interest as owner or stockholder of one percent (1%) or less in such a firm shall not be deemed to be a material financial interest, but serving as Director, officer, consultant, or employee of such an organization would be deemed a material interest.

36) AUDIT AND INSPECTION

For contract awards not based on competitive bidding procedures as defined by the Secretary Of Transportation, the Contractor agrees to permit the Secretary Of Transportation and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

37) EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project, the Contractor may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action 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. The Contractor shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its third-party contracts for Project implementation, except contracts for standard commercial supplies or raw materials and construction contracts, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

38) LOBBYING CERTIFICATION

During the term of this Contract the Contractor agrees to comply with the provisions of 31 USC section 1352, which prohibit the use of Federal funds for lobbying by any official or employee of any Federal agency, or member of employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with Federal assistance. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions On Lobbying", 49 CFR Part 20 and include these requirements in any subcontract which exceeds \$100,000.

The Contractor and all subcontractors in receipt of contracts exceeding \$100,000 shall submit Standard Form LLL quarterly to HT. The Contractor shall also submit with each request for payment 1) a list of each contractor and subcontractor that is subject to the Lobbying Certification, 2) certifications or evidence of certification for all subcontractors, 3) information regarding material changes in the previous certifications or disclosures, and, 4) Standard Form LLL or evidence that the form was previously submitted to HT.

HT will not make any payment to the Contractor or a subcontractor which 1) does not comply with this contract provisions, or, 2) is not in compliance with the above-cited federal requirements.

39) Americans with Disabilities Act

The Contractor agrees to and assures that any subcontractor under this Project complies with all applicable requirements of the Americans With Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq.; section 504 of the

Rehabilitation Act of 1973, as amended, 29 USC § 794; section 16 of the Federal Transit Act, as amended, 40 USC app. § 1612; and the following regulations and any amendments thereto:

- U.S. Dot regulations, “Transportation Services For Individuals With Disabilities (ADA)”, 49 CFR Part 37;
- U.S. Dot regulations, “Nondiscrimination On The Basis Of Handicap In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance”, 49 CFR Part 27;
- U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications For Transportation Vehicles”, 49 CFR Part 38;
- Department Of Justice (DOJ) regulations, “Nondiscrimination On The Basis Of Disability In State And Local Government Services”, 28 CFR Part 35;
- DOJ regulations, “Nondiscrimination On The Basis Of Disability By Public Accommodations And In Commercial Facilities”, 28 CFR Part 36;
- General Services Administration regulations, “Accommodations For The Physically Handicapped”, 41 CFR Subpart 101-19;
- Equal Employment Opportunity Commission, “Regulations to Implement The Equal Employment Provisions Of The Americans With Disabilities Act”, 29 CFR Part 1630;
- Federal Communications Commission regulations, “Telecommunications Relay Services And Related Customer Premises Equipment For The Hearing And Speech Disabled”, 47 CFR Part 64, Subpart f; and,
- FTA regulations, “Transportation For Elderly And Handicapped Persons”, 49 CFR Part 609.

40) PRIVACY

The Contractor agrees:

- a) To comply with the Privacy Act of 1974, 5 USC § 552a, and regulations thereunder, when performance under the Project involves the design, development, or operation of any system of records on individuals to be operated by the Recipient, its third-party contractors, subrecipients, or their employees to accomplish a Government function;
- b) To notify the Government when the Contractor, subcontractor, or their employees anticipate operating a system of records on behalf of the Government in order to implement the Project, if such system contains information about individuals retrievable by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be used in carrying out this Project until the necessary and applicable approval and publication requirements have been met. The Contractor, subcontractor, and their employees agree to correct, maintain, disseminate, and use such records as required by the Act, and to comply with all applicable terms of the Act;
- c) To include in every solicitation and in every third party contract and sub-agreement when the performance of work under that proposed third party contract or sub-agreement may involve the design, development, or operation of a system of records on individuals to be operated under that third party contract or sub-agreement to accomplish a Government function, a Privacy Act notification informing the third party contractor, or subrecipient that it will be required to design, develop, or operate a system of records on individuals to accomplish a Government function subject to the Privacy Act of 1974, 5 USC § 552a, and Federal agency regulations, and that a violation of the Act may involve the imposition of criminal penalties.

41) REMEDIES / BREACH OF CONTRACT

If the Contractor breaches any provision in this Contract, the Contractor agrees to reimburse HT for all damages suffered, including but not limited to incidental, consequential and other damages, as well as lost profits. The remedies in this Contract shall be cumulative and in addition to any other remedies allowed to HT under applicable law. No waiver by HT of any breach or remedy shall be a waiver of any other breach or remedy.

42) DBE SUBCONTRACTOR'S PAYMENT & REPORTING REQUIREMENTS

A) Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from HT. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of HT. This clause applies to both DBE and non-DBE subcontractors.

B) Contractor Reporting Requirements

The prime contractor agrees to count only the value of the work actually performed by the DBE firm toward its overall DBE goal. When a DBE performs as a participant in a joint venture, the prime contractor agrees to count the portion of the work of the contract that the DBE performs with its own forces toward its DBE goal only if the DBE is performing a commercially useful function of the contract. The factors listed in 49 CFR Part 26 will be used to determine whether a DBE trucking firm is performing a commercially useful function. The prime contractor understands that expenditures with DBEs for materials or supplies toward DBE goals will be counted according to the factors listed in 49 CFR Part 26. The prime contractor agrees to meet with the HT Finance Director for the purpose of verifying contractor reporting requirements prior to the signing of a contract.

C) Legal and Contract Remedies

The prime contractor agrees to report quarterly to the HT DBE Liaison Officer on all payments made to DBE subcontractors. Further, the contractor shall provide all copies of canceled checks made to DBE subcontractors showing proof of actual payment. The prime contractor understands that failure to report quarterly to the HT DBE Finance Director may result in the termination of this contract or such other remedy as HT deems appropriate.

The prime contractor understands that HT will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT inspector General, action under suspension and debarment of Program Fraud or Civil Penalties rules) provided in 26.109. The prime contractor understands that HT will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

43) OSHA REQUIREMENTS

The Contractor expressly warrants that all materials, supplies, and equipment provided under this Contract are provided in full compliance with the Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders issued pursuant thereto, and all other federal and state safety and health statutes. All sales of hazardous materials as defined in Title 29 of the cost of Federal Regulation, Chapter VII, parts 1501-1503, shall be accompanied by a completed U.S. Department of Labor "Materials Safety Data Sheet", Form OHFA-20 by the Contractor for each good sold to HT.

44) CARGO PREFERENCE

Pursuant to 46 CFR, Part 381, the Contractor agrees:

a) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to 46 CFR, Part 381, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment 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 (a) above to HT (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, 400 Seventh Street SW, Washington, DC, 20590, marked with appropriate identification of the Project.

To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

45) BUY AMERICA (not applicable)

The Contractor agrees to comply with Section 165 of the Surface Transportation Assistance Act of 1982, as amended, "Buy America Requirements - Surface Transportation Assistance Act Of 1982", 49 CFR Part 661, and 49 CFR, Part 663, and any amendments thereto and any implementing guidance issued by FTA.

46) CHANGE ORDERS

HT's Transportation Director, at any time by written order and without notice to the sureties, may make changes within the general scope of this Contract in (i) drawings, designs or specifications where the supplies to be furnished are to be specially manufactured for HT in accordance therewith; (ii) method of shipment of packing; (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modifications of the Contract. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided that HT's Project Manager, if he decides that the facts justify the action, may receive and act upon any such claim. Nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

47) PRODUCT WARRANTY

The Contractor expressly warrants that the goods provided under this Contract shall conform to all specifications, drawings, and other descriptions of the goods made by the Contractor or contained in specifications furnished to the Contractor by HT, and shall be free from all defects in material, design and workmanship. The Contractor also expressly warrants that the goods are merchantable and fit for the particular purpose intended by HT. The warranties of the Contractor contained in this Contract extend to future performance of the goods sold under this Contract. The Contractor further agrees not to attempt to limit or to exclude any remedies for damages, whether incidental, consequential or otherwise.

48) WARRANTY AND GUARANTEE

The Contractor hereby warrants to HT that all of the equipment furnished under the procurement shall be free from defects in material and workmanship under normal operating use and service. The Contractor shall provide such a Warranty beginning at the time of final acceptance of the system and continuing for a period of one (1) year on all equipment. The Warranty shall cover all parts and labor costs during the Warranty period. The remedial work to correct any of the potential deficiencies shall include the repair or replacement, at the Contractor's option, of equipment, components, devices and/or material. It is expressly understood that this Warranty covers all parts and labor costs necessary and that all cost for the necessary labor and material during the Warranty period shall be borne by the Contractor and not by HT except as provided for herein.

The Contractor also agrees to provide all labor and material to replace, during the period of this Warranty, without expense to HT, any and all parts which may be damaged due to defects in, or failure of such parts or of any other part or parts of the equipment furnished under the procurement. HT shall maintain the equipment in accordance with the Contractor's instructions in order to maintain this Warranty, and the Contractor shall be responsible for all shipping charges.

Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the equipment and for adequate installation and connection of all equipment, accessories, specialties and components. Under no conditions shall Contractor delegate this responsibility to suppliers or other sources.

Any apparatus, device or material which, in the sole opinion of HT, requires excessive service during its operation, shall be brought to the attention of the Contractor by HT at the conclusion of the first year but prior to the expiration of the Warranty. The Contractor shall be required to repair or replace the apparatus, device or material (at his or her determination of the problem and its cause) at no expense to HT. Should a "class failure" be involved, the Contractor may be required by HT to extend the Warranty on that item until the requirement for excessive service is eliminated. Excessive service is defined as three (3) failures (an event or failure of a given device and/or component in a unit or units which renders the unit or units inoperative and/or unsuitable for the intended purpose) or malfunctions (an event or failure of a given device and/or component in a unit or units which causes a degraded performance of the equipment but does not render the equipment inoperative) during the Warranty period. A "class failure" is a failure of a given component and/or device in five percent (5%) of the equipment provided during the Warranty period. The determination of a "class failure" shall be by HT and shall assume that all equipment within its respective category has these defects and shall ultimately experience these same failures.

In the event the Contractor fails to comply within ten (10) working days to a request by HT to repair, replace or correct damaged or defective work, materials, specialties, equipment and accessories, HT shall, upon written notice to the Contractor, have authority to deduct the cost of labor and material incurred by HT itself in making such repairs from any compensation due or to become due the Contractor. In the event the Contractor has been paid, the Contractor agrees to reimburse HT for the cost thereof. It is understood, however, that the said Warranty or Guarantee will not apply to any equipment which has been repaired or altered without the knowledge or consent of the Contractor and which repair or altering affected its stability and/or reliability; nor will said Warranty or Guarantee apply if the equipment has been subjected to other than normal use under conditions which prevail in HT service. The burden of proof for any negligence on the part of HT shall rest with the Contractor. Temperature, humidity, bus vibration and ambient electric conditions shall be considered normal operating conditions for this equipment. The Warranty shall not cover the replacement and maintenance items (such as light bulbs) made in connection with normal maintenance service.

Labor costs for HT to diagnose and to exchange faulty components, subassemblies or equipment and the shipping costs to return such items to a service location nominated by the Contractor for repair or replacement as provided for herein shall be at the expense of the Contractor. The shipping costs, including packing and insurance, to ship repaired or replaced items to HT shall be at the expense of the Contractor.

Contractor guarantees that a stock of replacement parts for the equipment and all components thereof, will be available for a period of not less the fifteen (15) years after the date of acceptance of the completed system under this Contract by HT.

The above Warranties are in addition to any statutory implied Warranties or Remedies imposed on the Contractor.

49) INTERCHANGEABILITY

All units and components procured under this Contract, whether provided by suppliers or manufactured by the Contractor shall be duplicates in design, manufacture and installation to assure interchangeability among items in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the unit.

50) TITLE

Title to goods acquired by HT under this Contract shall pass to HT when such goods are delivered, installed and accepted by HT. The Contractor shall bear all risk of loss until passage of title, or adequate documents for securing title shall be provided to HT by the Contractor.

51) INSPECTION

(a) HT reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing or installation process; provided, however, it is under no duty to make such inspection, and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, Contract requirements and specifications.

(b) Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of HT notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this Contract and its specifications.

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SECTION 7: REQUIRED FTA CLAUSES

ARCHITECTURAL AND ENGINEERING

"The supplier of goods or services must adhere to the following Federal Transit Administration requirements. The burden is on the supplier to read and understand each requirement based on the information provided. Execution of the contract implies agreement with the attached Federal Clauses and Certifications."

6) SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49 CFR Part 41

APPLICABILITY TO CONTRACT

Construction of new buildings or additions to existing buildings.

FLOW DOWN

The Seismic Safety requirements flow down from FTA recipients and sub recipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety including the work performed by all subcontractors.

REQUIREMENTS

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

7) ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq. 49 CFR Part 18

APPLICABILITY TO CONTRACT

The Energy Conservation requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

FLOW DOWN

The Energy Conservation requirements flow down from FTA recipients and sub recipients to first tier contractors to assure compliance, with the applicable building standards for Energy Conservation, including the work performed by all subcontractors.

REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8) CLEAN WATER REQUIREMENTS

33 U.S.C 1251

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$100,000 in value.

FLOW DOWN

The Clean Water requirements flow down to FTA recipients and sub recipients at every Tier.

REQUIREMENTS

A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report

each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11) LOBBYING

31 U.S.C 1352 49 CFR Part 19 49 CFR Part 20

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$100,000 in value.

FLOW DOWN

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

REQUIREMENTS

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the HT.

12) ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325 18 CFR 18.36(i) 49 CFR 633.17

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$100,000 in value.

FLOW DOWN

FTA does not require the inclusion of these requirements in subcontracts.

REQUIREMENTS

Access to Records - The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 6. FTA does not require the inclusion of these requirements in subcontracts.
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13) FEDERAL CHANGES *49 CFR Part 18*

APPLICABILITY TO CONTRACT

Applies to all contracts

FLOW DOWN

The Federal Changes requirement flows down appropriately to each applicable change requirement.

REQUIREMENTS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15) CLEAN AIR *42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18*

APPLICABILITY TO CONTRACT

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

FLOW DOWN

The Clean air requirements flow down to all subcontracts which exceed \$100,000.

REQUIREMENTS

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 U.S.C. §§ 7401 ET seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
 2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
-

20) NO GOVERNMENT OBLIGATION TO THIRD PARTIES

APPLICABILITY TO CONTRACT

To all contracts.

FLOW DOWN

Not required by statute or regulation for either primary contractors or sub contractors, this concept should flow down to all levels to clarify to all parties to the contract, that Federal Government does not have contractual liability to third parties, absent specific written consent.

REQUIREMENTS

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

21) PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C.3801 et seq. 49 CFR Part 31 18 U.S.C.1001 49 U.S.C.5307

APPLICABILITY TO CONTRACT

These requirements are applicable to all contracts

FLOW DOWN

These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

REQUIREMENTS

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

22) TERMINATION

49 U.S.C. Part 18 FTA Circular 4220.1F

APPLICABILITY TO CONTRACT

Contracts with nonprofit organizations and institutions of higher education in excess of \$100,000 and all other contracts in excess of \$10,000.

FLOW DOWN

Flow down to all contracts in excess of \$10,000, with exception of contracts with nonprofit organizations of higher learning.

REQUIREMENTS

1. Termination for Convenience (General Provision) The HT may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to HT to be paid the Contractor. If the Contractor has any property in its possession belonging to the HT, the Contractor will account for the same, and dispose of it in the manner the HT directs.

2. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the HT may terminate this contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the HT that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the HT, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) The HT in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to HT's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor or written notice from HT setting forth the nature of said breach or default, HT shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude HT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach In the event that HT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by HT shall not limit HT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience (Professional or Transit Service Contracts) The HT, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the HT shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the HT may terminate this contract for default. The HT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the HT.

7. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the HT may terminate this contract for default. The HT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of the HT's goods, the Contractor shall, upon direction of the HT, protect and preserve the goods until surrendered to the HT or its agent. The Contractor and HT shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the HT.

8. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the HT may terminate this contract for default. The HT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the HT may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the HT resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the HT in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

A. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the HT, acts of another Contractor in the performance of a contract with the HT, epidemics, quarantine restrictions, strikes, freight embargoes; and

B. The contractor, within [10] days from the beginning of any delay, notifies the HT in writing of the causes of delay. If in the judgment of the HT, the delay is excusable; the time for completing the work shall be extended. The judgment of the HT shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the HT.

9. Termination for Convenience or Default (Architect and Engineering). The HT may terminate this contract in whole or in part, for the HT's convenience or because of the failure of the Contractor to fulfill the contract obligations. The HT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the HT, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the HT may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the HT.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the HT.

10. Termination for Convenience or Default (Cost-Type Contracts) The HT may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the HT or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the HT, or property supplied to the Contractor by the HT. If the termination is for default, the HT may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the HT and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of the HT, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the HT determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control

of the contractor, the HT, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

23) GOVERNMENT-WIDE DEBARMENT AND SUSPENSION NON-PROCUREMENT

APPLICABILITY TO CONTRACT

Certification regarding Debarment, Suspension, and Other Responsibility Matters Lower Tier Covered Transactions Third Party Contracts over \$25, 000.

FLOW DOWN

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25, 000. Thus, the terms "lower tier covered transaction" include both contractor and subcontractors and contract and subcontracts over \$25, 000.

REQUIREMENTS

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

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

2. The prospective lower tier participant shall provide immediate written notice to HT if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact HT for assistance in obtaining a copy of those regulations.

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

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

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

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

7. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, HT may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment,

declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

24) PRIVACY ACT

5 U.S.C. 552

APPLICABILITY TO CONTRACT

When a contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier.

FLOW DOWN

Flow down to each third-party contractor and their contract at every tier.

REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

25) CIVIL RIGHTS REQUIREMENTS

*29 U.S.C. 632, 42 U.S.C. 2000 42 U.S.C. 6102, 42 U.S.C. 12112
42 U.S.C. 12132, 49 U.S.C. 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.*

APPLICABILITY TO CONTRACT

Apply to all contracts.

FLOW DOWN

Flow down to all third-party contractors and their contracts at every tier.

REQUIREMENTS

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment

Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties

26) BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18 FTA Circular 4220.1F

APPLICABILITY TO CONTRACT

Applies only to Contracts over \$100,000 in value

FLOW DOWN

Flow down to all tiers.

REQUIREMENTS

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of HT's Transportation Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transportation Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by HT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the HT and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the HT in which the HT is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the HT, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

27) PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

APPLICABILITY TO CONTRACT

Applies ONLY apply to research projects in which FTA grant finances the development of a product or information.

FLOW DOWN

Apply to all contractors and their contract at every tier.

REQUIREMENTS

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the

Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

29) DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

REQUIREMENTS

The Federal Fiscal Year goal has been set by the HT in an attempt to match projected procurements with available qualified disadvantaged businesses. The HT's goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the HT as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the HT may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

(a) Policy - It is the policy of the Department of Transportation and the HT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and

Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the HT to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the HT's procurement activities are encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the HT may declare the contractor noncompliance and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the HT's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the HT and will be submitted to the state upon request.

(e) The HT will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements
- DBE Program Definitions, as used in the contract:
- Disadvantaged business "means a small business concern":
- Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- Whose management and daily business operations are controlled by one or more women individuals who own it.
- "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.
- "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
- "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

30) STATE AND LOCAL LAW DISCLAIMER

APPLICABILITY TO CONTRACT

This disclaimer is applies to all contracts.

FLOW DOWN

The Disclaimer has unlimited flow down.

REQUIREMENTS

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the HT's procurement documents, the grantees should consult with their local attorney.

31) INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

APPLICABILITY TO CONTRACT

Applies to all contracts.

FLOW DOWN

The incorporation of FTA terms has unlimited flow down.

REQUIREMENTS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated 11/01/2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any HT requests which would cause the HT to be in violation of the FTA terms and conditions.

32) FLY AMERICA

49 U.S.C. 40118 41 CFR Part 301-10

APPLICABILITY TO CONTRACT

Applies ONLY to contracts involving international air transportation of persons or materials.

FLOW DOWN

The Fly America requirements flow down from FTA recipients and sub recipients to first tier contractors, who are responsible for ensuring that lower tier contractors are in compliance.

REQUIREMENTS

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag carriers to the extent services by U.S.-flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

34) ENVIRONMENTAL PROTECTION

REQUIREMENTS

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

35) ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)

REQUIREMENTS

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

Any implementing requirements FTA may issue.



Questions on Harbor Transit RFQ for A/E Services # 2021-09 Pre Bid Questions
This question and answer document amends the original RFQ where cited.

Progressive A/E Pre Bid Questions:

1. The scope of work calls for construction management. It is our assumption that you will be hiring a construction manager at risk and A/E will not provide those services?
[Answer: Harbor Transit is planning on hiring their own qualified Construction Manager.](#)
2. Will the 5339 funding be the balance of the funding after CMAQ dollars are determined?
[Answer: Harbor Transit will know what the CMAQ funding amount will be by November 30, 2021. The remaining funding will be both Local Funds and 5339 funds.](#)
3. Will the A/E be doing test fits alongside ORC as they are studying properties?
[Answer: Yes, Once the property has been identified, we would like the A/E to perform Test Fit Studies.](#)

TowerPinkster Pre Bid Questions:

1. NEPA study will be provided by Harbor Transit – Not included in our scope>
[Answer: Yes, The NEPA study will be provided by Harbor Transit.](#)
2. Previous study will be provided in Addendum.
[Answer: The Previous Programming and study was completed on March 25, 2020 by the request of previous Harbor Transit Director Steven Patrick. This study will be attached.](#)
3. Scope of work includes site concept layouts for multiple sites.
[Answer: If the need arises for site concept layouts for multiple sites, then yes the scope of work would include this.](#)
4. Preliminary budgeting is included in the scope of work.
[Answer: Yes – Preparations of pre-bid cost estimates for the project and any significant modification to the project scope.](#)
5. Standard A/E construction administration is included in the scope of work (not construction management).
[Answer: On page 7 of the RFQ under Scope of Work # 3 Firm or its subcontractor\(s\) shall have at a minimum the capabilities to design and engineer projects described in this RFQ. Capabilities should include, but are not limited to:](#)
 - [Landscape and Building Architecture](#)

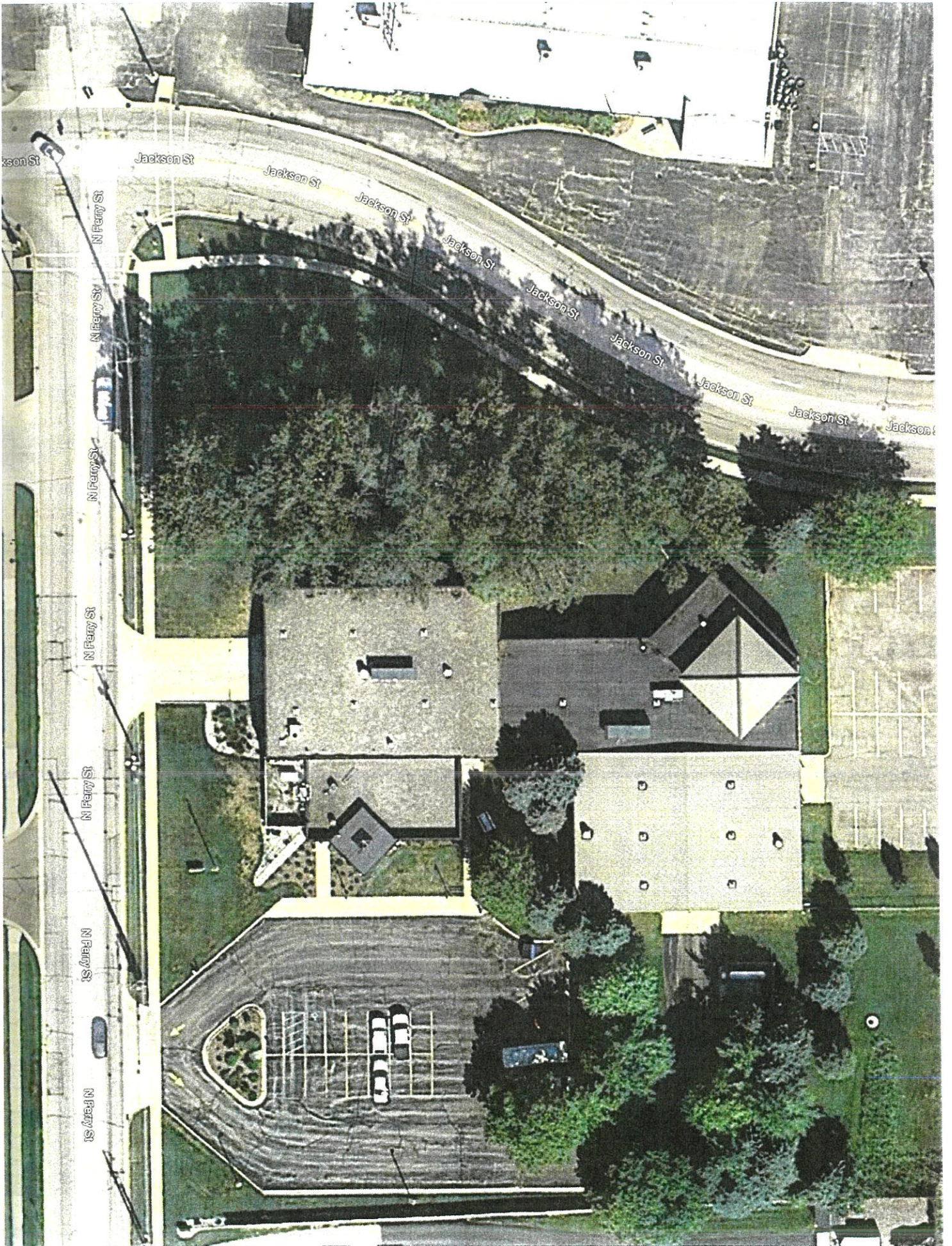
- Civil Engineering
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Environmental Engineering
- Construction Management
- Sustainable Design

End of Pre Bid Questions.

Harbor Transit Programming and Study

MARCH 25, 2020





Existing Conditions

Harbor Transit contacted Progressive AE in August of 2019 to discuss growth of the agency and what that might mean for the building located at 440 N. Ferry St. in Grand Haven, MI. Initially, there was a request for programming a facility that would accommodate growth. After that, there was an additional request to provide a conceptual floor plan to discuss what it might look like. A tour was conducted of The Rapid's Wealthy Operations Center to examine what a dispatch area adjacent to driver break room and bus storage might look like.

The site located at 440 N. Ferry is fairly tight with limited room to grow. The building is currently owned by the City of Grand Haven, leased back to Harbor Transit. To the north is Jackson St. to the west is N. Ferry St. The Grand Haven Public works building is to the east where parking is also located for Harbor Transit. To the south are small businesses that are unlikely to be relocated. The most opportune places for growth are on the northwest corner of the site and the southeast corner of the site.



Current Building Limitations

Progressive AE created a concept floor plan to start to understand what growth could look like understanding two key criteria. First, the building is leased and is not able to be demolished. We needed to work within the confines of the existing space. Second, the biggest area of growth needed is the vehicle storage area.

The attached concept plan was developed over a few weeks using best practices that we have learned over our two decades of working on transit buildings. The end result provides many challenges for a transit agency because of the site and building. It should be considered a first pass, since it was completed with only minimal input from the agency. This layout has many downsides and very few upsides. Essentially, it points to the real need. That is, Harbor Transit should relocate to a new site to promote growth of the agency. The existing site and the existing building provide too many barriers for success.

Examining the bus storage garage, the traffic flow is not smooth. There are pinch points and blind spots that shouldn't exist when you mix people and busses. There are many turns required to exit and there are many vehicles that have to be stacked properly in order to fill the storage space with vehicles. Safety is paramount in a facility like this. We work hard to avoid vehicles backing up at almost all costs because of probable vehicle damage. In this layout, it would be required for a large portion of vehicles. Fueling does not work well in this configuration.

Maintenance bay growth is another need within the facility. Currently there are two bays, but four are needed for the operation to run smoothly while accommodating growth. The concept plan shows two maintenance bays across the aisle from the existing bays. This creates an inefficiency, as well as some possible safety issues. There may be some duplicity related to tools/storage/bulk fluids because the bays are separated. The concept layout was created to not have to relocate key operations like maintenance to preserve costs for the project.

The administration area could work reasonably well, except that a group of staff will be separated with an understanding that there is value in having dispatch centrally located. Having passengers arrive at the facility in need of transportation complicates this further, as it makes sense to have someone there to greet them upon entry.

Given all the considerations above, Progressive AE does not recommend expanding the facility in this manner. If the program could be modified (specifically by lowering the vehicle count) there could be room for improvement in the concept layout.

Preliminary Program

A working program is best derived from an in-depth analysis of current conditions and strategic planning for the ideal future state work environment. This following preliminary program quantities and square footages represent our understanding of the Harbor Transit's current operations with some future thinking projections.

Harbor Transit Conceptual Program

03.24.2020 | PROJECT # 70890003



	# vehicle	# rooms	total	sf per vehicle	sf total	
Vehicle Storage						
32' Busses	32	1	32	576	18,432	Assumes (32) 12' wide bays and 32' per bus plus 50% travel factor
20' Vans	2	1	2	240	480	Assumes (2) 8' wide x 20' long spaces plus 50% travel factor
30' Trolley	2	1	2	450	900	Assumes (2) 10' wide x 30' long spaces plus 50% travel factor
32' Additional Busses	10	1	10	576	5,760	Assumes (10) 12' wide x 30' long spaces plus 50% travel factor
Some vehicles will need to be parked in wash, maintenance bays and drive isles to fit all 46 vehicles outlined						
	# vehicle	# rooms	total	sf per vehicle	sf total	
Maintenance						
Maintenance Bay (20'x50')		4	544		2,176	Each existing maintenance bay is 16' x 34' (two existing)
Tool Storage		1	120		120	
Tire Storage		1	150		150	Area for tire storage only, additional area required to balance/change
Bulk Fluid Storage		1	120		120	
Compressor Room		1	120		120	Include overhead door access and man door, includes waste oil
Misc. Storage		1	200		200	
Restroom		1	60		60	Existing toilet
Wash Bay		1	800		800	Existing bay size
Parts		1	550		550	
	# people	# rooms	total people	sf per person	sf total	
Administrative Area						
Private Offices	1	4	4	150	600	(2) existing, (2) additional offices
Open Work	2	1	2	100	200	
Conference Room	8	1	8	35	280	Seating for up to 8, large format digital display
Dispatch	6	1	6	100	600	Relocate Dispatch to addition
Records Storage & IT Servers		1	150		150	
Driver / Maintenance Services						
Breakroom with Kitchenette	30	1	30	20	600	Kitchenette with vending and seating for up to 30
Training Room	30	1	30	15	450	Shared space with Breakroom
Locker Room	40	1	40	15	600	
Changing Rooms		2	65		130	
Toilets		2	300		600	3 fixtures, two lavs, 1 shower enclosure in each toilet room
Janitor's Closet		1	100		100	
Building Support						
Mechanical / Electrical		1		951	951	3% of building program area sub total with rooftop equipment
Roof Access		1		150	150	
Program Area Net Subtotal					32,799	
15% Grossing Factor					4,920	
Total					37,719	Existing building is approximately 22,700 sf

Parking / Site						
Parking Spaces	50	1	50	200	10,000	Existing site can not accommodate all required parking
Drive Access Per Space	50	1	50	150	7,500	
ADA Parking	4	1	4	50	200	Space added to each required ADA space, 1 ADA / 6 standard spaces

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Industry Best Practice Examples



Proper clearances and organization improves safety



Separate people and vehicles



Provide ample natural light and ventilation



Automated vehicle wash as part of daily return procedure



Dispatch as a central hub with access to all activities



Well equipped training facility

Grant Funding

Harbor Transit currently has access to approximately one million dollars of funding for facilities. If changes were to be made to the building with this funding only, the top priorities would include:

- Increasing bus storage count
- Adding a small conference room along with additional restrooms
- Adding more administrative space

The logical place to add on to the building for administrative purposes is to the east of the existing administration area. This would require little to no reorganization of the parking area. The logical first step in adding on to bus storage is at the south end of the current bus storage area. Construction is assumed to be a pre-engineering metal building.

Considering the project budget and the existing construction market, we would anticipate you could build enough square footage for 6-8 vehicles to be stored (32' long). You may also be able to add a small conference room, and restrooms adjacent to the existing administration space.

Based on the items the budget would likely afford (this may change in the coming months), Progressive AE would not recommend spending the money on this building update. We don't believe it offers good value to the agency.

Future New Site

If Harbor Transit has an opportunity to pursue a new site, there are a number of best practices that should be accommodated. Flexibility should be included as well as considering alternate fuel-powered vehicles. Items of note (in no particular order):

- Separate people and vehicles – provide a clear path for staff to maneuver in the garage without danger from vehicles
- Provide clear span structure for a column free space
- Provide ample natural light through clear vision glass up high (to minimize the ability for people to view in) and provide translucent wall panel where more privacy is needed
- Consider indoor fueling to use shared space already under cover – storage tanks could be either below grade or above grade
- Consider providing a clear path directly into maintenance without needing onsite circulation
- Provide dispatch and breakroom facilities at the intersection of vehicle storage and maintenance
- Minimize or eliminate backing up of vehicles

Example Facility of Similar Scope



progressive|ae

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