REQUEST FOR PROPOSAL
FOR
VIDEO SURVEILLANCE AND ACCESS CONTROL INTEGRATION AND SUPPORT SERVICES

PROJECT NUMBER 2021-21

Interurban Transit Partnership
300 Ellsworth Ave SW
Grand Rapids, MI 49503-4018
(616) 456-7514

Date of Issue:	September 8, 2021
Non-Mandatory Pre-Proposal Meeting:	September 13, 2021
Questions due:	September 17, 2:00 p.m., ET
Proposals Due:	October 4, 2021, at 2:00 p.m., ET
Board Action	October 27, 2021
Contract Award	October 28, 2021

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PUBLIC NOTICE: REQUEST FOR PROPOSAL
FOR
VIDEO SURVEILLANCE AND ACCESS CONTROL INTEGRATION AND SUPPORT SERVICES

Sealed proposals to provide VIDEO SURVEILLANCE AND ACCESS CONTROL INTEGRATION AND SUPPORT SERVICES for the Interurban Transit Partnership (ITP) will be received until October 4, 2021, at 2:00 p.m. ET. ITP has joined the Michigan Inter-governmental Trade Network (MITN). This is a group of agencies that joined forces to create a regional bid notification system to notify companies of new bid opportunities. Register with MITN here. https://www.bidnetdirect.com/mitn All documents and submittals will be processed through MITN.

You can view listings of current solicitations as well as contract award information. To download bids, proposals, or formal quote documents and addenda as well as receive email notifications, you must complete a brief online registration process. There are no fees related to registration on this site.

Proposals shall be subject to all applicable State and Federal laws and subject to financial assistance contracts between the ITP Board and the United States Department of Transportation under the Urban Mass Transportation Act of 1964, as amended, and the Michigan Department of Transportation. The selected contractor(s) will be required to comply with all applicable Equal Employment Opportunity laws and regulations. All proposers will be required to certify that they are not on the Comptroller General's list of ineligible contractors.

The ITP Board hereby notifies all proposers that it will affirmatively ensure, in regard to any contract entered into pursuant to this advertisement, that Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals in response to this Request for Proposal and will not be discriminated against on the grounds of race, religion, color, sex, handicap, or national origin, in consideration for an award.

The ITP Board reserves the right to postpone, accept, or reject any and all proposals in whole or in part on such basis as the ITP 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.

No proposal may be withdrawn for at least sixty (60) days after the scheduled closing time of the proposals. A digital copy of the proposal must be submitted through MITN. (Link provided above). **Please submit your bid as a single PDF file with all information scanned in the order requested.**

Judy DeVries-Eppinga
Senior Procurement Specialist
Jdevries-eppinga@ridetherapid.org

Interurban Transit Partnership
300 Ellsworth Ave. SW
Grand Rapids, Michigan 49503

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SECTION 1 - REQUEST FOR PROPOSALS

1.1 Invitation

The Interurban Transit Partnership (ITP) doing business as (dba) The Rapid, is accepting proposals from qualified firms for Video Surveillance and Access Control Integration and Support Services in accordance with the terms, conditions and requirements set forth below. A description of the services to be performed is provided in Section 2, Scope of Work, following. The anticipated term of this contract is five (5) years with up to five (5) additional one (1) year options based on written mutual agreement. Learn more about ITP at: https://www.ridetherapid.org/

Offerors wishing to participate should ensure they have all addenda prior to submission of proposal. Failure to acknowledge receipt of any addenda applicable to this project could result in the rejection of your proposal.

This project and any subsequent addenda will be posted to the ITP E-Purchasing System (ITPEPS) website (https://www.bidnetdirect.com/mitn). Firms are encouraged to register with ITPEPS for all ITP contract opportunities.

This invitation does not commit the ITP to pay for costs incurred in the submission of a proposal package or for any costs incurred prior to the execution of a formal contract.

1.2 Pre-proposal Meeting

A pre-proposal meeting will conducted remotely on Monday, September 13, 2021, at 10:00 am ET; interested firms are encouraged to attend however attendance is not mandatory. The ITP will post a summary of questions and clarifications to ITPEPS where it will be available for all interested firms to access. Click here to join the meeting

1.3 Questions

Each proposer, before submitting their proposal, shall become fully informed as to the extent and character of work required. All questions must be submitted in writing via ITP E-Purchasing System (ITPEPS) website (https://www.bidnetdirect.com/mitn).

Question Deadline: September 17, 2021, 2:00 pm ET.

1.4 Submittal Instructions

Submittal requirements are outlined in Section 3 – Content of Proposal.

ITP will receive digital proposals until October 4, 2021, 2:00 p.m. local time. **A digital copy shall be posted to the ITPEPS website**. https://www.bidnetdirect.com/mitn

Judy DeVries-Eppinga – Senior Procurement Specialist
Interurban Transit Partnership
300 Ellsworth Ave., S.W.
Grand Rapids, Michigan 49503

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All communications must be made through the Senior Procurement Specialist (SPS) or posted to ITPEPS as directed. ***No direct contact with other ITP staff members or officers will be permitted unless authorized by the SPS.*** All correspondence to the SPS must be done in writing (e-mail is acceptable). Anyone unable to submit through ITPEPS must contact the SPS for alternate submittal instructions prior to the submittal deadline.

A signed statement acknowledging the receipt of any addenda issued to this RFP must accompany proposals.

ITP reserves the right to modify the schedule described above or to withdraw this RFP at any time without prior notice. ITP also makes no representations that any agreement will be awarded to any proposer(s) responding to this RFP. The ITP expressly reserves the right to reject any and all proposals or to waive any irregularity or informality in any proposal and to be the sole judge of the suitability of the services to be rendered.

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SECTION 2 - SCOPE OF WORK

2.1 INTRODUCTION

ITP seeks installation and support services for video surveillance and access control systems that are fully compatible with its' existing equipment. ITP currently utilizes Avigilon Video Surveillance and LenelST Access Control systems. The contract is for five (5) years and includes five (5) one (1) year options. Services to include one firm to provide all necessary support, design, installation, engineering, project management, and service that allows consistency across the organization. The contract term covers all properties currently owned by the ITP as well as any future property acquisition(s).

2.2 FACILITY SUMMARY

The ITP was formed in 2000 to operate a public transportation system they named The Rapid to provide services for the Grand Rapids metro area and beyond. It is organized and operates under Michigan Public Act 196 of 1986 with a 15-member board of directors representing the six municipalities in the service area.

Beyond its fixed routes, The Rapid also operates demand response services for people with disabilities, and for those living outside the fixed-route service area, car, and vanpooling programs.

2.2.1 Equipment locations:

Existing video surveillance and access control equipment can be found at the following locations:

Rapid Operations Center – 333 Wealthy St SW
The main storage depot and maintenance facility for The Rapid, this is the storage garage for all Rapid buses except the Laker Line buses. All fueling of diesel buses occurs here and most of the bus maintenance activity is also performed at this location. The building also includes underground parking for employees who operate out of the facility, including most Rapid bus drivers, and office space for some administrative staff.

Rapid Central Station – 250 Grandville Ave SW
The main transfer facility for Rapid routes. Includes a covered platform with 17 bus bays, and passenger waiting area with restroom amenities and The Rapid's information center. The facility is also home to intercity bus services, currently operated by Indian Trails. There is commercial space available for lease that is currently vacant.

Administrative Headquarters – 300 Ellsworth Ave SW
The Rapid's two-floor administrative headquarters building, where most administrative Rapid employees work out of.

Facilities Maintenance Building – 700 Butterworth St SW
The Facilities department operates on this campus, which includes an administrative building and storage sheds for vehicles and other facilities equipment.

Laker Line Light Maintenance Facility – 801 Freeman Ave SW
The Laker Line storage and maintenance facility. All 16 articulated Laker Line buses are stored here,

and basic maintenance of these vehicles also occurs at this location as well.

Compressed Natural Gas Fueling Facility – 1020 Market St SW
The Rapid's compressed natural gas fueling facility, where all Rapid CNG fueling occurs. The Rapid is transitioning its bus fleet from diesel fuel to CNG fuel. The Rapid also intends to begin retail CNG fueling out of this location later in 2021.

Vern Ehlers Amtrak Station – 440 Century Ave SW
The Grand Rapids Amtrak station which is owned and operated by The Rapid. The facility includes a small passenger waiting building with restrooms, and a platform and canopy for boarding the train.

Kentwood Station – Woodland Mall – 331 28th St SE
The Rapid's regional hub center, located in the Woodland Mall area in Kentwood, Michigan. There are currently 6 bus bays with waiting areas and restroom facilities that are only for Rapid employees.

Silver Line Bus Rapid Transit Stations
Bus Rapid Transit passenger boarding platforms, including a boarding platform, canopy, and other passenger amenities. There are 34 stations on the Silver Line corridor through downtown Grand Rapids and then south on Division Avenue to 60th Street. There are 6 shared stations with the Laker Line.

Laker Line Bus Rapid Transit Stations
Bus Rapid Transit passenger boarding platforms, including a boarding platform, canopy, and other passenger amenities. There are 26 stations on the Laker Line corridor through downtown Grand Rapids and then west on Fulton/Lake Michigan Drive out to the Grand Valley State University campus in Allendale. There are 6 shared stations with the Silver Line.

2.2.2 Equipment Summary

Currently the ITP has approximately 610 surveillance cameras and 95 doors controlled by electronic access control.

2.3 SCOPE OF WORK

The Contractor shall work with ITP and consultants to maintain current equipment and perform necessary upgrades and expansions to the existing system and future sites. This could include, but is not limited to:

1. Installation of new cameras and access control as needed.
2. Replace any existing analog cameras with IP based cameras as instructed.
3. Repositioning of existing cameras to obtain better perspectives with the current system.
4. Maintenance and upgrades to existing software, licenses, cameras. access controls, etc.
5. Provide recommendations for upgrades that will make the system more efficient, user friendly, or more cost effective to operate.
6. Inform The Rapid on latest technologies, best practices, etc.

SECTION 3 - CONTENT OF PROPOSAL

Firms shall include the following information (at a minimum), in the following order as part of the proposal.

3.1 FIRM AND STAFF QUALIFICATIONS

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

- Information regarding the firm's previous experience with at least three (3) similar or related firms for Avigilon and LenelST systems. It should contain a brief description of the other firm or agency; contact person and phone number, email, and any positive outcomes you could share. SEPARATE REFERENCES FOR VIDEO SURVELLIENCE AND ACCESS CONTROL.

- Information demonstrating the firm and staff capabilities to perform all aspects of this project. Include confirmation of licensing to install and provide support and services for Avigilon Video Surveillance and LenelST Access Control systems as required by the authority having jurisdiction.

- Information regarding the expertise and experience of staff person(s) to be assigned to work under this contract, including biographies of individuals to be assigned to this engagement and their relevant experience with both Avigilon Video Surveillance and LenelST Access Control systems. It should also contain specific proposed responsibilities of the project staff person(s) and coordination activities with ITP staff.

    a. Contractor shall include vendor certification level (if applicable), along with detailed information of personnel that make up that level.
    b. Contractor to include duration the contractor has been a certified vendor for Avigilon and LenelST systems.
    c. Contractor shall list number of clients currently under contract for Avigilon and LenelST systems.
    d. Contractor shall detail annual sales for 2018, 2019 and 2020 Avigilon and LenelST systems. Each year and system shall be listed separately.

3.2 COST PROPOSAL

Provide proposed costs for each year one (1) through five (5) for the following:

- Engineering cost per hour.
- Project Management Cost per hour.
- Installation/Labor cost per hour for new projects.
- Programming cost per hour.
- Trip charge.
- Labor cost per hour for service calls.

Any additional fees that could be added to the premiums that ITP would be required to pay should be noted separately.

OPTIONAL:

Additionally, the ITP is considering a preventative maintenance agreement for cameras and access control which would begin October 2022. Accordingly, proposers shall define tiers of preventative maintenance agreements to include specific detail of inclusion under each tier and corresponding cost. Cost to be provided for each contract year 2 through 5.

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SECTION 4 - EVALUATION OF PROPOSALS

A team from The Rapid shall evaluate all proposals using the factors listed below. The evaluation factors are listed in the relative order of importance.

Evaluation Factors

1. Experience – The committee will evaluate the experience of the firm with large, multi-site clients, specifically government clients
2. Response time – The vendor should provide examples of and commitment to quick response times. In cases where the ITP has worked with the firm previously, they will also consider past performance. Where the Evaluation Committee has no experience with the proposer, the Committee will contact customers of the proposer with similar systems as indicated in the RFP.
3. Resumes – The committee shall evaluate the quality and experience of the proposed staff that will be assigned to The Rapid
4. Longevity – The committee will evaluate how long the vendor has been certified/qualified with Avigilon and LenelST systems.
5. Proposed costs as defined in Section 3 – 3.2 Cost Proposal

SECTION 5: ADDITIONAL INSTRUCTIONS TO BIDDERS

5.1 Funding

This Project will be funded, in part, with the assistance of grants from the Michigan Department of Transportation (MDOT) as well as local funding. The successful bidder will be required to comply with all terms and conditions prescribed for third party contracts in grant contracts between the United States of America and ITP, and between MDOT and ITP. These grant contracts are available for examination by prospective bidders in the ITP offices.

5.2 Project Budget

The budget for this Project will be funded through local funds and the Michigan Department of Transportation (MDOT). The total Project budget will be determined by the final negotiated price between ITP and the successful bidder.

5.3 Protest Procedures

The following terms, conditions and appeal procedures will apply:

(a) ITP 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 ITP in writing not less than ten (10) 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) 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 Senior Procurement Specialist (SPS) five (5) 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.

(f) Upon receipt of a protest, ITP 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, ITP will contact all Contractors and subcontractors who were furnished a copy of the specifications by ITP 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.

(g) Representatives of ITP 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 ITP and the protester, the ITP CEO 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, ITP will then issue appropriate addendum to reschedule the date for the bid opening or closing date for the receipt of proposal.

(h) 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 Senior Procurement Specialist (SPS) 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, ITP shall immediately determine if work on the protested Project should be suspended until such time as the protest is resolved.

(i) Representatives of ITP 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 ITP representatives and the protester, ITP 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.

(j) Except as noted in paragraph (l), ITP 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 ITP CEO. After the issuance of a final decision, ITP will wait a minimum of five (5) working days before opening bids or proposals or before awarding a Contract for a Project.

(k) ITP may open bids, receive proposals, and award a Contract for a Project while a protest is pending final disposition when the ITP CEO 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 ITP or the Federal Government.

(m) Protester may request a reconsideration after a final decision has been issued by the ITP CEO 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 4220.1 F (11/01/08), are hereby incorporated and made part of the rules of ITP. Protests to the FTA by a protester must be made in accordance with FTA Circular 4220.1 F. FTA will only consider a protest that alleges failure of ITP to have a written protest procedure or failure to follow such procedure.

(o) Any appeal or protest may be withdrawn at any time.

5.4 Duration of Offer

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

5.5 Late Proposals or Withdrawal of Proposals

(a) Late proposals will not be considered.

(b) 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.

5.6 Determination of Successful Proposer

In determining the successful bidder, consideration is given to the proposer's qualification, content of proposal, and financial proposal as described in the evaluation criteria. The Contract award for this Project will be made to the proposer making the best and most advantageous offer, price considered.

5.7 Proposer Qualifications

In order to be eligible for award, proposers 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 ITP 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.

(c) 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.

5.8 Acceptance of Proposal

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

5.9 Withholding Award

This solicitation for bids or proposals does not commit ITP 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.

5.10 Proposal Acceptance, Rejection, And Postponement

ITP reserves the rights to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the ITP 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, ITP reserves the right to accept an original offer or proposal without negotiation or without calling for a "best and final" offer.

5.11 DBE Participation

In connection with the performance of this Contract, the successful bidder agrees to cooperate with ITP 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 apart with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.

(b) DBE Obligation - ITP 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, ITP or its Contractors shall take all necessary and reasonable steps in accordance with 49 CF, Part 23, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. ITP 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:

There is no DBE requirement for this project. The following information is not applicable to this project.

A minimum of 0 % of the total contract price, as awarded, may 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:

(a) A member of a joint venture as a prime contractor;
(b) An approved subcontractor;
(c) An owner-operator of equipment;
(d) A renter of equipment to a prime contractor;
(e) A firm manufacturing and supplying goods used in the project;
(f) A firm supplying goods used in the project (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.

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.

Good faith efforts may include, but are not limited to, the following:

(a) Attendance at a pre-bid meeting, if any, scheduled by ITP to inform DBE of subcontracting opportunities under a given solicitation.

(b) Advertisement in general circulation media, trade and association publications and minority focus media.

(c) Written notification to DBE's that their interest in the contract is solicited.

(d) Efforts made to select portions of the work proposed to be performed by DBE's is in order to increase the likelihood of achieving the stated goals.

(e) Efforts to negotiate with DBEs for specific sub bids shall include the names, addresses and telephone numbers of DBE's contacted regarding the plans and specifications for portions of the work to be performed.

(f) Concerning each DBE the bidder contacted but rejected as unqualified, the reasons for the bidder's conclusion.

(g) Effort made to assist the DBE contacted that needed assistance in obtaining bonding or insurance required by the bidder or ITP.

Award of the Contract will be conditioned upon satisfaction of these requirements.

5.12 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 $100,000. 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 ITP for each listed subcontractor prior to contract award.

During the term of the Contract the successful bidder will be required to immediately notify ITP 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.

5.13 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 ITP for each listed subcontractor prior to contract award.

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SECTION 6: CONTRACT PROVISIONS
CONTRACT PROVISIONS

1. DURATION OF CONTRACT

This Contract shall become effective on October 28, 2021, and shall remain in effect through October 28, 2026. This Contract may be extended for up to five (5) single option years with the concurrence of both parties.

2. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by ITP, 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 ITP will be rejected and shall be replaced by the Contractor without delay.

3. 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 ITP by its CEO or the Project Manager.

4. BREACHES DISPUTE RESOLUTION *(Applies to all contracts over $250,000)*

(a) Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

(b) Performance during Dispute. Unless otherwise directed by the recipient, 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 ten days after the first observance of such injury or damage.

(c) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between the recipient and 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 residing State. Rights and Remedies - 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 recipient 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.

5. 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 ITP, 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. ITP shall promptly notify the Contractor of any such claim. ITP 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 ITP shall not be liable to the Contractor for any such claim brought against the Contractor.

6. INDEMNIFICATION

The Contractor agrees to indemnify and hold ITP, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against ITP and from any and all damages, losses, expenses, attorneys' fees, costs and liabilities sustained by ITP 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 ITP harmless for its own negligence whether active, passive, or concurrent, in the performance of ITP's duties and obligations pursuant to the Contract.

7. PATENT RIGHTS (*Applies to Research projects in which FTA finances and the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (less than $10,000)*

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 ITP immediately and provide a detailed report. The rights and responsibilities of ITP, 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.

8. RIGHTS IN DATA (*Applies to Research projects in which FTA finances and the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual or to micro-purchases (less than $10,000)*

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, ITP may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may ITP 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 ITP, sub-recipient, or a third-party contractor purchases ownership with Federal assistance.

c) When FTA provides assistance to ITP 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 ITP'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, ITP 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 ITP 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. ITP 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.

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

9. 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 ITP with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of Contract.

10. ASSIGNABILITY

The terms and provisions of the Contract documents shall be binding upon ITP 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 ITP'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 ITP of the subcontractor.

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

11. PRICE WARRANTY AND COMMISSIONS

The price to be paid by ITP 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 ITP's sole discretion, ITP 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, ITP 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.

12. 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.

13. 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. ITP 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 ITP prior to termination, cancellation, or reduction in coverage in the policy. Certificates of such insurance shall be filed with ITP 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 garagekeepers liability, including bodily injury and property damage, insurance in the minimum amount of $2,000,000 per occurrence.

14. UNAVOIDABLE DELAYS

If delivery of completed Project under this Contract should be unavoidably delayed, the ITP Project Manager 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.

15. NOTIFICATION OF DELAY

The Contractor will notify the Project Manager 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.

16. REQUEST FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the ITP Project Manager to make a decision on any request for extension. The ITP Project Manager 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 ITP Project Manager 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.

17. CONTRACTOR'S REPRESENTATIVE

Prior to the start of Contract performance, the Contractor shall advise ITP 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.

18. INTERURBAN TRANSIT PARTNERSHIP'S REPRESENTATIVES

Prior to the start of Contract performance, the ITP Project Manager will furnish a letter to the Contractor indicating the personnel who will represent ITP 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.

19. INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS

In accordance with the Contract Changes provision of the Contract, The ITP Project Manager 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 ITP Project Manager 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.

20. TERMINATION OF AGREEMENT

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

a) Termination For Convenience: ITP 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 ITP, the Contractor will account for same, and dispose of it in the manner ITP 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, ITP may terminate, revoke, or rescind this Agreement for default. Termination, revocation, or rescission shall be affected 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 ITP 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, ITP, 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 ITP 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, ITP 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 ITP under Michigan law.

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

21. 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.

22. 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 ITP deems appropriate.

A minimum of 0 percent of the total contract price, as awarded, shall be awarded to certified DBEs by the Contractor.

23. 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 $,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 ITP 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.

ITP 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.

24. 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.

25. 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 ITP 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.

e) 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.

26. TITLE VI COMPLIANCE OF THE CIVIL RIGHTS ACT OF 1964

The Contractor agrees to comply with 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.

27. 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 ITP in connection with this Contract.

28. 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.

29. PROHIBITED INTEREST

No ITP employee, officer, or agent, including any member of an evaluation committee for an ITP project, may participate in the selection, award, or administration of an ITP 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 ITP;
- 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.

30. 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.

31. 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.

32. 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 ITP. 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 ITP.

ITP 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.

33. 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.

34. 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, sub-recipients, 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.

35. REMEDIES/BREACH OF CONTRACT

If the Contractor breaches any provision in this Contract, the Contractor agrees to reimburse ITP 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 ITP under applicable law. No waiver by ITP of any breach or remedy shall be a waiver of any other breach or remedy.

36. DBE & NON-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 ITP. 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 ITP. 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 ITP DBE Liaison Officer 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 ITP 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 ITP DBE Liaison Officer may result in the termination of this contract or such other remedy as ITP deems appropriate.

The prime contractor understands that ITP 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 ITP will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

37. THE MICHIGAN IRAN ECONOMIC SANCTIONS ACT, 2012 P.A. 517

Pursuant to the Michigan Iran Economic Sanctions Act, 2012 P.A. 517, by submitting a bid, proposal or response, Respondent certifies, under civil penalty for false certification, that it is fully eligible to do so under law and that is not an "Iran linked business" as that term is defined in the Act.

38. 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 ITP.

39. 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.

b) 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 ITP (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.

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

40. BUY AMERICA

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.

41. CHANGE ORDERS

ITP's Project Manager, 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 ITP 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 ITP'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.

42. 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 ITP, 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 ITP. 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.

43. WARRANTY AND GUARANTEE

The Contractor hereby warrants to ITP that all 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 ITP 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 ITP, 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. ITP 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 ITP, requires excessive service during its operation, shall be brought to the attention of the Contractor by ITP 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 ITP. Should a "class failure" be involved, the Contractor may be required by ITP 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 ITP 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 ITP to repair, replace or correct damaged or defective work, materials, specialties, equipment and accessories,

ITP shall, upon written notice to the Contractor, have authority to deduct the cost of labor and material incurred by ITP 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 ITP 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 ITP service. The burden of proof for any negligence on the part of ITP 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 ITP 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 ITP 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 ITP.

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

44. 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.

45. TITLE

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

46. INSPECTION

(a) ITP 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 ITP 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.

47. SAFETY STANDARDS

The Contractor agrees that pursuant to Section 107 of the Contract Work Hours and Safety Standards Act and Department of Labor regulations set forth at 29 CFR, Section 1926, no laborer, or mechanic working on a construction contract shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction and health standards promulgated by the Secretary of Labor.

48. NONDISCRIMINATION IN CONSTRUCTION CONTRACTS

During the performance of this Contract, the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c) The Contractor will send to each labor union or representative of workers with which it has a Collective Bargaining Agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the Secretary of Labor and FTA for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal of Federally-assisted Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or otherwise provided by law.

g) The Contractor will include the provisions of paragraphs (a) through (g) of this subsection in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that if a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

49. LABOR PROVISIONS: CONSTRUCTION CONTRACTS

(1) Minimum Wages:

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions are permitted by Regulations issued by the Secretary of Labor under the Copeland Act, 29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under § 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but no less often than quarterly) under plans, funds, or programs that cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided at 29 CFR, § 5.5(a)(4), laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification

in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR, § 5.5(a)(1)(ii) and the Davis-Bacon poster, WH-1321) shall be posted at all times by the Contractor and its Subcontractor's at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) 1 The contracting officer shall require that any class of laborers of mechanics that is not listed in the wage determination and that is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(b) The classification is utilized in the area by the construction industry; and

(c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

2 If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30) day period that additional time is necessary.

3 In the event the Contractor, laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty (30-day period that additional time is necessary.

4 The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR § 5.5(a)(i)(1)(B) or 29 CFR § 5.5(a)(i)(1)(C), shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the

Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

(2) Withholding:

FTA 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 the Contractor, under this agreement or any other federal contract with the same recipient or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is withheld by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, FTA may, after written notice to the Contractor, sponsor, applicant, or ITP, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls And Basic Records:

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his/her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee

programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) 1 The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to FTA if FTA is a party to the Contract; but if FTA is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or ITP, as the case may be, for transmission to FTA. The payrolls submitted shall set out accurately and completely all the information required to be maintained under 29 CFR § 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock No. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors'.

2 Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor or Subcontractor or his/her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

a That the payroll for the payroll period contains the information required to be maintained under 29 CFR § 5.5(a)(3)(i) and that such information is correct and complete;

b That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 CFR Part 3;

c That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

3 The weekly submission of a properly executed certification set forth on the reverse side of optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR § 5.5(a)(3)(ii)(B).

4 The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 USC Section 1001 and 31 USC Section 231.

(c) The Contractor or Subcontractor shall make the records require under 29 CFR § 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or make them

available, FTA may, after written notice to the Contractor, sponsor, applicant, or ITP, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(4) Apprentices and Trainees:

(b) APPRENTICES. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) TRAINEES. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training

Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination, that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(d) EQUAL EMPLOYMENT OPPORTUNITY. The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the Equal Employment Opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

(5) Compliance with Copeland Act Requirements:

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated herein by reference.

(6) Contract Termination: Debarment:

A breach of the Contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

(7) Compliance With Davis-Bacon and Related Act Requirements:

All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are incorporated herein by reference.

(8) Disputes Concerning Labor Standards:

Disputes arising out of the labor standard provisions of this Contract shall not be subject to the general disputes' clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractor's) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(9) Certification Of Eligibility:

(a) By entering into this agreement or a third-party contract financed under this agreement, the Contractor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government Contract by virtue of § 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

(10) 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/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 times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

(11) Violation; Liability for Unpaid Wages; Liquidated Damages:

In the event of any violation of the requirements of 29 CFR § 5.5(b)(1), the Contractor and any Subcontractor responsible therefore 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 to such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 CFR § 5.5(b)(1) in the sum of ten ($10) dollars for each calendar day on 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 29 CFR § 5.5(b)(1).

(12) Withholding For Unpaid Wages and Liquidated Damages:

FTA or the recipient 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 at 29 CFR § 5.5(b)(2).

(13) Subcontracts:

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subsections (1) through (12) of this Agreement and also a clause requiring the Subcontractor's 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 subsection (1) through (12) of this Agreement.

50. EQUAL EMPLOYMENT OPPORTUNITY

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246):

1) As used in these specifications:

(a) "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
(b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
(c) "Employer Identification Number" means the Federal Social Security Number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941;
(d) "Minority" includes:
i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or origin, regardless of race);
iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and,
iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation, and which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR § 60-4.5) in a hometown plan approved the U.S. Department of Labor in the covered area, either individually or through an association, its Affirmative Action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such hometown plan. Each Contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any

covered Contractor's or subcontractor's failure to made good faith efforts to achieve the plan goals and timetables.

4) The Contractor shall implement the specific Affirmative Action standards provided in paragraphs (7) (a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally Assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific Affirmative Actions to ensure Equal Employment Opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement Affirmative Action steps at least as extensive as the following:

   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all Foremen, Superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
   b) Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
   c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken

with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs of the sources compiled under (7)(b) above.

f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and Affirmative Action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i) Direct recruitment efforts, both oral and written to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of the Contractor's work force.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure the seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO polices and Affirmative Action obligations.

8) Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their Affirmative Action obligations set forth in paragraphs (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (p) of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, made a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor, the obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the Contractor has achieved its goal for women generally, the Contractor may be in violation of the Executive Order is a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or Affirmative Action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.

12) The Contractor, in fulfilling its obligations under these specifications, shall implement specific Affirmative Action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure Equal Employment Opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.8.

13) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, laborer, or helper), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

14) Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

51. LABOR AND MATERIALS

Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project.

52. PERMITS AND FEES

Unless otherwise provided in the Contract, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Project which are customarily secured after execution of the Contract, and which are legally required when bids are received, or negotiations conclude.

CLEAN UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Project, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up as provided in the Contract, ITP may do so, and the cost thereof shall be charged to the Contractor.

54. SUBCONTRACTORS

Contractor shall be fully responsible for all acts and omissions of Subcontractor's and of persons directly or indirectly employed by them and persons for whose acts any of them may be liable to the

same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract shall create any contractual relationship between any Subcontractor and ITP or any obligation on the part of ITP to pay or to see to the payment of any moneys due any Subcontractor, except as may otherwise be required by law. ITP may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to Contractor for specific work done.

55. SAFETY AND PROTECTION

Contractor shall be responsible for initiating, maintaining and supervising safety programs in connection with the Project. Contractor shall take precautions and provide protection to prevent damage, injury, or loss to:

A. Employees on the Project and other person who may be affected thereby;
B. The Project and materials or equipment to be incorporated therein, whether in storage on or off the site; and,
C. Other property at the site or adjacent thereto, both above and below ground, not designated for removal, relocation, or replacement. Contractor shall erect and maintain necessary safeguards for safety and protection of property and shall notify ITP of adjacent utilities when performance of the Project may affect them. Contractor shall be responsible for costs associated with all damage, injury, or loss.

Damage, injury, or loss to property referred to in this Article caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor and anyone directly or indirectly employed by any of them and anyone for whose acts any of them may be liable, shall be remedied. Contractor duties and responsibilities for the safety and protection of the Project shall continue until the Project is completed and ITP has issued the Certificate of Completion.

56. EMERGENCIES

In emergencies affecting the safety of persons, the Project or adjacent property, Contractor, without authorization from ITP, is obligated to act, at Contractor's discretion, to prevent threatened damage, injury, or loss. Contractor shall give ITP prompt notice of the emergency action taken, and any significant changes in the Project or deviations from the Contract caused thereby.

57. WORK BY OTHERS

ITP may perform or may contract with others to do additional work related to the Project. Contractor shall afford others a reasonable opportunity to perform work as well as to store materials and equipment on site and shall properly integrate and coordinate Contractor's work with others. Contractor shall coordinate and cooperate with Contractor's working in the area for other ITP's or jurisdictions.

If any part of Contractor's work depends on proper execution or results upon the work of other Contractor's, or ITP, Contractor shall inspect and promptly report to ITP any defects or deficiencies in such work. Contractor's failure to so report shall constitute an acceptance of the other work as fit and proper for integration with Contractor's work.

58. REJECTING DEFECTIVE WORK

ITP Project Manager will have authority to disapprove of or reject defective work. ITP Project Manager will also have authority to require special inspection or testing of work whether or not the work is fabricated, installed, or completed.

59. CHANGE ORDERS

Without invalidating the Contract, ITP may, at any time, order additions, deletions, or revision in the Project by Change Orders. Upon receipt of an executed Change Order, Contractor shall proceed with the work involved. ITP Project Manager may authorize minor changes or alterations in the Project not involving extra cost and not inconsistent with the overall intent of the Contract. These changes will be authorized by a Bulletin and will be binding upon ITP and Contractor. Additional work be binding upon ITP and Contractor. Additional work performed by Contractor without authorization of a Change Order will not entitle Contractor to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as set forth in these Contract Conditions.

60. CHANGES IN CONTRACT PRICE

The Contract Price constitutes the total compensation payable for performing all duties, responsibilities and obligations assigned to or undertaken by Contractor. The Contract Price may only be changed by a Change Order. Claims for a change in the Contract Price shall be submitted to ITP Project Manager within fifteen (15) calendar days of the occurrence of the event giving rise to the claim with supporting data. Claims for extra compensation shall not be made by Contractor for reasonable delays caused by the work of other Project Contractors or Subcontractors or due to the failure of ITP to perform any obligations required of ITP under this Contract.

Value of work covered by a Change Order shall be determined as follows:

A. Where work is covered by Contract unit prices by application of unit prices to the items involved.
B. By mutual acceptance of a lump sum.
C. On the basis of the cost of the work, plus overhead and profit, but only in the event ITP and Contractor cannot agree on one of the above methods.

INSPECTION AND TESTING

If the Contract laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to be inspected, tested, or approved by someone other than Contractor, Contractor shall give ITP Project Manager timely notice of readiness, therefore. Such tests shall be in accordance with the methods prescribed by the applicable organization or Contract. Neither observations by ITP Project Manager nor inspections, tests, or approvals by persons other than Contractor shall relieve Contractor from obligations to perform the Project required by the Contract, laws, ordinances, rules, regulations, or orders of public authority having jurisdiction.

61. ACCESS TO WORK

The ITP Project Manager, his/her representatives, and representatives of ITP shall at all times have access to the Project. Contractor shall provide proper facilities for access, observation of the work, and for any inspection or testing by manufacturers, suppliers, material men, and other parties as authorized by ITP.

62. UNCOVERING WORK

If work requiring inspection, testing or approval is covered either without the ITP Project Manager's written approval where required or contrary to the ITP Project Manager's specific request, the work shall, if requested by the ITP Project Manager, be uncovered for observation, and replaced at the Contractor's expense.

If the ITP Project Manager considers it necessary or advisable that covered work be inspected or tested, Contractor, at ITP Project Manager's request, shall uncover and expose that portion of the work. If the work is defective, Contractor shall bear all the expenses of satisfactory repair and reconstruction, as verified by the ITP Project Manager, including compensation for additional engineering services. If such work is not found to be defective, Contractor shall be allowed increases in Contract Price, an extension of Contract Time or both, directly attributable to such uncovering and reconstruction.

63. CORRECTION OR REMOVAL OF DEFECTIVE WORK

Contractor shall promptly, as specified by the ITP Project Manager, either correct any defective work or remove it from the site and replace it with non-defective work. If Contractor does not correct or remove and replace such rejected work within a reasonable time, ITP may have the deficiency corrected or the rejected work removed and replaced by others. All direct and indirect costs of such correction or removal, and replacement, including compensation for additional engineering services, shall be paid by Contractor in an amount as verified by the ITP Project Manager. Contractor shall also repair all work of others destroyed or damaged by replacement of Contractor's defective work.

64. ONE YEAR CORRECTION PERIOD

Prior to the expiration of one year after the date of Certification of Completion or date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract, Contractor shall promptly correct identified defective work or remove it from the site and replace it with non-defective work. If Contractor does not promptly comply, ITP's rights to correction will be the same as for defective work in this Article. Repairs and replacements made under this article shall bear an additional twelve (12) month correction period dated from the acceptance of repair and replacement.

65. NEGLECTED WORK BY CONTRACTOR

If Contractor should neglect to prosecute the work diligently, including requirements of the Construction Schedule, ITP, after seven (7) days' Notice to Contractor may, without prejudice to any other remedy that ITP may have, correct, and remedy any such deficiency. Direct and indirect costs of ITP, including compensation for additional engineering services, shall be verified by ITP Project Manager and an appropriate reduction in the Contract Price will be made. If the payments due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to ITP.

66. WARRANTY

The Contractor warrants to ITP that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the work will

be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by ITP, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

67. PROGRESS PAYMENTS AND RETAINAGES

For Projects with a Construction Schedule exceeding ninety (90) days, Contractor may submit requests for partial payment. Payment requests shall be proportional to work completed on the Project. ITP will retain ten (10%) percent of any payment until final completion of the Project.

68. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by ITP, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work or 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. Materials, 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 ITP Project Manager will be rejected and shall be replaced by the Contractor without delay.

69. CONTRACTOR'S WARRANTY OF TITLE

Contractor warrants and guarantees that title to all work, materials and equipment covered by monthly payment requests, passes automatically to ITP at the time of payment, free and clear of all liens.

70. PAYMENT WITHHELD

The ITP Project Manager may not approve any payment or may nullify any payment previously recommended, to such extent as may be necessary to protect ITP from loss because:

A. Work is defective or completed work has been damaged requiring correction or replacement.
B. Written claims have been made against ITP or liens have been filed in connection with the Project.
C. Contract Price has been reduced by Modifications.
D. ITP has been required to correct defective work or complete neglected work.
E. Unsatisfactory prosecution of the Project, including failure to clean-up or failure to perform testing as required by field quality control.

71. SUBSTANTIAL COMPLETION

When ITP Project Manager considers that the Project has been substantially, but not entirely completed, and full completion thereof is materially delayed through no fault of Contractor, the ITP Project Manager will issue a Certification of Substantial Completion. Liquidated damages for that portion of work will not be assessed beyond the date of Substantial Completion.

72. NOTIFICATION OF COMPLETION

When Contractor considers the work required in the performance of this Contract to be complete and ready for final inspection, Contractor shall so notify ITP Project Manager.

73. VETERAN'S HIRING PREFERENCE

The Interurban Transit Partnership – The Rapid are recipients of federal financial assistance in this contract. The contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

74. INCIDENTAL CONSTRUCTION WORK

AIA Document A201, General Conditions of the Contract for Construction, 1987 Edition, shall apply to all construction work, including concrete work, associated with this Project.

75. QUANTITY OPTIONS

ITP reserves the unilateral right to increase order quantities up to 50 percent of the maximum amounts shown on the proposal form. Notice of any increase in quantities will be included in the Notice to Proceed.

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SECTION 8: REQUIRED CERTIFICATES

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
   (Name of Contractor)

   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
   (Name of subcontractor/supplier)

   perform the work as described above for the amount specified.

   Dated _____ _____
   (Authorized Signature)

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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

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

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 sub recipients 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 or not less than $10,000 and not more than $100,000 for each such failure.

Dated _____

(Name)

_____
(Title)

_____
(Firm)

BUY AMERICA CERTIFICATE

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982, as amended by Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, FTA regulations at 49 CFR, Part 661, and at 49 CFR, Part 663, and guidance issued by FTA, all bidders shall submit the following certificate with their bid or proposal. Failure to submit this certificate will automatically disqualify the bidder from consideration of a Contract award for this Project. An exemption from the "Buy America" requirements may be sought by ITP if grounds for an exemption exist.

Please check the appropriate box (661.6 or 661.12) then complete remainder of form.

☒ **§661.6 Certification requirements for procurement of steel or manufactured products.**

If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.

☐ **§661.12 Certification requirement for procurement of buses, other Rolling Stock and associated equipment.**

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of this part.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that *it will* comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661 for Goods, *or* for 49 CFR 661.11 for Rolling Stock.

DATED:_____

COMPANY:_____

SIGNATURE:_____

PRINTED NAME:_____

TITLE:_____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that *it cannot* comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

DATED:_____

COMPANY:_____

SIGNATURE:_____

PRINTED NAME_____

TITLE:_____