

# CLARE COUNTY TRANSIT CORPORATION

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## Request for Proposal # 2011-1

### Architectural & Engineering Services for Photovoltaic, Wind and Solar Hot Water Systems, Net Metering and Fueling Station Canopy

#### SCHEDULE OF ACTIVITIES

RFP Released:	January 24, 2011
Pre-Proposal Meeting:	February 9, 2011, 1:00 P.M., EST
Number of Proposals & Due Date:	Submit five (5) proposal copies; by 2:00 P.M., EST, February 21, 2011
Orals/Interview(s) (If Held):	February 22, 2011
Anticipated Award Date:	February 23, 2011
Documents Complete	March 25, 2011
Begin Construction	May 23, 2011
Progress Meetings:	Twice Monthly, alternating weeks

**January 24, 2011**



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# CLARE COUNTY TRANSIT CORPORATION

## Architectural & Engineering Services

### Request for Proposal Project #2010-1

## SECTION I: PROCUREMENT PROCESS

### I-A Issuing Office

This Request for Proposal (“RFP”) is issued by Clare County Board of Commissioners on behalf of Clare County Transit Corporation (CCTC), 1473 Transportation Drive, Harrison, MI 48625.

**All communications regarding this project during the procurement process must be addressed to CCTC Executive Director:**

Mr. Tom Pirnstill  
Executive Director  
Clare County Transit Corporation  
1473 Transportation Drive  
Harrison, MI 48632  
Fax: (989) 539-9751  
E-mail: cctcmgr@sbcglobal.net

### I-B Project Oversight

The oversight of this Project is the responsibility of the CCTC’s Executive Director.

The Contractor will be required to work with CCTC staff and service agencies as directed by Clare County Board of Commissioners throughout the duration of the Contract and attend Progress Meetings as required by the CCTC Executive Director

### I-C Incurring Costs

Clare County Board of Commissioners and CCTC are not liable for any cost incurred by any party prior to signing of a contract with that party and then only upon written authorization from CCTC to proceed with the project.

Clare County Board of Commissioners and CCTC are soliciting proposals for Architectural/ Engineering Services required for the design, documentation, bidding, and construction oversight of photovoltaic, wind turbine, solar hot water heating systems, net metering, and a fueling station canopy.

CCTC is located in Harrison, Michigan, operates thirty-two (32) mid size buses, serving Clare County, with a population of approximately 32,000. CCTC has received Federal and State funding for the design of photovoltaic, wind turbine, solar hot water heating systems, net metering, and a fueling station canopy. All proposals received must meet Federal and State guidelines and regulations included in the Federal Office and Management and Budget Circular A-102, as amended, and Federal Transportation Administration Circular 4220.1F.

## I-D Contract Term

It is anticipated that any contract resulting from this solicitation will have a term for the duration to end after successful installation of all items in this contract.

## I-E Contract Extension

Clare County Board of Commissioners and CCTC reserve the right to extend or cancel the terms of this contract resulting from this RFP. Any extension will be in writing.

## I-F Pre-Proposal Meeting

See Schedule of Activities page above for date and time of Pre-Proposal Meeting scheduled for this RFP. Any such meeting will be held at the CCTC Administrative offices. The purpose of this meeting is to discuss with prospective contractors the work to be performed and to answer questions about this RFP. Attendance at the pre-proposal meeting is non-mandatory, but highly encouraged. Please contact CCTC to confirm if you are attending.

## I-G Proposals

To be considered for award, each respondent must submit a complete response to the RFP, using the designated format and accepting the requirements of Sections II and III below. Proposals are to be submitted only to CCTC. No other distribution of proposals is to be made. An official authorized to bind the respondent to the proposal must sign the proposal in ink. Submission of a proposal shall bind the respondent to all provisions of the proposal, including costs, for a period extending not less than one hundred eighty (180) days following the Proposal Due Date. Submit the number of proposal copies per the directions indicated on the *Schedule of Activities* page above. Proposals, including price sheets, must be submitted to CCTC by the time and date set as the Proposal Due Date indicated on the *Schedule of Activities* page above. ***Technical Proposals are to be submitted separately, but at the same time, as Price Proposals. The envelopes containing Technical Proposals and Price Proposals must be separate, sealed, and clearly marked.*** The respondent is solely responsible for the timely delivery of the proposal to CCTC. Except as provided below, late proposals will not be considered.

Late proposals which are received after the Proposal Due Date may be considered, if the respondent establishes to Clare County Board of Commissioners and CCTC's satisfaction within five (5) days of the Proposal Due Date that the delay was due to an independent event outside the control of respondent, such as acts of God or the public enemy, war, national emergency, labor strikes, the failure of the U. S. Postal Service to deliver first-class, registered, or certified mail within five (5) days, or the failure of a national courier service recognized by Clare County Board of Commissioners and CCTC to deliver as guaranteed or specified. Clare County Board of Commissioners and CCTC will require documentation to excuse late delivery, including, but not limited to, signed statements or affidavits, postmarks, original postal receipts, courier receipts, and shipment tracking logs in a form satisfactory to Clare County Board of Commissioners and CCTC. All proposals submitted in response to this RFP will become the property of Clare County Board of Commissioners and CCTC and will not be returned to the respondent.

## I-H Acceptance of Proposal Content

The contents of this RFP, its attachments, and the proposal will become contractual obligations if a contract ensues. Failure of the successful respondent to accept these obligations may result in elimination of the respondent from the selection process. Clare County Board of Commissioners and CCTC further reserve the right to interview the key personnel assigned by the successful respondent to this project and to recommend reassignment of personnel deemed unsatisfactory by Clare County Board of Commissioners and CCTC.

## I-I Economy of Presentation

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to be creative and to meet the requirements and objectives of this RFP. Emphasis should be on completeness and clarity of content

## I-J Primary Contractor Responsibilities

The selected contractor will be required to assume responsibility for all services offered in its proposal whether or not the contractor performs them. Further, Clare County Board of Commissioners and CCTC will consider the selected respondent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. If any part of the work is to be subcontracted, the prime contractor must provide a complete description of work subcontracted and descriptive information about the subcontractor's organization and capabilities. The prime contractor is totally responsible for adherence by the subcontractors to all provisions of the contract. Clare County Board of Commissioners and CCTC must review and approve in writing all subcontractors. All subcontractors must be included in the initial proposal with descriptions of the firms' qualifications and the qualifications of the key individuals assigned to this project.

## I-K Other Duties Assigned by Clare County Board of Commissioners and CCTC

Because of the nature of this project, Clare County Board of Commissioners and CCTC are unable to determine all possible work components and tasks to be completed. The Contractor may be asked to provide additional service that has not been outlined in this RFP. When additional duties beyond those outlined in this RFP and in the Contractor's proposal are identified, Clare County Board of Commissioners, CCTC and the Contractor will discuss the Contractor's ability to complete this work. If Clare County Board of Commissioners and CCTC determine the Contractor should conduct the additional work, contractor will provide request for Task Order describing the work to be done and all associated costs. A written task order will then be issued by Clare County Board of Commissioners and CCTC.

## I-L Selection Criteria

Responses to this RFP will be evaluated based upon the following factors as presented in the respondent's proposal.

The selection of a firm will be based on the capability and qualifications of the Prime Firm and any of its consultants. Clare County Board of Commissioners and Clare County Transit Corporation reserve the right to accept or reject any or all proposals. The criteria used to evaluate the proposals will be as follows:

**Capability and qualifications of the key individuals.** This addresses key individuals from the primary consultant and any named sub-consultants, including previous work on similar projects, technical experience, education and training.

**Method of Approach to the Scope of Work as described in the proposal.** Quality of information submitted in the proposal based on completeness, relevance, conciseness and organization of materials presented.

**Capability and qualifications of the prime firm and all subcontractors.** This addresses distribution of staff time to the project, the respondent's past record of performance on similar assignments (such as control of costs, quality of work and ability to meet schedules). The primary contractor will also be evaluated on its past experience in managing subcontractor relationships.

**Understanding of the Problem and Objectives.** As stated in the proposal and demonstrated by the written description of the project in the proposal.

**Demonstrated ability to complete the project on time and on budget.** Respondents must demonstrate experience, ability and willingness to work with CCTC and provide evidence of successful engagements elsewhere with other customers on similar projects.

**Time Schedule:** The statement of time schedule for the architectural and engineering services for the project, and the narrative description of the product that will be delivered.

Clare County Board of Commissioners and CCTC will convene an ad hoc committee to evaluate all proposals. Those firms deemed by Clare County Board of Commissioners and CCTC to be most responsive to the needs of Clare County Board of Commissioners and CCTC may be asked to make oral presentations to Clare County Board of Commissioners and CCTC. In any event, Clare County Board of Commissioners and CCTC will determine a firm to be the most highly qualified of those submitting based on the submitted proposal and any oral presentation that may be made. The cost proposal for the most qualified firm will be opened. That most qualified firm will be asked to enter final negotiations. If the most highly qualified firm is unable to consummate agreement with Clare County Board of Commissioners and CCTC, then the next most highly qualified firm will be considered for award, and so on. At any time during this process, Clare County Board of Commissioners and CCTC reserve the right to re-bid, award, or cancel the project, as Clare County Board of Commissioners and CCTC determine. The terms, conditions, and scope indicated in this RFP will be part of any contract resulting from the above process.

Each prime contractor should make every effort to include Disadvantaged Business Enterprises in this project.

## I-M Oral Presentation

Respondents may be required to make oral presentations of their proposals. These presentations provide an opportunity for the respondent to clarify the proposals through mutual discussion. This is not a time to simply review the contents of the proposal but to present to Clare County Board of Commissioners and CCTC your approach to this project and the uniqueness of the respondent's team in meeting the requirements of this RFP. Key members of the respondent's project team, including a representative from each subcontractor, must be part of the presentation. If held, the presentations will be on the date indicated on the cover of this RFP, with a **maximum of 30 minutes allowed for each presentation followed by 30 minutes for questions and answers (timing and duration to be determined by Clare County Board of Commissioners and CCTC).**

## I-N Independent Price Determination

By submission of a proposal, the respondent certifies, or, in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:

1. The prices in the proposal have been determined independently and without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices with any other respondent or with any competitor.
2. Unless otherwise required by law, the prices that have been quoted in the proposal have not been knowingly disclosed by the respondent prior to award directly or indirectly to any other respondent or to any competitor.
3. No attempt has been made or will be made by the respondent to induce any other persons or firm to submit or not submit a proposal for the purpose of restricting competition.
4. Each person signing the proposal certifies that she/he:
  - a. Is the person in the respondent's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to the bullets above; **OR**

- b. Is not the person within the respondent's organization responsible for the decisions as to the pricing being offered in the proposal but has been authorized, in writing, to act as an agent for the persons responsible for such a decision and certifying that such persons have not participated (and will not participate) in any action contrary to the bullets above.

## I-O Payment

Payments against any contract entered into as a result of this RFP will be made not more than monthly upon receipt of the contractor's billing statement for the preceding month, along with the receipt and acceptance of the progress report and proof of work completed.

See *Section II-I, Cost of Project*, for details concerning pricing submittal.

## SECTION II: STATEMENT OF WORK

### II-A Background

The Clare County Transit Corporation (CCTC) is the County public transportation provider. CCTC operates 32 demand-response buses/vehicles. CCTC also provides a demand-response service designed to meet the needs of persons with disabilities. CCTC provided 173,000 passenger trips in fiscal year 2008.

### II-B Objectives of the Project

Provide A/E Services for the design and implementation of renewable "green" systems.

### II-C Scope of Work

The following is a list of areas, but not limited to, that need to be covered in the RFP. When required by CCTC, the Architectural firm will be responsible for design development and developing all construction bid documents. The Architectural firm will be responsible for analyzing all proposals/bids and making a written recommendation for award to CCTC. Following award, the A/E Firm will be responsible to provide CCTC with project management and oversight assistance as it relates to the bid documents developed by the firm.

#### **Basis for Design - Photovoltaic**

1. Investigate and document the existing site conditions.
2. The photovoltaic system shall have a nameplate minimum capacity of approximately 65 kW.
3. The system shall be a grid-tied only system; no batteries allowed.
4. It shall be a ground mount system.
5. The lowest point of the Photovoltaic Array shall be at least 3 feet off the ground.
6. The array shall be oriented due "solar" south.
7. The installation shall follow NFPA NEC 2008 code with particular attention paid to section 690, or the code of the local jurisdiction.
8. All components shall be UL Listed 1741.
9. Voltage drop throughout the Photovoltaic system shall be less than 3%.
10. System must be designed to provide real-time plus historical data via a touch screen and internet web-based portal.

#### **Basis for Design - Wind**

1. Investigate and document the existing site conditions.

2. The nameplate capacity of the wind generator system shall be approximately 3 kW.
3. The system shall be a grid-tied only system; no batteries allowed.
4. Maximum tower height shall be 60 ft.
5. There may be no more than one wind turbine.
6. Voltage drop throughout the wind generator system(s) shall be less than 3%
7. All turbine/towers shall be located at least 1.1 times the tip blade height from property lines, buildings, and any other structures.
8. The installation shall follow NFPA NEC 2008 code or the code of the local jurisdiction.
9. All components shall be UL Listed 1741.
10. System must be designed to provide real-time plus historical data via a touch screen and internet web-based portal.

#### **Basis for Design - Solar Thermal Domestic Hot Water**

1. Investigate and document the existing site conditions.
2. The SDHW (Solar Domestic Hot Water) system shall use flat plate collector(s).
3. Collector(s) shall be SRCC rated.
4. There shall be 1 distinct system.
5. The system shall be an active, indirect system capable of heating 80 gallons of potable water with a  $\Delta T$  of 90° F with an insulation factor of 2000 Btu/ft<sup>2</sup>.
6. Collector(s) shall be mounted on the standing seam metal roof with aluminum or stainless steel racking and stainless steel hardware.
7. The collector(s) shall be mounted on the roof side with the most southern exposure.
8. Collectors shall be mounted at an angle equal to latitude +15°.
9. All piping shall be properly insulated.
10. SDHW installations must comply with the codes of the local jurisdiction.

#### **Basis for Design – Net Metering**

1. Investigate and document the existing site conditions.
2. Provide the necessary professional services to assist CCTC in determining eligibility of securing a Category 2 Net Metering agreement.
3. Provide the necessary professional services to assist CCTC in securing a Category 2 Net Metering Agreement if CCTC is determined to be eligible.
4. The costs associated with securing the Net Metering Agreement should be broken out as a separate cost in the separately submitted Fee Proposal response.

#### **Basis for Design – Fueling Station Canopy**

1. Investigate and document the existing site conditions.
2. Incorporate one (1) Owner provided camera into the existing CCTV system.
3. Provide complete bidding documents for a four (4) column canopy.
4. Must comply with the codes having jurisdictional authority.

## **II-D Clare County Board of Commissioners and CCTC Responsibility**

1. Provide geotechnical report, if required.
2. Pay for direct costs associated with any net metering agreement with Consumers Energy.

3. Pay for normal reimbursable expenses (printing, plan review fees, travel, bid advertisements).
4. Access to CCTC facility and documents to the successful consultant.

## II-E General Requirements

**Timeliness:** The services of the successful respondent are to commence upon execution of each task assigned and completed so as to assure project completion as directed by CCTC's Executive Director.

**Meetings:** The successful respondent (Contractor) shall meet with the CCTC Executive Director during the project at least monthly. These meetings may be conducted over the telephone, in person, or via e-mail, as determined by the CCTC Project Manager. The Contractor shall make immediate phone calls to the CCTC Executive Director if any significant problems are encountered during the project.

**Oral Presentations:** In addition to any committee and/or community outreach meetings established in the scope of work, the contractor may also make other presentations as required.

**Progress Reports:** The successful respondent shall provide monthly written progress memos to CCTC's Executive Director. These reports will identify work accomplished, problems encountered during the past month, methodology and timeline for resolving these problems and the activities planned for the upcoming month. These memos shall be provided to the Executive Director by the 10<sup>th</sup> day of each month. The report can be faxed, mailed or e-mailed to the Executive Director.

**Project Reports:** The Contractor will provide to the Executive Director A/E studies and proposals as appropriate and required.

## II-F Deliverables

All documents and reports provided are considered deliverables, and must be delivered to CCTC's Executive Director as required. 5 copies must be provided. In addition, if the deliverables are available electronically, at least two copies (on CD's) must be provided in Microsoft Word 2000 or newer. No primary deliverable (e.g. reports, technical memorandums, data tables, etc.) may be delivered by e-mail only. All GIS data must be provided in ASCII or another mutually agreed upon format.

## II-G Detailed Work Plan

Within 10 working days of the award of the contract, the Contractor will submit to CCTC's Project Manager, for discussion, review and approval, an adjusted technical work plan including the following:

1. The Contractor final project organization structure.
2. The Contractor's (and subcontractors) detailed manning table with names, titles, addresses, telephone numbers, fax numbers, e-mail addresses and any other critical information, by task if appropriate. The project breakdown showing subprojects, activities and tasks, products, public involvement, decision points, and resources (person hours or days and dollar amount) required and allocated to each elements of the work plan.
3. The time-phases planned for completing the project.
4. Within one week following the submittal of the detailed work plan, the Contractor's representative will meet with CCTC's Project Manager to review the components of the work plan and to finalize the direction of the project.

## II-H Proposal Requirements

Interested parties should submit proposals which include, at a minimum, the following information:

1. Detailed description of Respondent's plan for implementing Scope of Work; Respondent's detailed technical work plan including such things as a proposed schedule/time line.
2. Statement describing the Respondent's understanding of CCTC's stated problem and project objectives.
3. Qualifications of the Primary Contractor and each sub-contractor.
4. Qualifications of the key individuals from each firm assigned to the project.
5. Past experience on similar projects – not less than three (3) examples for the prime and each sub-consultant.
6. List of three (3) references including specific contact names, addresses, telephone numbers, fax numbers and e-mail addresses.
7. Names and addresses of all DBE firms to be involved in the project.
8. Statement of Agreement with CCTC Standard Terms & Conditions and the RFP.
9. Statement of compliance and agreement to continue compliance with Federal and State laws and regulations, including regulations of the Federal Transit Administration ("FTA") and the Michigan Department of Transportation ("MDOT").
10. Bar Chart Schedule for each task.
11. Additional Information and Comment – include any other information that is believed to be pertinent, but not specifically asked for elsewhere.
12. A description of the Respondent's Quality Assurance Program.
13. Cost proposals based on hourly rates **in a separately sealed envelope**.
14. A list of any work that is to be sub-contracted and a description of the qualifications of the Prime Contractor and each Sub-Contractor on the team.
15. An organizational chart of the Respondent and all Sub-Consultants.
16. The name and telephone number of person(s) in the Respondent's organization authorized to negotiate.
17. Signed copies of Appendices C, D, E and F.

## II-I Cost of Project

Vendor pricing proposals must be submitted at the same time as technical proposals, but in a separately sealed envelope from the technical proposal; that is, **submit five (5) copies of the price proposal in a sealed envelope separately from the five (5) copies of the technical proposal**.

## SECTION III: COMPLIANCE REQUIREMENTS

### III-A FTA and MDOT Required Clauses

The Contractor will comply with all relevant procurement and contract requirements of the Federal Transit Administration ("FTA") and the Michigan Department of Transportation ("MDOT"). See for example FTA Best Practices procurement Manual, Appendix A.1 and FTA Circular 4220.1F.

The website address of the Federal Transit Administration is [www.fta.dot.gov](http://www.fta.dot.gov).

The website address of the Michigan Department of Transportation is [www.michigan.gov.mdot](http://www.michigan.gov.mdot).

The Contractor shall furnish to CCTC upon request, certificates of compliance with all such laws, rules and regulations. The Contractor shall, at its own expense, be responsible for obtaining all necessary permits and licenses required for

performance of the Contract.

All contractual provisions required by MDOT or mandated by FTA as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any CCTC requests which would cause CCTC or the Contractor to be in violation of FTA or MDOT terms and conditions.

### III-B Disadvantaged Business Enterprises

Disadvantaged Business Enterprises (“DBE”) are encouraged to bid on this project. Any applicable DBE firm’s certifications must be included in the proposal. Cost Proposals must list the amount and activity of service provided by the DBE firm, as applicable. Information on becoming certified as a Disadvantaged Business Enterprise is available from Michigan Department of Transportation (“MDOT”) at the following website address: <http://mdot270.state.mi.us:8080/UCP/HomePageServlet>.

### III-C Compliance with Laws

The Contractor shall comply with all federal, state, and local laws, ordinances, rules, regulations, and orders, including, but not limited to:

1. Motor Carrier Safety Act, 1963 PA 181, as amended.
2. Motor Bus Transportation Act, 1982, PA 432, as amended.
3. Rules and Regulations of the Department of Transportation may promulgate to accomplish the purpose of 1990 PA 339.
4. Motor Safety Carrier Regulations, being 49 CFR, Parts 387, 390-393, 395-397, and 399 including appendices C, D, E, and G.
5. Drug-Free Workplace Act of 1988.
6. Procedures for Transportation Workplace Drug Testing Progress, 49 CFR 40.
7. Physical Qualification Requirements of 49 CFR 391.41 to 391.49.
8. Debarment Certification per 49 CFR 29; Appendix C must be signed by Respondent and included in proposal submittal.
9. Surface Transportation Assistance act of 1982 (“Buy America Act”); Appendix D must be signed by Respondent and included in proposal submittal.
10. Lobbying Disclosure Act of 1985; Appendix E must be signed by Respondent and included in proposal submittal
11. Non-Discrimination Clause per 49 CFR, Part 26.
12. Prohibition of Discrimination per 1976 P A 453, Public Acts of 1976.

Upon request, Contractor shall furnish to Clare County Board of Commissioners and CCTC certificates of compliance with all such laws, rules and regulations. The Contractor shall, at its own expense, be responsible for obtaining all necessary permits and licenses required for performance outlined in this RFP.

Information regarding the regulations listed above may be obtained from the Federal Motor Carrier Safety Administration at [www.fmcsa.dot.gov/rulesregs/fmcsr/fmcsrguide.htm](http://www.fmcsa.dot.gov/rulesregs/fmcsr/fmcsrguide.htm).

### III-D Ownership

All original documents, calculations, and work product produced by CONTRACTOR, whether produced on paper or electronic media or otherwise in performance of this Agreement, shall be the property of CCTC. CONTRACTOR shall have the right to retain a copy of such documents, calculations, and work product. CONTRACTOR shall make available to CCTC copies of all CONTRACTOR correspondence, notes, and other papers relating to the work, upon request of CCTC. All works of original authorship created in the scope of this Agreement are "works made for hire", as that term

is used in connection with the U.S. Copyright Act. To the extent that by operation of law CONTRACTOR retains any intellectual property rights to any work product, CONTRACTOR hereby irrevocably assigns and licenses to Clare County Board of Commissioners and CCTC all right, title, and interest in such work product, including copyrights and patents, and agrees to execute such assignments and licenses as may be required in the opinion of Clare County Board of Commissioners and CCTC's legal counsel to confirm this provision. The work product produced by CONTRACTOR in the performance of services under this Agreement is intended for use by Clare County Board of Commissioners and CCTC solely for the purpose intended. Any use or reuse of such work product by CCTC for any purpose other than its intended purpose shall be at the sole risk of Clare County Board of Commissioners and CCTC and without any liability or responsibility of CONTRACTOR. To the extent that the work product produced by CONTRACTOR contains standard design or construction details or other standardized material previously developed by CONTRACTOR in its professional architectural, engineering, and planning practices, then CONTRACTOR shall have the right to reuse any such material on other projects for other clients or persons without the prior knowledge or permission of Clare County Board of Commissioners and CCTC and without the payment of any compensation to Clare County Board of Commissioners and CCTC, provided that the reuse or continued use of such material contains no Clare County Board of Commissioners and CCTC identifying information or confidential information.

### III-E News Releases

News releases pertaining to this RFP or the services, study, data, or project to which it relates will not be made without prior written CCTC approval, and then only in accordance with the instructions from CCTC's Executive Director.

### III-F Audit and Inspection of Records

In the case of all negotiated contracts, and contracts for construction, reconstruction, or improvement of facilities and equipment which were entered into under other than competitive bidding procedures, the Contractor agrees that the grantee, the Comptroller General of the United States, or any of their duly authorized representative shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and accounts with regard to the project. Further, the Contractor agrees to maintain all required records for at least three (3) years after grantees make final payments and all other pending matters are closed.

### III-G Contractual Terms and Conditions

#### STANDARD TERMS AND CONDITIONS OF PROCUREMENT

A. The Following Terms and Conditions Will be a Part of the Contract Awarded.

- 1. CHANGES.** Clare County Board of Commissioners and CCTC, at any time, by a written order, and without notice to the sureties, may make changes within the general scope of this contract, in (a) drawings, designs or specifications where the supplies to be furnished are specifically manufactured for Clare County Board of Commissioners and CCTC in accordance therewith; (b) method of shipment or packing; and (c) 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 modification 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 Clare County Board of Commissioners and CCTC, if it decides that the facts justify the action, may receive and act upon any such claim if asserted prior to dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- 2. TERMINATION FOR DEFAULT.** Clare County Board of Commissioners and CCTC, by written

- notice, may terminate the contract awarded on the basis of this proposal, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages, including the excess cost of reprocurring similar supplies or services, provided, that if (a) it is determined for any reason that the contract was not in default or, (b) the Contractor's failure to perform is without his control, fault or negligence, the termination shall be deemed to be a termination for convenience under the following Paragraph 3.
- 3. TERMINATION FOR CONVENIENCE.** Clare County Board of Commissioners and CCTC, by written notice, may terminate the contract, awarded on the basis of this proposal, in whole or in part, when it determines it is in the best interest of Clare County Board of Commissioners and CCTC. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with its auditable cost incurred at the time of notification of termination. To the extent that the contract is for services and is so terminated, Clare County Board of Commissioners and CCTC shall be liable only for payment in accordance with the payment provisions of the contract for services rendered to the effective date of termination.
  - 4. ADDITIONAL INFORMATION.** The Contractor shall promptly furnish any additional information requested by Clare County Board of Commissioners and CCTC relative to the equipment it proposes.
  - 5. SUPPLIER RESPONSIBILITY.** No advantage shall be taken by the Contractor or its Subcontractor in the omission of any part or detail which goes to make the equipment complete and operable for use by CCTC. In case of any variance, this specification shall overrule Contractor or Subcontractor specifications. The Contractor shall assume responsibility for all materials used whether the same is manufactured by the Contractor or purchased ready made from a source outside Contractor's company. In the case of the replacement of a Subcontractor, the Contractor must, within five (5) working days, notify Clare County Board of Commissioners and CCTC in writing of the replacement and provide name, address, telephone number, and the type of service.
  - 6. DELIVERY.** Service and/or equipment will be delivered to Clare County Transit Corporation, 1473 Transportation Drive., Harrison, MI 48625 or at the new building site. Invoices shall be furnished with the delivery of each item. CCTC reserves the right to inspect all deliveries or services before acceptance
  - 7. BREACH OF CONTRACT.** If the Contractor shall fail, refuse or neglect to comply with the terms of these contract conditions, such failure shall be deemed a total breach of contract and the Contractor shall be subject to legal recourse by Clare County Board of Commissioners and CCTC, plus costs relating to failure to comply.

- 8. DISPUTES (AFTER BID AWARD.** Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by Contractor shall be decided by Clare County Board of Commissioners and CCTC in writing, with a copy mailed or otherwise furnished to the Contractor. The decision of Clare County Board of Commissioners and CCTC shall be final and conclusive unless within ten (10) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to Clare County Board of Commissioners and CCTC a written appeal addressed to the Executive Director for the determination of such appeal, which shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending a final decision of the dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with Clare County Board of Commissioners and CCTC's decision.
- 9. DELIVERY EXTENSION AND DELAYS.** Clare County Board of Commissioners and CCTC reserve the right to extend, postpone or reschedule delivery in case the delivery of service equipment, under this contract, shall be necessarily delayed because of strike, injunction, civil disturbance, government controls, or by reason of any cause or circumstance beyond the control of the Contractor, as detailed in writing by the Contractor, the time of completion or a delivery shall be extended by a number of days to be determined in each instance by Clare County Board of Commissioners and CCTC.
- 10. INSTALLATION.** If specified, the Contractor shall install and place in operation, subject to approval by Clare County Board of Commissioners and CCTC, the equipment at the Contractor's expense within thirty (30) days from issuance of a notice to install issued by Clare County Board of Commissioners and CCTC.
- 11. INSTALLATION EXTENSION AND DELAYS.** Clare County Board of Commissioners and CCTC reserve the right to extend, postpone, or reschedule installation in case the installation of equipment under this contract shall be necessarily delayed because of strike, injunction, civil disturbance, government controls, or by reason or cause or circumstances beyond the control of the Contractor. The time of completion or installation shall be extended by a number of days to be determined in each instance by Clare County Board of Commissioners and CCTC.
- 12. ASSEMBLY.** If required, the Contractor shall assemble the equipment of the installation.
- 13. ACCESSORIES.** The Contractor shall furnish all accessories required to permit CCTC to operate the equipment as contemplated by the Authority. Accessories shall be included in the bid price.
- 14. TRAINING.** The Contractor shall properly train CCTC personnel in the operation and maintenance of the equipment.
- 15. SERVICE MANUAL AND WIRING SCHEMATIC.** If specified, the Contractor will provide at least one copy of a service manual and at least one copy of a wiring schematic for individual components and other schematics and drawings.
- 16. WARRANTY.** The Contractor shall describe its policy or warranty(s) both on workmanship and material as applying to the equipment, along with the method or adjustment, and shall be further subject to warranty requirements of Clare County Board of Commissioners and CCTC as set forth in the following Paragraph 17.

**17. CCTC WARRANTY.** The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable warranties the Contractor gives any customer for such equipment and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to Clare County Board of Commissioners and CCTC by any other clause of this contract. The Contractor shall state the warranty and supply with its bid.

**18. INSURANCE.** The Contractor shall place and maintain with responsible insurance carriers the following insurance. The Contractor shall deliver to Clare County Board of Commissioners and CCTC, upon request, certificates of insurance which shall provide thirty (30) days' written notice to be given to CCTC in the event of cancellation. Contractor shall require all Subcontractors to maintain adequate insurance coverage.

(a) Workers' Compensation and Employer's Liability Insurance.

- (1) Workers' Compensation in compliance with the applicable state and federal laws.
- (2) Employer's Liability. Limit \$1,000,000.

(b) Commercial General Liability Insurance, including Professional Liability, Blanket contractual, XCU Hazards, Broad Form Property Damage, Completed Operations, and Independent Contractor's Liability, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 each occurrence/claim, subject to a \$2,000,000 annual aggregate for Professional Liability, Completed Operations and Personal Injury other than Bodily Injury.

(c) Automobile Liability Insurance, including owned, hired and non-owned automobiles, Bodily Injury and Property Damage, to a combined single limit of \$1,000,000 each occurrence.

**19. INDEMNIFICATION.** In addition to the protection afforded by any policy of insurance, the Contractor agrees to indemnify and save harmless Clare County Board of Commissioners, CCTC, the Michigan Department of Transportation ("MDOT"), the Federal Transit Administration ("FTA"), and all officers, agents, and employees thereof:

- (a) From any and all claims by persons, firms, or corporations for labor, materials, supplies, or services provided to the Contractor in connection with the Contractor's performance of the contract; and
- (b) From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation and response, and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the Contractor's negligent performance of the contract.
- (c) Clare County Board of Commissioners and CCTC will not be subject to any obligations or liabilities by Subcontractors of the Contractor or their Subcontractors or any other person not a party to this contract without its specific consent and notwithstanding its concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

- 20. ACCEPTANCE OF MATERIAL - NO RELEASE.** Unless Clare County Board of Commissioners and CCTC otherwise agrees in writing, acceptance of any portion of the material prior to final acceptance shall not release the Contractor from liability for faulty workmanship or materials or for failure to fully comply with all of the terms of this contract. Clare County Board of Commissioners and CCTC reserve the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing process, and shall have the right to reject all materials and workmanship which do not conform with the contract requirements and specifications; provided, however, that Clare County Board of Commissioners and CCTC is under no duty to make such inspection and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship in accordance with the contract requirements and specifications.
- 21. FINAL ACCEPTANCE.** Upon final acceptance by Clare County Board of Commissioners and CCTC of all work to be performed by the Contractor, Clare County Board of Commissioners and CCTC will so notify the Contractor in writing. The date of final acceptance shall commence the warranty period.
- 22. NO ASSIGNMENT OF CONTRACT.** Contractor may not assign or transfer any interest in the contract without the prior written consent of Clare County Board of Commissioners and CCTC.
- 23. DEFECTIVE WORKMANSHIP AND MATERIAL.** When and as often as Clare County Board of Commissioners and CCTC determines that the work done or being done under the contract or the kind of quality or materials supplied in connection therewith are not fully and completely in accordance with any requirement of the contract documents, it may give notice of such noncompliance to the Contractor in writing and the Contractor shall immediately upon receipt of such notice do all things required to remedy such noncompliance without additional cost to Clare County Board of Commissioners and CCTC. If the Contractor fails to comply with such written notice, then Clare County Board of Commissioners and CCTC, upon written notice to the Contractor, shall deduct the cost of repair, replacement or correction of defective or damaged work from the compensation due or to become due to the Contractor.
- 24. WAIVER OF BREACH.** The waiver by either party hereto or any breach of any provision of this contract by the other party shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this contract by either party hereto.
- 25. OWNERSHIP OF DOCUMENTS.** All original documents, calculations, and work product produced by CONTRACTOR, whether produced on paper or electronic media or otherwise in performance of this Agreement, shall be the property of Clare County Board of Commissioners and CCTC. CONTRACTOR shall have the right to retain a copy of such documents, calculations, and work product. CONTRACTOR shall make available to CCTC copies of all CONTRACTOR correspondence, notes, and other papers relating to the work, upon request of CCTC. All works of original authorship created in the scope of this Agreement are "works made for hire", as that term is used in connection with the U.S. Copyright Act. To the extent that by operation of law CONTRACTOR retains any intellectual property rights to any work product, CONTRACTOR hereby irrevocably assigns and licenses to Clare County Board of Commissioners and CCTC all right, title, and interest in such work product, including copyrights and patents, and agrees to execute such assignments and licenses as may be required in the opinion of CCTC's legal counsel to confirm this provision. The work product produced by CONTRACTOR in the performance of services under this Agreement is intended for use by Clare County Board of Commissioners and CCTC solely for the purpose intended. Any use or reuse of such work product by Clare County Board of Commissioners and CCTC for any purpose other than its intended purpose shall be at the sole risk of

**Clare County Board of Commissioners and CCTC and without any liability or responsibility of CONTRACTOR. To the extent that the work product produced by CONTRACTOR contains standard design or construction details or other standardized material previously developed by CONTRACTOR in its professional architectural, engineering, and planning practices, then CONTRACTOR shall have the right to reuse any such material on other projects for other clients or persons without the prior knowledge or permission of CCTC and without the payment of any compensation to Clare County Board of Commissioners and CCTC provided that the reuse or continued use of such material contains no Clare County Board of Commissioners and CCTC identifying information or confidential information.**

**26. EXCUSES FOR FAILURE TO PERFORM OR DELAYS. The Contractor will not be in default by reason of any failure in the performance of this contract, if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to, acts of God or the public enemy, acts of the government either in its sovereign or contractual capacity, fires, floods, and strikes. But in every case, a failure to perform must be beyond the control and without the fault or negligence of the Contractor or its Subcontractors. An excusable delay will permit the Contractor an extension of time for such reasonable period as may be mutually agreed upon between the parties.**

B. TERMS INCLUDED IN CONTRACTS FUNDED IN WHOLE OR PART BY FTA, MDOT, OR OTHER GOVERNMENTAL AGENCY.

1. NONDISCRIMINATION.

(a) Compliance with Regulations. Contractor shall comply with Federal Regulations relative to nondiscrimination of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, and Title 23, Code of Federal Regulations, Part 710.405(b), as they may be amended from time to time (hereinafter referred to as the Regulations), and with Executive Order 11246 titled Equal Employment opportunity, as amended by Executive Order 11375, and as supplemented by Department of Labor Regulation (41 CFR 60) which are herein incorporated by reference and made a part of this contract.

(b) Nondiscrimination. With regard to the work performed by it during this contract, Contractor shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by Section 21.5 and Part 710.405(b) of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(1) In connection with the performance of services under this contract, Contractor agrees to comply with the State of Michigan provisions for "prohibition of discrimination in state contracts" as set forth in Appendix A dated March 19, 1998, a copy of which is attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this contract. Further, each contract which Contractor signs with a Subcontractor must include the following assurance:

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 49 CFR Part 26 in the award and administration of US 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 the recipient deems appropriate.

2. **DBE REQUIREMENTS.** Contractor will carry out the applicable requirements of the Michigan Department of Transportation's Disadvantaged Business Enterprise ("DBE") program and 49 CFR 26, including, but not limited to those requirements set forth in Appendix B, attached hereto and made a part hereof.
3. **CONTINGENT FEES.** The Contractor warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Contractor, to solicit or secure this contract and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, CCTC shall have the right to annul this contract without liability.
4. **RECORDS/AUDITS.** The Contractor shall maintain complete and accurate books, documents, papers, accounting records, and other evidence with respect to allowable costs incurred and manpower expended under this contract. All such records shall be maintained on the basis of generally accepted accounting principles and shall be clearly identified and readily accessible. The Contractor shall provide access during regular business hours to authorized representatives of CCTC to such data and records, and the right to inspect and audit all data and records of the Contractor relating to its performance under the contract, and to make transcripts therefrom as necessary to allow inspection of all work data, documents, proceedings, and activities related to this contract for a period of four (4) years from the date of final payment under this contract. In the event of a dispute as to allowable costs or any other issue under this contract, Contractor will thereafter continue to maintain such records until the dispute has been resolved.
5. **CONFLICT OF INTEREST.** The Contractor certifies that, to the best of its knowledge, no CCTC Employee or office of any public agency interested in this contract has any pecuniary interest in the business of the Contractor and that no person associated with the Contractor has any interest that would conflict in any manner or degree with the performance of this contract.
6. **INTEREST OF MEMBER OF CONGRESS OR DELEGATES TO CONGRESS.** No member of Congress or delegates to the Congress of the United States shall be admitted to any share or part of the contract, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.
7. **DEBARMENT AND SUSPENSION.** Contractor agrees to comply, and assure the compliance by each of its Subcontractors at any tier, with the provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29. Contractor shall furnish the Certificate of Compliance, as set forth in Appendix C, as a term and condition of the procurement.
8. **MDOT AND FTA TERMS.** All contractual provisions required by MDOT or mandated by FTA as set forth in FTA Circular 4220.1F, dated November 1, 2008, as amended, are hereby incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms or MDOT mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CATA requests which would cause CCTC to be in violation of the FTA terms and conditions.
9. **COMPLIANCE WITH LAWS.** The Contractor shall at all times observe and comply with all laws, ordinances, and regulations of the state, federal, local, and city government which may, in any manner, affect the performance of the contract.
10. **AIR POLLUTION LIMITATIONS.** All facilities and equipment utilized by Contractor in the performance of this contract shall be designed and equipped to prevent or control air pollution in compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. If state or local air pollution regulations are in force, the more restrictive criteria shall

- govern. The Contractor and any subcontractors or suppliers must submit evidence to CCTC that the governing air pollution criteria will be met. Violations shall be reported to the Regional Office of the Environmental Protection Agency.
11. **BUY AMERICA PROVISIONS.** This procurement is subject to the FTA's Buy America Requirements in 49 CFR 661. The attached certificate, entitled "Buy America" Provision (Appendix D), must be completed and submitted with the proposal as a term and condition of the procurement. Failure to fill out the certificate completely and return it with the proposal will render your proposal non-responsive. A waiver from the Buy America Provision may be sought by the bidder if grounds for a waiver exist. Section 165a of the Surface Transportation Act of 1982 permits FTA participation on contracts only if steel and manufactured products used in the contract are produced in the U.S.A.
  12. **CERTIFICATION REGARDING LOBBYING.** This procurement is subject to the Federal Transportation Administration Lobbying requirements. The attached certificate, entitled Certificate Regarding Lobbying (Appendix E), must be signed and returned as a term and condition of the procurement.
  13. **PREVAILING WAGE.** Contractors must comply with the provisions of the Davis-Bacon Act, 1931 P A 403, as amended, as to payment by the contractor of wages prevailing in the area in which the work is performed.

C. MISCELLANEOUS.

1. **COMPUTATION OF TIME.** In computing a period of time prescribed by these conditions, the following rules apply:
  - (a) "Day" means days of the week (e.g., Monday through Friday), not business days.
  - (b) The day of the act or event after which the designated period of time begins is not included.
  - (c) The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday. In that event, the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.
2. **NOTICE.** All notices and other communications required under this Contract shall be given in writing, signed by an authorized representative, and be personally delivered or delivered by overnight courier, or certified mail (return receipt requested) to the addresses set forth below:

To CCTC: Tom Pirnstill  
Executive Director  
Clare County Transit Corporation  
1473 Transportation Drive  
Harrison, MI 48625

3. **JURISDICTION.** This Contract will be governed by the internal laws of the State of Michigan without reference to its choice of law rules. Exclusive jurisdiction and venue of any suit, action or claim relating to this contract will be in the Clare County Circuit Court, or the Federal District Court for the Western District of Michigan.
4. This contract constitutes the entire contract between the parties and supercedes all negotiations, commitments, and previous contracts and may be modified only by a further written contract which is executed by a duly authorized officer of each of the parties.

**APPENDIX A****PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS**

In connection with the performance of work under this contract, Contractor agrees as follows:

1. In accordance with Act 453, Public Acts of 1976, Contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980, Contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. Contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. Contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. Contractor or its collective bargaining representative 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 advising the said labor union or workers' representative of the Contractor's commitments under this appendix.
6. Contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. Contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as Contractor itself, and said Contractor will permit access to its books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that Contractor has not complied with the contractual obligations under this Agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare Contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until Contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom Contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. Contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil

Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

**APPENDIX B****ASSURANCES THAT RECIPIENTS AND CONTRACTORS MUST MAKE  
(EXCERPTS FROM US DOT REGULATION 49 CFR § 26.13)**

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

- B. Each contract Contractor signs with a subcontractor must include the following assurance:

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 49 CFR Part 26 in the award and administration of US 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 the recipient deems appropriate.

**APPENDIX C****CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY, AND VOLUNTARY EXCLUSION  
INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal, the prospective Participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective Participant knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective Participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective Participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "primary", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective Participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective Participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A Participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A Participant may decide the method and frequency by which it determines the eligibility of its principals. Each Participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a Participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 49 CFR 29, Appendix C, includes attached Certification of Primary Participant Regarding Debarment, Suspension, and Other Responsibility Matters

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

The Primary Participant (applicant for an FTA grant to cooperative agreement or potential contractor for a major third party contract), \_\_\_\_\_, ("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 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 offenses enumerated in paragraph 2 above of this Certification; and
- 4. Have not within a three year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

(If the Primary Participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this Certification, the Participant shall attach an explanation to this Certification).

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), \_\_\_\_\_, 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 USC §§ 3801, et seq., are applicable thereto.

\_\_\_\_\_

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

By: \_\_\_\_\_

Signature and Title of Authorized Official

The undersigned chief legal counsel for Contractor, \_\_\_\_\_, hereby certifies that the Contractor has authority under federal, state, and local law to comply with the subject assurances and that the Certification above has been legally made.

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

By: \_\_\_\_\_

Signature of Contractor's Attorney

Name, Address, and Phone of Contractor's Attorney: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**APPENDIX D**

**"BUY AMERICA" PROVISION**

This procurement is subject to the Federal Transit Administration "Buy America" Requirements in 49 CFR Part 661.

The "Buy America" Certificate below must be completed and submitted with your bid/proposal. A bid/ proposal which does not include the Certificate or where both certificates are signed will be considered non responsive.

A waiver from the "Buy America" provision may be sought by Clare County Transit if grounds for the waiver exist.

In order to qualify as a domestic end-product, the cost of components produced in the United States must be 100% American made.

<p>CERTIFICATE ONE:</p> <p style="text-align: center;">BUY AMERICA CERTIFICATE</p> <p>The bidder hereby certifies that it <u>WILL</u> comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (B)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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<p>CERTIFICATE TWO:</p> <p style="text-align: center;">BUY AMERICA CERTIFICATE</p> <p>The bidder hereby certifies that it <u>CANNOT</u> comply with the requirements of section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (B)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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**APPENDIX E**

**CERTIFICATE REGARDING LOBBYING**

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS  
(To be submitted with each bid or offer exceeding \$100,000).

The undersigned Contractor certifies to the best of his or her knowledge and belief that:

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 an 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 making lobbying contacts to 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 (as amended by "Government Wide Guidance for New Restrictions on Lobbying", 61 Fed. Reg. 1413 (11/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 USC § 1601, et seq.).
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, subgrants, 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 was 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 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required Certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 USC § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required Certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, certifies or affirms to the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC § 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor’s Authorized Official

\_\_\_\_\_  
Name & Title of Contractor’s Authorized Official

\_\_\_\_\_  
Date

**APPENDIX F**  
**CERTIFICATION OF COMPLIANCE**

\_\_\_\_\_ acknowledges receipt of the attached Contract Clauses  
(Company name)

(Appendix G) and certifies compliance with all applicable federal requirements for the design and engineering of Photovoltaic, Wind and Solar Hot Water Systems, Net Metering, and Fueling Station Canopy being solicited by Clare County Board of Commissioners under the project authorization 2007-0193/Z17

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

**APPENDIX G****REQUIRED FEDERAL CLAUSES  
FOR PROFESSIONAL CONTRACTS AND A&E PROCUREMENTS  
LESS THAN \$100,000****INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES****No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**FALSE OR FRAUDULENT STATEMENTS OR CLAIMS**

The Recipient acknowledges and agrees that:

(1) **Civil Fraud**. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) **Criminal Fraud**. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate.

**ACCESS TO THIRD PARTY CONTRACT RECORDS**

The Recipient agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

**CHANGES TO FEDERAL REQUIREMENTS**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract in compliance with 49 CFR Part 18.

**TERMINATION (For projects over \$10,000)**

**a. Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest in compliance with 49 U.S.C. Part 18/FTA Circular 4220.1F. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any

such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

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

not be terminated, nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

**i. Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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

**j. Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the

fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**CIVIL RIGHTS (For projects over \$10,000)**

The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. **Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C.

§§ 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives that may be issued.

c. **Equal Employment Opportunity.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as “construction,” the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No.

11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. **Nondiscrimination on the Basis of Sex.** The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

e. **Nondiscrimination on the Basis of Age.** The Recipient agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

f. **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

g. **Access to Services for Persons with Limited English Proficiency.** The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

h. **Environmental Justice.** The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

i. **Other Nondiscrimination Laws.** The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

### **DISADVANTAGED BUSINESS ENTERPRISE**

To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The Recipient agrees and assures that it shall comply with section 1101(b) of SAFETEA-

LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26. (2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

#### **DEBARMENT AND SUSPENSION (For projects over \$25,000)**

The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

#### **CARGO PREFERENCE REQUIREMENTS**

**Use of United States-Flag Vessels** - The contractor agrees in compliance with 46 U.S.C. 1241/46 CFR Part 381:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a

subcontractor's bill-of-lading.)

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **FLY AMERICA**

The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

### **SEISMIC SAFETY**

The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

### **ENERGY CONSERVATION**

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

### **NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

### **ACCESS FOR INDIVIDUALS WITH DISABILITIES**

The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities

Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

### **STATE, TERRITORIAL, AND LOCAL LAW**

Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project

expeditiously.