

Marquette County Transit Authority (MARQ-TRAN)

Request for Proposal (RFP) for Dispatch Software

Section I

Direct Questions To: Delynn Klein, Executive Director
1325 Commerce Drive
Marquette, MI 49855
marqtran@marq-tran.com
Please direct questions via email by Sept 10 2014

Date Issued: Aug. 18, 2014

Bids Due: Sept 15, 2014

Proposer Name: _____

Price: \$ _____

Submit one (1) copy via email to: Delynn Klein marqtran@marq-tran.com

Or submit three (3) hard copies to: Delynn Klein
Executive Director
1325 Commerce Drive.
Marquette, MI 49855

PROPOSER READ AND COMPLETE

The undersigned certifies that he/she offers to furnish materials in strict accordance with the requirements of this proposal including the specifications, Proposal Form, and Terms and Conditions that are attached; that prices submitted are correct.

Company Name: _____

Print Name and Title: _____

Signature

Date

Federal ID#:

SECTION II

BACKGROUND INFORMATION:

The Marquette County Transit Authority's (MARQ-TRAN) mission is to provide safe, high-quality, efficient, and reliable transportation to Marquette County, Michigan, through nine fixed routes, door to door service and deviated fixed routes. Employees serve the public with a high standard of quality, safety, and responsiveness. MARQ-TRAN operates 36 vehicles and transported 366,192 passengers in FY 2013.

Dispatch Software

SCOPE OF WORK:

MARQ-TRAN is requesting proposals from qualified vendors for purchase, training, and implementation of new dispatch software. Consideration will be given to those vendors who demonstrate a history of collaborative, solution-based work with a primary focus on the end-user.

Project Objectives

MARQ-TRAN is seeking a new dispatch software solution to replace the manual system currently in use. The software must be user friendly with an emphasis on simplicity in operation and reporting. The project must be completed and final billing submitted to MARQ-TRAN by Dec 1, 2014

SPECIFICATIONS:

The dispatch software must meet the following specifications. MARQ-TRAN's fleet is not equipped with Mobile Data Terminals (MDTs), but this software must be MDT-compatible.

All costs associated must be presented in the proposal.

Scheduling

- Provide overall efficiencies with user friendly technology
- Auto-Scheduling
- Auto "build a day" feature
- Auto archiving feature
- No double click functions
- Ability to set defaults / resets
- Reservation feature that allows for multiple legs of a trip, occurrences, saving of partial data
- Provision for alerts/alarms
- Ability to create fields / legends as needed for changes in routing, scheduling, etc.
- Ability to create and develop fields in drop downs or window task panes
- Override features without compromising other data/schedules

- Improve client history fields to track cancellations, no shows, rides, etc.
- Be able to verify locations via geo-coding with officially recognized addresses
- Internal calendar functions which auto update with standard time changes
- Program data organized in logical fashion / sequence
- Auto-Scheduling capabilities that are unique to MARQ-TRAN's geographical area and system
- Ability to time stamp data manipulation for no shows, cancellations, etc.
- Records last dispatcher on modification to records
- Contains alerts / alarms for data that is computed that do not fit within specified parameters
- Have multiple fields for other MARQ-TRAN data such as vehicle fleet information, drivers, training information, drivers schedules, phone numbers
- Display options such as alpha order with first and last names
- Detailed client daily log note functions
- Ability to segregate different client profiles, i.e. students / disabled / seniors
- When assessing client information, have a special instructions/note screen that shows on the first screen (dispatch view), and immediately gives dispatcher pertinent information on the client without having to search for it.
- For building a day, have an auto build function along with auto archiving feature
- Visual ergonomic friendly screen layouts that have visual flow with intuition
- Ability to set / reset defaults
- Ability to build new reservation off old reservation and extend current reservations without affecting current schedule, and therefore still be able to track numbers
- Reservations that show all legs of a trip, as well as add/subtract legs at will
- Provide availability of other routes if accommodations cannot be met for a customer, i.e., other routes or other times
- Have a legend table for the dispatch screen that should be easily identifiable such as color coded, symbols, etc.
- Maintain the dispatch view and the route view on the same screen
- Provide only one way to cancel a reservation, or isolate each cancel function so one function does not change data elsewhere
- Capability to generate multiple reports based on the software's internal database, in a cross dimensional fashion
- Have strong search functions across the fields, and with the internet
- Contain drop down windows that automatically populate like Google matches
- Has a design for a back-up system in case MDTs fail or go down, i.e. can still print passenger manifest sheets.
- Ability to import / export data from schedules, bus assignments, external documents, etc.
- Improve communication capabilities to present, future and potential riders
- Improve customer communication to the point of service
- Increase reliability of software applications
- Effective handling of no shows, cancellations, and on-time scheduling

- Improved communications between dispatchers and drivers
- increased efficiency in call handling
- Effective recording of information required for MDOT
- Eliminate redundancy in the software program
- Include time stamp feature to provide accountability
- Program that runs faster, quicker with multiple windows open
- Define service process such as Location Verifier / Geo-coding capabilities
- Ability to water print on ride sheets

Integration

- Efficient intercommunication between phone retrieval and scheduling
- Increasing surveillance of the fleet thereby effectively managing mileage, etc.
- Provide fleet information relative to accommodation of rider schedule
- Ability to integrate with current phone system. (preferred not required)
- Auto matching of information from software to phone
- Ability to capture Website/Smart phone interfacing (auto feature)
- Ability to identify data sending to the MDT
- Interface with a Geographical Positioning System
- Interface with projected MDTs
- Be able to interface with current phone system. (preferred not required)
- Ability to identify data to be shared with the MDTs
- Ability to interface / connect to websites or smart phones, i.e., data capturing or scheduling for customers
- Ability to relay cancellations / new rides to the MDTs

Customer Service/Training

- Professional customer support that is available 24/7
- Initial training and ongoing training (online or webinar)

Technical Requirements:

Hosting

Vendor proposals must include technical description of recommended hosting solution.

Network Requirements

Vendor proposals must include technical network requirements for solution. This must be the recommended requirements, and not the minimum, for each solution.

Security

Develop appropriate security mechanisms for all aspects of the MARQ-TRAN dispatch software.

Ongoing Support and Maintenance

Vendor will define approach for ongoing support and maintenance and outline all costs associated for the next three years. Ongoing support and maintenance costs must be clearly identified and not included in purchase, installation and training costs.

SECTION III**OFFER PREPARATION AND SUBMITTAL:****PROPOSAL CONTENT**

Statement of Proposal: Provide a narrative statement of your proposal indicating, through the use of drawings, diagrams or other material the way in which you propose to satisfy the RFP requirements.

Organization Structure: Indicate through the use of organization diagrams and/or narrative statements, the proposed staffing, functioning, and interrelationships with the transit authority during the production of the design package.

Prior Experience: Include descriptions of prior or present projects which would tend to substantiate your qualifications to perform this project. Include three (3) transit industry references involving dispatch software sale and installation. Include name, address, and telephone number of the reference's contact person, and sale/installation date.

Staff Description: Identify principal staff personnel by name and qualification.

Authorized Negotiators: Provide the names and telephone numbers of personnel of your organization authorized to negotiate with the transit agency.

Subcontractors: Indicate any portion of the proposal to be performed by subcontract. Include similar information as to qualifications of subcontractors or their employees as is required of the respondent.

Cost and Price Analysis of Proposal: Provide a detailed cost or price breakdown.

Business Organization: State the full name and address of your organization and, if applicable, the parent or subsidiary entity that will perform or assist in performing the work contained in your proposal or will provide any assistance. Indicate whether you operate as an individual, partnership or corporation; if as a corporation, include the state in which you are incorporated.

All respondents must indicate their organization's federal identification number. Also include a certified copy of your latest annual report, including balance sheet and income statement.

Proposal Submittal: Email (1) one copy to marqtran@marq-tran.com or mail/deliver (3) three copies of proposal to MARQ-TRAN, ATTN: Delynn Klein, 1325 Commerce Drive, Marquette, MI 49855. THE RFP COVER PAGE SUBMITTED WITH THIS PROPOSAL MUST BE SIGNED IN INK BY AN OFFICIAL OF THE ORGANIZATION authorized to bind the proposer to the RFP provisions and the submitted proposal. THE COMPLETED RFP COVER PAGE MUST BE RETURNED WITH THE PROPOSAL.

Proposals must be received by 4:00 p.m. on *Sept 15*, 2014 at MARQ-TRAN administrative offices, 1325 Commerce Drive, Marquette, MI 49855.

Late submissions will NOT be accepted.

Questions about this RFP must be submitted in writing by email to marqtran@marq-tran.com Phone calls involving the RFP or related questions will not be accepted. All questions and answers related to this RFP will be sent to vendors who were sent an RFP, or who have submitted questions or a proposal. All questions and/or comments must be received at least ten (10) working days prior to the proposal due date. Verbal comments are not part of this solicitation.

MODIFICATIONS AND WITHDRAWALS OF OFFERS:

Proposals may be withdrawn by written request at any time prior to the due date and time. No proposal may be withdrawn after the due date. Withdrawn proposals may be resubmitted, with or without modifications, up to the due date and time.

PROPOSAL EVALUATION:

All proposals will be evaluated by the Selection Committee consisting of the executive director, assistant director, lead dispatcher and maintenance supervisor. The Selection Committee may be assisted by other technical personnel as deemed appropriate. Representatives from the firms in a competitive range may be invited to interview in person with the Selection Committee and demonstrate their product before final selection is made. The interviews will make an additional 20 points available based on the method and seamlessness of implementation and another 20 points for a product demonstration that confirms the software best fits MARQ-TRAN's needs. MARQ-TRAN reserves the right to waive any informality or minor defects, and to reject any and all proposals for sound, documentable, business reasons. MARQ-TRAN reserves the right to award to other than the lowest priced proposal and to the proposal offering the Best Value to MARQ-TRAN. The evaluation criteria listed below in order of importance:

Capability and Qualifications: The ability of a prospective proposer will be evaluated under the terms of the RFP, relative to having a staff with the qualifications needed to successfully complete the project. The proposer's professional and project staff that work on the project must be the same staff that is identified in the proposal.

Price: Proposals will be evaluated using a formula. Formula: Lowest price / price being evaluated x 35 points available= Points awarded. Evaluated price will be the total of purchase, installation and training costs, plus ongoing support and maintenance costs for the next three years

Method of Approach: This refers to the technical soundness of the proposer's stated approach to the project, the comprehensiveness of the proposed approach, and the techniques to be used. The proposal should describe the approach and techniques used to achieve each item in the scope of work.

Prior Experience: Qualifications of professional personnel assigned to the project will be measured by experience with particular reference to experience on projects similar to that described in the scope of work. Evaluation will be based on samples of work and explanations of similar services offered to clients that yielded results and demonstrations of measurable impact of the proposer's work.

DURATION OF CONTRACT:

Work specified in this contract is to be completed by *Nov 30*, 2014 with an anticipated start date of *Nov 17*, 2014. The selected vendor must have an MDOT-approved third-party subcontract. MARQ-TRAN will issue a Notice To Proceed upon subcontract award.

TERMS OF PAYMENT:

Vendor will clearly outline deliverables, timeline and associated costs. This will be a firm, fixed price contract and MARQ-TRAN will pay for this project on a lump sum basis when project is complete. No payment will be submitted to the State of Michigan for reimbursement until MARQ-TRAN verifies that the project meets the RFP specifications.

The prime contractor will submit an invoice to: MARQ-TRAN, Att Delynn Klein, Executive Director, 1325 Commerce Drive, Marquette, MI, 49855. Upon acceptance, MARQ-TRAN will place a reimbursement request to the State of Michigan which will take a minimum of forty-five (45) days to be processed. No payment will be made by MARQ-TRAN until the reimbursement check is received by the finance department of MARQ-TRAN. All invoices shall be **itemized**.

PROTESTS:

All protests pertaining to the proposal award shall be addressed in writing to MARQ-TRAN within five (5) days following the deadline for proposal submittals. MARQ-TRAN will respond within ten (10) days of receiving the protest. MARQ-TRAN is the final arbitrator on any dispute pertaining to proposals,

proposal forms, and proposal awards. This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above; provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law. Bid protests shall contain:

- a) The name and address of the protester
- b) Identification of the project
- c) A statement of the grounds for the protest and any supporting documentation. The grounds for protest shall be fully supported to the extent feasible. Additional materials in support of an initial protest may be permitted only at the sole discretion of MARQ-TRAN.
- d) The relief desired of MARQ-TRAN

SECTION IV

CONTRACTOR/TRANSIT AUTHORITY FURNISHINGS:

The contractor shall provide all supervision, labor, materials, supplies, parts, tools, transportation and equipment necessary to perform the scope of this project.

INDEMNITY PROVISIONS:

The contractor shall indemnify, defend and hold harmless MARQ-TRAN's, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- a) the product provided, performance of the work, duties, responsibilities, actions or omissions of the contractor
- b) breach by the contractor or any representation of warranty made by the contractor in the contract
- c) occurrences that the contractor is required to insure against as provided for in this contract
- d) death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage
- e) any claim, demand, action, citation or legal proceeding against MARQ-TRAN, its employees and agents which results from an act or omission of the contractor or any of its subcontractors in its or their capacity as an employer or person

SECTION V

CHANGES CLAUSE:

MARQ-TRAN reserves the right to make changes, in designated areas, within the **general scope** of the project, as long as the change does not constitute a cardinal change.

TERMINATION FOR DEFAULT AND CONVENIENCE:

MARQ-TRAN may at any time and for any reason terminate Contractor's services and work at MARQ-TRAN's convenience. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only the actual cost of the work completed in conformity with this Agreement. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against MARQ-TRAN for any additional compensation or damages in the event of such termination and payment.

INSPECTION:

Final inspection and acceptance of all work, reports, performance, and other deliverables required under this contract shall be performed at the place of delivery by the Contracting Officer

ASSIGNMENT:

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed

IMPACT OF FEDERAL, STATE, AND LOCAL TAXES:

MARQ-TRAN is exempt from Federal, State, and local taxes. MARQ-TRAN will not be responsible for any taxes levied on the respondent as a result of the contract resulting from this RFP.

EXCUSABLE DELAY:

The contractor shall be excused from performance under this contract for any period that they are prevented from performing any services as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their control.

DISPUTES:

The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same.

If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure.

GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan except for matters arising from or concerning indemnification which shall be governed by and construed in accordance with the laws of the State of Michigan.

EXAMINATION OF RECORDS:

The bidder who is awarded the contract agrees that the auditor of MARQ-TRAN or an authorized representative from the State of Michigan shall have access to, and the right to examine, audit, excerpt, and transcribe any directly pertinent books, documents, papers, and records of the contractor relating to orders, invoices, or payments of this contract. All records relating to the awarded contract shall be retained for three (3) years after the date of final payment or completion of any required audit.

Compliance with this clause does not relieve a contractor from retaining any records required by other laws or regulations of federal, state, or local government units.

SECTION VI:

The attached Federal clauses, Michigan Department of Transportation 3165 (02/14) MATERIALS AND SUPPLIES MORE THAN \$100,000, must be signed if your firm is chosen as the selected vendor to complete this project.

MATERIALS AND SUPPLIES MORE 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 the Federal Transit Administration (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 _____, hereafter referenced as "CONTRACTOR" shall not perform any act, fail to perform any act, or refuse to comply with any _____, hereafter referenced as "AGENCY," requests which would cause AGENCY to be in violation of the FTA terms and conditions.

BUY AMERICA REQUIREMENTS (For Rolling Stock over \$100,000)

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the FTA CONTRACTOR the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

SIGNATURE		DATE
NAME	TITLE	

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

SIGNATURE		DATE
NAME	TITLE	

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

SIGNATURE		DATE
NAME	TITLE	

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

SIGNATURE		DATE
NAME	TITLE	

LOBBYING (For projects over \$100,000)

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the CONTRACTOR.

APPENDIX A, 49 CFR PART 20--CERTIFICATION 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 (1/19/96). 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 U.S.C. 1601, *et seq.*)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors 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, U.S.C. § 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 U.S.C. § 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 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 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of CONTRACTOR's Authorized Official

Name and Title of CONTRACTOR's Authorized Official

Date

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

- (1) The AGENCY 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 AGENCY, 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 CONTRACTOR 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 CONTRACTOR's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR the penalties of 49 U.S.C. § 5323(l), 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 AGENCY agrees to require, and assures that its CONTRACTOR 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 CONTRACTOR further agrees to require, and assures that its subcontractors 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

The 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 AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this contract. The 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 AGENCY 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 AGENCY to be paid. If the CONTRACTOR has any property in its possession belonging to the AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, 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 AGENCY in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten(10) days 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 AGENCY'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 AGENCY setting forth the nature of said breach or default, AGENCY 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 AGENCY 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 AGENCY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by AGENCY shall not limit AGENCY '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 AGENCY, 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 AGENCY 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 AGENCY may terminate this contract for default. The AGENCY 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 CONTRACTOR.

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 AGENCY may terminate this contract for default. The AGENCY 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 AGENCY goods, the CONTRACTOR shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The CONTRACTOR and AGENCY 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 AGENCY.

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 AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, the AGENCY 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 AGENCY 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 AGENCY 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 AGENCY, acts of another CONTRACTOR in the performance of a contract with the CONTRACTOR, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the CONTRACTOR, within [10] days from the beginning of any delay, notifies the AGENCY in writing of the causes of delay. If in the judgment of the AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of the AGENCY 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 CONTRACTOR.

i. Termination for Convenience or Default (Architect and Engineering) The AGENCY may terminate this contract in whole or in part, for the CONTRACTOR's convenience or because of the failure of the CONTRACTOR to fulfill the contract obligations. The AGENCY 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 CONTRACTOR, 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 AGENCY may complete the work by contract or otherwise and the CONTRACTOR shall be liable for any additional cost incurred by the AGENCY.

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 CONTRACTOR.

j. Termination for Convenience of Default (Cost-Type Contracts) The AGENCY may terminate this contract, or any portion of it, by serving a notice of termination on the CONTRACTOR. The notice shall state whether the termination is for convenience of the AGENCY 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 AGENCY, or property supplied to the CONTRACTOR by the AGENCY. If the termination is for default, the AGENCY 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 AGENCY and the parties shall negotiate the termination settlement to be paid the CONTRACTOR. If the termination is for the convenience of the AGENCY, 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 AGENCY 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 AGENCY, 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 CONTRACTOR 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 CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, 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 CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, 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 CONTRACTOR 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 CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, 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 CONTRACTOR also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The CONTRACTOR 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 CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, 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 CONTRACTOR agrees to comply and

assures the compliance of each subcontractor, 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR of the CONTRACTOR'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 CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, 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 CONTRACTOR agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <https://www.sam.gov/portal/public/SAM/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

BREACHES AND DISPUTE RESOLUTION (For project over \$100,000)

In compliance with 49 CFR Part 18/FTA Circular 4220.1F:

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

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

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

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

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

CLEAN AIR (For project over \$100,000)

(1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*/40 CFR 15.61/49 CFR Part 18. The

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

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

CLEAN WATER REQUIREMENTS (For project over \$100,000)

(1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The CONTRACTOR agrees to report each violation to the AGENCY and understands and agrees that the AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

CARGO PREFERENCE REQUIREMENTS (FOR PROPERTY TRANSPORTED BY OCEAN VESSEL)

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 MDOT (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 (FOR FOREIGN AIR TRANSPORT OR TRAVEL)

The CONTRACTOR 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.

ENERGY CONSERVATION

The CONTRACTOR 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 CONTRACTOR 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.

PREFERENCE FOR RECYCLED PRODUCTS (CONTRACTS FOR ITEMS DESIGNATED BY EPA, WHEN PROCURING \$10,000 OR MORE PER YEAR)

To the extent applicable, the CONTRACTOR agrees to comply with the U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and

services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS (For all ITS projects)

To the extent applicable, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR to violate any State, territorial, or local law, regulation, or ordinance, the CONTRACTOR agrees to notify FTA immediately in writing. Should this occur, FTA and the CONTRACTOR agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.