

Milwaukee Transport Services, Inc.
Purchase of Service Agreement

This Agreement (“Agreement”) is made and entered into between Milwaukee Transport Services, Inc, operator of Milwaukee County Transit System and a quasi-governmental instrumentality of Milwaukee County, located at 1942 North 17th Street, Milwaukee, Wisconsin 53205 (hereinafter called “MTS” or “MCTS”) and the City of Waukesha, a Wisconsin municipal corporation, provider of transit administrative services to Waukesha County for the operation of Waukesha County Transit System located at , 201 Delafield Street, Waukesha, Wisconsin 53188 (hereinafter called “Contractor”), entered into May __, 2022.

1. CONTRACT TERM

This is a less than one year Agreement to extend Waukesha Metro’s Route 1 into Milwaukee County ending at the Milwaukee Regional Medical Center (“MRMC”) effective the first date of operation of the MCTS East West Bus Rapid Transit Line (“BRT”) which is scheduled to begin Spring 2023 (Effective Date) until December 31, 2023. MCTS will provide Contractor with the exact Effective Date in writing within a reasonable time after it is known to MTS but no later than 30 days prior to the start of BRT services. MTS and Contractor (collectively the “Parties”) may renew or extend this Agreement for an additional one (1) year term upon written agreement.

2. COMPENSATION

2.1 MTS will pay Contractor the following:

- 2.1.1 MTS will compensate Contractor for Services for each revenue hour in which a bus operator operates route service (“Revenue Hours”) that are operated within Milwaukee County and for one-third of any deadhead time for the route.
- 2.1.2 Contractor will not be compensated by MTS for the Revenue Hours operated outside of Milwaukee County or for operations which include providing security, emergency response to traffic and other accidents, dispatching, route supervision, policy enforcement, and fare collections (“Operations”) either within or outside of Milwaukee County.
- 2.1.3 Contractor and Waukesha County (“Waukesha”) are responsible for all other costs, including Revenue Hours, incurred from the operation of Route 1 within Waukesha County and the remaining two-third of any deadhead time as agreed upon and between Contractor and Waukesha of which MTS is not a party. Contractor agrees to indemnify and hold harmless MTS for any compensation or claims for compensation made by Waukesha for services performed relating to or arising from this Agreement.

2.2 The Contractor will invoice MTS its share of the operating cost minus passenger revenues monthly.

2.3 The rate per Revenue Hour for Route 1 in 2023 is \$105.05. This fee will not include any surcharge for paratransit service.

2.4 Passenger revenue collected in Milwaukee County will be calculated at the rate of \$1.00 per passenger based on the 2023 fare structure. Any significant fare changes enacted during the period of this Agreement will be immediately reflected in the rate.

2.5 Ridership Reporting: Contractor is responsible for counting passengers on Route 1 between 124th and Bluemound Road and the MRMC.

2.6 Contractor recognizes that the total Revenue Hours may not be met, and MTS makes no guarantee as to the amount of Revenue Hours paid under this Agreement.

2.7 MTS is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor must be without such taxes. Including taxes on invoices will delay payment.

2.8 The Parties agree that section 66.0135, Wisconsin Statutes, Prompt Pay Law, will not apply to payment for programs and services provided hereunder.

2.9 MTS and Contractor acknowledge that funding of this Agreement is completely dependent upon state and federal grants and contracts. The obligation of the MTS to purchase the Services described herein is contingent upon present local, state, and

federal grants and contracts continuing at their present levels. Should such funding sources terminate or be reduced, MTS reserves the right, in its sole discretion, either to terminate this Agreement or revise the scope of services being purchased to reflect any reduction in such funding. It is further recognized and agreed by MTS and Contractor (collectively the "Parties") that the Services provided under this Agreement are subject to all provisions of said local, state, and federal grants and contracts, and Contractor agrees to comply with all such provisions for the period of this Agreement.

2.10 MTS will not accept any changes to the compensation I during the term of this Agreement unless agreed upon in writing by MTS.

3. SCOPE OF SERVICES

Contractor will provide Fixed Route transit services, as described in this section ("Services"), from Waukesha County into Milwaukee County by way of the route currently known as Waukesha Metro Route 1, a map of which is attached to this agreement and incorporated herein as Exhibit 1, ending at the MRMC. All Services provided by Contractor will be performed with reasonable due care and diligence.

3.1 Fixed Route Services:

3.1.1 Contractor will not provide more than 6,500 Revenue Hours annually within Milwaukee County.

3.1.2 Each of the days Monday through Friday ("Weekday") Contractor will provide Services for approximately 98 Platform Hours a day, 20 of which are in Milwaukee County, between the hours of 5:30 a.m. and 12:00 a.m. The frequency of Weekday Service will be approximately every 20 minutes during the daytime hours and every 25 minutes during the evening hours (see schedule in Appendix A).

3.1.3 Each Saturday Contractor will provide Services for approximately 80 Platform Hours, 17 of which are within Milwaukee County, between the hours of 7:00 a.m. and 11:00 p.m. The frequency of Services will be every 20 minutes during the daytime hours and every 25 minutes during the evening hours. (See schedule in Appendix A).

3.1.4 Each Sunday Contractor will provide Services for approximately 45 Platform Hours, 9 of which are within Milwaukee County, between the hours of 7:00 a.m. and 10:00 p.m. The frequency of Services will be approximately every 35 minutes (see schedule in Appendix A).

3.1.5 To the extent that Contractor's and MCTS' scheduling allows, Contractor and MCTS will make reasonable efforts to schedule Route 1 and BRT busses to arrive at the MRMC at or around the similar times.

3.2 Operations: Contractor is responsible for the management and oversight of Contractor Operations within Milwaukee County.

3.3 Bus Stop Signage: Contractor is responsible for the placement and maintenance of all bus stop signs within Milwaukee County for which the Contractor is the sole user. MCTS shall be responsible for placement and maintenance of bus stop signs within Milwaukee County for which MTS and the Contractor are both users.

3.4 Bus Shelters: Bus Shelters within Milwaukee County which are owned by MCTS shall continue to be owned and maintained by the MCTS. This includes MCTS bus shelters for which the contractor is the sole user.

3.5 Fare Tariff / Transfer Policy: Passengers may transfer between Waukesha Metro Transit and MCTS at the Milwaukee Regional Medical Center, or other locations that would be normal transfer locations between the systems with either a valid transfer or pass from either system with no extra cost. MCTS passengers boarding a Waukesha Metro bus must tap their Umo card or mobile app on the validator or present their valid Umo Card, which will then be validated via a handheld card reader by the Waukesha Metro operator (if equipped). Waukesha will not accept U-PASS, Commuter Value Pass, Transit Plus Pass or GO Pass as fare for trips originating on its system. If requesting a transfer while boarding, the following rules and fees apply:

3.5.1 If requesting a transfer from MCTS: MCTS will allow riders with Waukesha transfers or passes to board and ride MCTS routes for no additional fare. Passengers transferring from Waukesha Metro to MCTS must pay full MCTS fare if requesting a transfer to a second MCTS boarding.

3.5.2 If requesting a transfer from Waukesha: Waukesha Metro will allow riders with MCTS transfers or passes to board

Waukesha Metro and ride Route 1 for no additional fare. A Waukesha Metro transfer can be purchased for \$0.50 to board a second Waukesha Metro bus. This MCTS transfer policy is valid at bus stops located at the Milwaukee Regional Medical Center. Transfers are valid for 90 minutes from the time of issuance.

3.5.3 The current MCTS Local Passenger Tariff will guide all other matter of fare payments between Waukesha Metro and MCTS.

3.6 Collaboration: The Parties agree to collaborate on Route 1 service levels, hours of service, schedule and routing, and any other Route 1 operating elements that is mutually beneficial to both Parties and will include a representative of Waukesha County, when necessary. The Parties also agree to consider the levels of service of the Waukesha County segment of Route 1 when collaborating. Service levels and ridership will be reviewed annually, no later than August 1 of each year to determine if changes to Services should be made in the following year. Any changes to service levels must be mutually agreed upon in writing by both Parties.

3.7 Marketing: MTS and Contractor will raise public awareness of the Services and will build ridership by marketing Route 1. Contractor will provide an annual marketing plan to MCTS by November 1st of each year. Additionally, Contractor will print public timetables at no cost to MTS and is responsible for making timetables available to the public at existing outlets used by Waukesha Metro provide a reasonable number of timetables to MTS for distribution at MCTS outlets.

4. PARATRANSIT SERVICE

4.1 Contractor is responsible for and will provide MetroLift paratransit services in the Federally required $\frac{3}{4}$ mile buffer around Route 1 including around all segments of Route 1 that extend into Milwaukee County.

4.2 MTS is responsible for and will provide Transit Plus paratransit services in the Federally required $\frac{3}{4}$ mile buffer around the former MCTS GoldLine as it extends into Waukesha County from 124th & Bluemound Road to Brookfield Square shopping center.

4.3 Contractor agrees to provide paratransit services in compliance with FTA and ADA requirements attached hereto as Exhibit 1. These requirements must flow down to any third-party subcontractors providing this service on behalf of Contractor.

5. STAFFING AND DELIVERY OF SERVICES

5.1 Contractor warrants that they will provide all personnel required to perform the Services under this Agreement. Such personnel shall not be employees of MTS, or have any other contractual relationships with MTS.

5.2 Contractor will provide proper supervision to all of Contractor's employees providing Services under this Agreement. All paratransit services provided by Contractor will be performed with reasonable due care and diligence.

5.3 Except as provided herein, Contractor will determine the methods, procedures, and personnel policies to be used in administering the Services under this Agreement.

5.4 **Drug/Alcohol Testing.** All safety-sensitive employees performing Services under this Agreement are subject to FTA drug and alcohol testing rules found in 49 CFR Part 655. Contractor warrants they will comply with 49 CFR Part 665 and will submit a report to MTS using the forms prescribed, no later than March 1 of year for the previous years' drug and alcohol testing for all safety-sensitive employee providing Service under this Agreement. Contractor must be ready and able to pass a federal drug and alcohol audit at any time during the term of this Agreement. MTS reserves the right to verify Contractor's compliance with the FTA drug and alcohol testing rules at any time during the term of this Agreement.

5.5 This Agreement in its entirety is at all times subject to such local, state, and federal laws and administrative regulations as exist at the time this Agreement is executed and as shall become effective after execution but prior to termination of this Agreement. Contractor warrants it will comply with all federal, state, and local laws and regulations and will maintain incompliance and good standing with all licenses, permits, and certifications required for and relating to the Services referred to herein.

6. BILLING AND REPORTING

6.1 Contractor will provide MTS with monthly billings and reports for the Services provided under this Agreement by the fifteenth (15th) working day of the month following the month in which services are provided. Contractor will submit billings and any

required reports according to the manner specified by MTS. Invoices will be e-mailed to accountspayable@mcts.org, failure to e-mail the invoice to the address provided may delay payments for which MTS is not responsible

- 6.2 Within thirty (30) days of the receipt of all required billings and reports, MTS will make payment to Contractor of the undisputed net amount due. The 30 days does not start to run until all forms are accurate, complete, and include all revisions requested by MTS.
- 6.3 Contractor will provide MTS with monthly billings, **listing actual costs and ridership**, which shall include, but not be limited to, the following: (1) Name and address of contractor, (2) invoice date and number, (3) Remittance name and address, (4) Name, title, and phone number of person to notify in event of defective invoice.
- 6.4 Invoices must be accompanied by operating statistics so MTS can comply with various federal reporting requirements, including National Transit Database and safety and security reports.
 - 6.4.1 Monthly operating statistics reports must include all FTA required information to complete the National Transit Database (“NTD”) reporting including, but not limited to: a) unlinked passenger trips, b) revenue collected, c) revenue miles, d) total miles, e) revenue hours, f) total hours, g) operating cost, h) passenger miles, i) vehicles operated in max service, and j) any other information requested by the FTA now or in the future to complete the required NTD reporting.
 - 6.4.2 Contractor will provide MTS a year-end report for operating statistics by no later than February 15 of the year following any calendar year in which Contractor provides Services. The required year end reporting will include: a) operating cost total broken down by vehicle operations, b) vehicle maintenance, facility maintenance and general administration costs as required for the F30 form c) allocated capital leasing/depreciation expense as required for the B30 form d) major/minor mechanical failures for our purchased service as required for R20 form e) fuel usage in gallons for the purchased service as required for A30 form, f) vehicle inventory as required for the A30 form, g) station and maintenance facilities count as required for A10 form, and h) route statistics as required for the S10 form.
- 6.5 Invoices not containing this information will not be considered a “properly completed invoice” under Wisconsin State Statute 16.528(2)(a) and MTS will not incur any interest on any delayed payments to Contractor for such invoices.

7. WARRANTIES

Contractor warrants that (a) the services and equipment provided under this Agreement will be free from material defects and conform in all material respects to the descriptions set forth in this Agreement, (b) the Services will be performed in a professional and workmanlike manner; (c) it has and will maintain all necessary licenses, consents, and permissions necessary to perform its obligations under this Agreement, and (d) Contractor is compliant with all PCI-DSS and other Data Security requirements necessary to provide the services under this Agreement.

8. OWNERSHIP OF DATA

Upon the natural end or termination of this Agreement, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of MTS. Therefore, any reports, information, and data, given to or prepared or assembled by Contractor under this Agreement will not be made available to any individual or organization by Contractor without the prior written approval of MTS.

9. DBE GOAL AFFIRMATIVE ACTION EQUAL EMPLOYMENT OPPORTUNITY

This Agreement does not have a DBE goal, however, Contractor will comply with all applicable provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 when and where applicable and as said Ordinance may be amended. MTS shall notify Contractor in the event that new ordinances are issued.

10. DATA SECURITY

MTS requires that all Contractors with which it shares personally identifiable or confidential information secure and protect that information by following all applicable state and federal data security privacy laws or any data security provisions contained in Contractor’s third party agreements for data storage, hosting, credit card processing and/or any other service that requires the transfer of MTS or MTS’s employee’s or rider’s data and to indemnify MTS for all legal liability resulting from or arising out of the release of

such information based on the acts of Contractor or the acts of its employees, contractors or assigns or any breach of contract by Contractor.

11. INDENIMTY

11.1 Contractor agrees to the fullest extent permitted by law, to indemnify, defend, and hold harmless, MTS, and its agents, officers, and employees, from and against all loss, fees, fines, damages, costs, and expense (including costs and reasonable attorney's fees) incurred as a result of any claim arising from (A) statutory benefits under Workers' Compensation laws, and (B) suits at law or in equity, caused by (1) any wrongful, intentional, or negligent act or omission of Contractor, or its agents.

11.2 Contractor agrees to indemnify MTS for any amount(s) MTS may be required to repay MTS by virtue of payments made to Contractor by MTS under this Agreement that MTS, Milwaukee County, or FTA determines to be overpayments or inappropriate payment.

11.3 If any claims arise out of or are connected with the activities covered by this Agreement:

11.3.1 MTS will notify Contractor promptly upon learning of such claim, however, MTS's failure to notify Contractor promptly shall not affect Contractor's obligation to indemnify MTS unless such failure to notify Contractor materially prejudices Contractor's ability to defend against the action;

11.3.2 Contractor shall not have sole control over the defense of the claim unless agreed upon in writing by MTS. Contractor cannot agree to a settlement or consent judgment that requires any affirmative payment or other conduct on the part of MTS without MTS's prior written consent, such consent shall not be unreasonably withheld or delayed; and

11.3.3 MTS will provide Contractor with all reasonable information and assistance that is requested by Contractor to defend such claim at Contractor's expense, however, MTS's failure to provide reasonable information and assistance shall not affect Contractor's obligation to indemnify MTS unless such failure materially prejudices Contractor's ability to defend against the action; and

11.3.4 MTS has the right to obtain its own counsel at its own expense.

12. TERMINATION FOR DEFAULT

12.1 **For Default:** If the Contractor fails to fulfill its obligations under this Agreement in a timely or proper manner, or violates any of its provisions, MTS shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, MTS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

12.1.1 Opportunity to Cure

12.1.1.1 MTS in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 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.

12.1.1.2 If Contractor fails to remedy to MTS's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within 30 days after receipt by Contractor of written notice from MTS setting forth the nature of said breach or default, MTS shall have the right to terminate this Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude MTS from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

12.2 **MTS Termination for Convenience:** MTS may terminate this Agreement at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination, Contractor will reduce its activities hereunder as

mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination within 30 days of the submission of an invoice by Contractor.

12.3 **Survivability:** Sections 11,14, 15, and 22 will survive any termination or expiration of this Agreement.

13. INSURANCE

Contractor agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Contractor's activities, by whomever performed, in such coverage and amounts as required and approved by MTS. Acceptable proof of such coverage shall be furnished to MTS prior to commencement of activities under this agreement. A Certificate of Insurance including declarations page, shall be submitted for review for each successive period of coverage for the duration of this agreement, unless otherwise specified by MTS, in the minimum amounts specified below.

Contractor shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation and Employer's Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability	\$1,000,000 Per Occurrence
Bodily Injury and Property Damage to include Personal Injury, Fire, Products and Completed Operations	\$2,000,000 Aggregate
Automobile Liability Bodily Injury and Property Damage All Autos	\$10,000,000 Per Accident
Umbrella Liability	\$5,000,000 Per Occurrence
Policy will follow form to underlying Employer's, General, and Automobile Liability policies	\$5,000,000 Aggregate

Milwaukee Transport Services, Inc and Milwaukee County shall be named as an Additional Insured on the General and Automobile Liability policies as respects the services provided in this agreement. A Waiver of Subrogation shall be afforded to MTS on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to MTS.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any requests for deviations from or waivers of required coverages or minimums shall be submitted in writing and approved by MTS's Risk Manager as a condition of this agreement.

14. RECORDING KEEPING AND ACCESS TO RECORDS

14.1 Contractor shall maintain and, upon request, furnish to MTS, at no cost to MTS, any and all information requested by MTS relating to the quality, quantity, and cost of services covered by this Agreement and shall allow authorized representatives of MTS and MTS's funding sources to have access to all records necessary to confirm Contractor's compliance with this Agreement. Access

to information shall include computerized data and/or other electronic information used by the Contractor, made available in formats suitable for data analysis, such as queries, using conventional software programs.

14.2 Contractor shall maintain clearly identified and readily accessible documentation of (1) costs supported by properly executed payrolls, time records, invoices, contracts, vouchers, and (2) official documentation evidencing in proper detail the compliance with all required FTA and Federal laws as required by this Agreement. Contractor shall retain all such records for a period of at least three (3) years after the date of the last paid invoice.

15. MTS RIGHT TO AUDIT

The Contractor, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and MTS contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, or any other party to the Agreement, related to the terms and performance of the Agreement for a period of up to three years following the date of last payment, the end date of this Agreement, or activity under this Agreement, whichever is later. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, or any other party to this Agreement, and any subcontractors understand and will abide by the requirements of Chapter Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

16. CONTINUITY OF SERVICE

Contractor recognizes that the services under this Agreement are vital to MTS and must be continued without interruption and that, upon contract expiration or termination, a successor, either MTS or another contractor, may continue them. If requested by MCTS, Contractor agrees to provide Services for up to 120 days after this Agreement expires or terminates.

17. COVID-19 and CRITICAL CONTRACT

MTS has identified this Agreement as critical to MTS's ability to provide essential services. During the duration of the current COVID-19 pandemic, while there is federal, state, and/or local orders relating to or arising from this pandemic, or during any future pandemic or state of emergency declared during the term of this Agreement by federal, state, or local governments, Contractor agrees to follow all local, State, and Federal COVID-19 requirements and regulations.

18. MODIFICATIONS

18.1 Contractor recognizes the right of MTS to make reasonable modifications in the programs and services purchased under this Agreement. Contractor shall be notified in writing of any such modifications.

18.2 This Agreement may be renegotiated in the event of changes required by law, regulations, court action, or inability of either party to perform as committed in this Agreement.

18.3 Excluding changes made pursuant to 18.1 and 18.2, MTS and Contractor may modify or amend this Agreement if such modifications are in a written amendment signed by the authorized representatives of both Parties.

19. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement shall constitute or be construed to create a partnership, joint venture, or employer-employee relationship between MTS or its successors or assigns and Contractor or its successors or assigns. In entering into this Agreement and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor duly authorized to perform the acts required of it hereunder.

20. PROHIBITED PRACTICES

20.1 During the period of this Agreement, Contractor shall not hire, retain, or utilize for compensation, any member, officer, or employee of MTS. or allow any Employee of MTS to be an officer, member of the Board of Directors, or have a proprietary interest in Contractor's business.

20.2 Contractor attests that it is familiar with Milwaukee County's Code of Ethics (Chapter 9 of the General Ordinances of Milwaukee County) which states in part, "No person shall offer or give to any public official or employee, directly or indirectly, and no public

official or employee shall solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's or employee's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction or omission by of the public official or employee."

21. ASSIGNMENT LIMITATION

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

22. PUBLIC RECORDS

22.1 Both parties understand that MTS and Contractor are bound by the Public Records Law, and as such, all the terms of this agreement are subject to the provisions of Section 19 of Wisconsin Statutes. Contractor and MTS hereby agree that they shall be obligated to assist the other in retaining and timely producing all records requested by a third party that are related to this Agreement and are subject to the Wisconsin Public Records Law.

22.2 IF CONTRACTOR OBJECTS TO THE RELEASE OF RECORDS BY MTS ON THE BASIS OF CONFIDENTIALITY CONTRACTOR SHALL PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF CONFIDENTIALITY AND AGREES TO HOLD MTS HARMLESS FOR ANY COSTS OR DAMAGES ARISING OUT OF MTS' AGREEMENT TO WITHHOLD OR RELEASE THE AFORMENTIONED RECORDS.

23. NON-CONVICTION FOR BRIBERY

Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

24. CONFIDENTIALITY

Contractor agrees that, aside from obligations under the public records law as more fully described in Sec. 22 of this Agreement and as determined in cooperation with MTS, Contractor shall maintain all materials and communications developed under or relating to this Agreement as confidential and shall disclose them only to or as directed by the individual who is signing this Agreement on behalf of MTS or their designee. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for MTS and may require Contractor to indemnify MTS as provided in Sec. 7 of this Agreement.

25. NOTICES

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To: City of Waukesha
Attn.: Brian Engelking
Address: 2311 Badger Drive
Waukesha, WI 53188

To MTS:
Attn.: Director of Procurement
Address: 1942 N. 17th St
Milwaukee, WI 53205

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

26. GOVERNING LAW

This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of State of Wisconsin without regard to its conflict of law provisions.

27. DISPUTES

If a dispute arising from or related to this Agreement cannot be resolved informally by the Parties, the Parties will escalate such dispute to senior management, with the intention of reaching a good faith resolution within 30 Business Days of the escalation date. In the event any dispute under this Agreement that cannot be resolved within the 30 Business Day period, the Parties agree that the dispute will be resolved by any State court of competent jurisdiction in the state of Wisconsin in the County of Milwaukee or in the United States District Court for the Eastern District of Wisconsin. The court shall have the discretion to award the prevailing Party its

reasonable attorneys' fees and costs.

28. INVALIDITY, REMEDIES NOT EXCLUSIVE

The invalidity in whole or in part of any term or condition of these Terms shall not affect the validity of the remainder of these Terms and the application of such provisions to other persons or circumstances shall not be affected thereby. The rights and remedies provided herein shall not be exclusive and are in addition to any other rights and remedies in law or equity.

29. ENTIRE CONTRACT

The entire Agreement of the Parties, with all attached exhibits and assurances, as negotiated is contained herein. This Agreement supersedes all oral agreements and negotiations and all writings not herein referred to and incorporated.

30. COUNTERPARTS

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

31. AUTHORIZATION.

Signer for Contractor warrants they are authorized to sign on behalf of Contractor.

IN WITNESS WHEREOF,

Business Name: City of Waukesha

By: _____ Date: _____
Signed

Name Printed Title

Milwaukee Transport Services, Inc

By: _____ Date: _____
Signed

Name Printed Title

EXHIBIT 1

1. REQUIRED FEDERAL TERMS

The preceding provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in other Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and FTA Master Agreement (23) October 1, 2016 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of MTS's requests that would cause MTS to be in violation of the FTA terms and conditions. In the event of any conflict among the requirements of clauses applicable to the Contractor, the most stringent requirements of the clauses will apply.

- 1.1 **Davis Bacon Act, as amended (40 U.S.C. 3141—3148).** If the Order is in excess of \$2,000 and pertains to construction or repair, and further, if required by Federal program legislation, Contractor shall comply with the Davis- Bacon Act (40 U.S.C. 3141 - 3144 and 3146-3148) and as supplemented by Department of Labor regulations (29CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Contractor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor shall be required to pay wages not less than once a week.
- 1.2 **Copeland "Anti-Kickback" Act (40 U.S.C. 3145).** If the Order is in excess of \$2,000 and pertains to construction or repair, Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides in part that Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.
- 1.3 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Order is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 1.4 **Bayh-Dole Act (35 U.S.C. 200-212).** If the Order is for the performance of experimental, developmental, or research work, under a "funding agreement" under 37 CFR 401.2(a) Contractor shall provide for the rights of the Federal Government and MTS in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and comply with the requirements of 37 CFR Part 401 and any implementing regulations issued by the awarding agency.
- 1.5 **Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251— 1387), as amended.** If the Order is in excess of \$150,000 Contractor shall comply with all applicable standards, Orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251—1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 1.6 **Energy Policy and Conservation Act (42 U.S.C. 6201).** Contractor agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 1.7 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** If the Order is for \$100,000 or more, Contractor and its subcontractors shall file the certification required by this statute and associated regulations. 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 any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to MTS.

- 1.8 Debarment and Suspension (E.O.s 12549 and 12689).** Contractor represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor must comply with 2 CFR Part 180, Subpart C and must include a requirement to comply with this regulation in any lower tier covered transaction it enters into.
- 1.8.1 Contractor shall have an ongoing duty during the term of this Agreement to disclose to MTS on an ongoing basis any occurrence that would prevent Contractor from making the certifications contained in this Section 9. Such disclosure shall be made in writing to MTS within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.
- 1.8.2 This certification is a material representation of fact relied upon by MTS. If it is later determined that Contractor did not comply with 2 CFR Part 180, Subpart C, in addition to remedies available to MTS, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- 1.9 Procurement of recovered materials.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If applicable, Contractor shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 1.10 Domestic preferences for procurements (2 CFR 200.322).** As appropriate and to the extent consistent with law, the materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section 11 must be included in all subawards including all contracts and purchase orders for work or products under this Order. For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes from the initial melting stage through the application of coatings, occurred in the United States and "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinylchloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 1.11 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321).** Vendor shall take affirmative steps to include minority businesses, women's business enterprises, and labor surplus area firms when possible by: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps a through e. of this Section 12.
- 1.12 Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216).** Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Contractor shall not obligate or expend funding provided under this Contract to:

- a. Procure or obtain;

- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- d. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- e. Telecommunications or video surveillance services provided by such entities or using such equipment.
- f. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country

1.13 Nondiscrimination – Title VI of the Civil Rights Act. Contractor agrees to, and assures that each subcontractor will:

- 1.13.1 Prohibit discrimination based on race, color, or national origin,
- 1.13.2 Comply with:

1.13.2.1 Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C.

§ 2000d, et seq.; U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and

1.13.2.2 Federal transit law, specifically 49 U.S.C. § 5332; and Follow:

1.13.2.3 The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;

1.13.2.4 U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and

1.13.2.5 All other applicable federal guidance that may be issued.

1.14 Equal Employment Opportunity. Federal Requirements and Guidance. Contractor agrees to, and assures that each Subcontractor will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:

1.14.1 Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.;

1.14.2 Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;

1.14.3 Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;

1.14.4 Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;

1.14.5 FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and

1.14.6 Follow other federal guidance pertaining to EEO laws, regulations, and requirements. *Specifics.* Contractor agrees to, and assures that each Subcontractor will:

- 1.14.7 *Affirmative Action.* If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to:
 - 1.14.7.1 Recruitment advertising, recruitment, and employment;
 - 1.14.7.2 Rates of pay and other forms of compensation;
 - 1.14.7.3 Selection for training, including apprenticeship, and upgrading; and
 - 1.14.7.4 Transfers, demotions, layoffs, and terminations; but
- 1.14.8 *Indian Tribe.* Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer;" and
- 1.14.9 *Equal Employment Opportunity Requirements for Construction Activities.* Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - 1.14.10 U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60; and
 - 1.14.11 Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
 - 1.14.12 *Disadvantaged Business Enterprise.* To the extent authorized by applicable federal laws, regulations, or requirements, Contractor agrees to facilitate, and assures that each Subcontractor will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:
 - 1.14.13 *Statutory and Regulatory Requirements.* Contractor agrees to comply with:
 - 1.14.13.1 Section 11101(e) of IIJA;
 - 1.14.13.2 U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26; and
 - 1.14.13.3 Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
 - 1.14.14 *DBE Program Requirements.* A Recipient that receives planning, capital and/or operating assistance and that will award prime subcontractor contracts exceeding \$250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 CFR Part 26.
 - 1.14.15 *Special Requirements for a Transit Vehicle Manufacturer (TVM).* Contractor agrees that:
 - 1.14.16 *TVM Certification.* Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR Part 26; and
 - 1.14.17 *Reporting TVM Awards.* Within 30 days of any subcontractor contract award for a transit vehicle purchase, Contractor must submit to FTA the name of the TVM contractor and the total dollar value of the subcontractor contract using the Transit Vehicle Award Reporting Form on FTA's website. Contractor must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.

- 1.14.18 *Assurance*. As required by 49 C.F.R. § 26.13(a): *Recipient Assurance*. Contractor agrees and assures that:
- 1.14.18.1 It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR Part 26;
 - 1.14.18.2 It must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - 1.14.18.3 Its DBE program, as required under 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
- 1.14.19 *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance*. Contractor agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
- 1.14.19.1 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR Part 26;
 - 1.14.19.2 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - 1.14.19.3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 1.14.19.1 is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
 - 1.14.19.4 The following remedies, or such other remedy as Contractor deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- 1.14.20 *Remedies*. Upon notification to Contractor of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR Part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801, et seq.
- 1.14.21 *Nondiscrimination on the Basis of Sex*. Contractor agrees to comply with federal prohibitions against discrimination based on sex, including:
- 1.14.22 Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq.; U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25; and Federal transit law, specifically 49 U.S.C. § 5332.
- 1.14.23 *Nondiscrimination on the Basis of Age*. Contractor agrees to comply with federal prohibitions against discrimination based on age, including:
- 1.14.23.1 The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age;
 - 1.14.23.2 Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625;
 - 1.14.23.3 The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., which prohibits

- discrimination against individuals based on age in the administration of Programs, Projects, and related activities receiving federal assistance;
- 1.14.23.4 U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR Part 90; and Federal transit law, specifically 49 U.S.C. § 5332.
- 1.14.24 *Nondiscrimination on the Basis of Disability*. Contractor agrees to comply with the following federal prohibitions against discrimination based on disability including:
- 1.14.24.1 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
- 1.14.24.2 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:
- 1.14.24.2.1 For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
- 1.14.24.2.2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
- 1.14.24.2.3 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;
- 1.14.25 Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- 1.14.26 Federal regulations and guidance, including:
- 1.14.26.1 U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
- 1.14.26.2 U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
- 1.14.26.3 Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
- 1.14.26.4 U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
- 1.14.26.5 U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
- 1.14.26.6 U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
- 1.14.26.7 U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
- 1.14.26.8 U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
- 1.14.26.9 U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;

- 1.14.26.10 FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
 - 1.14.26.11 FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - 1.14.26.12 Other applicable federal civil rights and nondiscrimination regulations and guidance.
- 1.14.27 *Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections.* Contractor agrees to comply with the confidentiality and civil rights protections of:
- 1.14.27.1 The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101, et seq.;
 - 1.14.27.2 The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541, et seq.; and
 - 1.14.27.3 The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- 1.14.28 *Access to Services for Persons with Limited English Proficiency.* Contractor agrees to promote accessibility of public transportation services to persons with limited understanding of English by following:
- 1.14.28.1 Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, (65 Fed. Reg. 50121); and
 - 1.14.28.2 U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.
- 1.14.29 *Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.* Contractor agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination.
- 1.14.30 *Remedies.* Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.
- 1.14.31 *Promoting Free Speech and Religious Liberty.* Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

1.15 Employee Protections.

- 1.15.1 *Awards Not Involving Construction.* Contractor will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
- 1.15.2 *Public Transportation Employee Protective Arrangements.* As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, Contractor agrees to comply and assures that each Subcontractor will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b): *U.S. DOL Certification.* When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. Contractor agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that Contractor must comply with its terms and conditions.
- 1.15.3 *Special Warranty.* When its Underlying Agreement involves public transportation operations and is

supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. Contractor agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and Contractor must comply with its terms and conditions.

- 1.15.4 *Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310.* Contractor agrees, and assures that any Subcontractor providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

1.16 Motor Carrier Safety.

1.16.1 Financial Responsibility. Contractor will comply with the economic and insurance registration requirements of the:

- 1.16.1.1 U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 CFR Part 387, if it is engaged in operations requiring compliance with 49 CFR Part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and
- 1.16.1.2 The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR Part 387, and reduce the amount of insurance Contractor must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.
- 1.16.2 *U.S. FMCSA Requirements.* Contractor will comply with:
- 1.16.3 The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR Parts 390 – 397, to the extent applicable; and
- 1.16.4 The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR Part 383, and “State Compliance with Commercial Driver’s License,” 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382, and implementing federal guidance, to the extent applicable.

1.17 Safe Operation of Motor Vehicles.

- 1.17.1 *Seat Belt Use.* Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:
- 1.17.2 Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- 1.17.3 Including a “Seat Belt Use” provision in each subcontractor agreement related to the Award.
- 1.17.4 *Distracted Driving, Including Text Messaging While Driving.* Contractor agrees to comply with:
- 1.17.4.1 Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and

1.17.4.2 The following U.S. DOT Special Provision pertaining to Distracted Driving:

1.17.4.2.1 *Safety*. Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award;

1.17.4.2.2 *Recipient Size*. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

1.17.5 *Extension of Provision*. Contractor agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its subcontractor agreements, and encourage its Subcontractor to comply with this Special Provision, and include this Special Provision in each subcontractor subagreement at each tier supported with federal assistance.

1.18 Substance Abuse.

1.18.1 *Drug-Free Workplace*. Contractor agrees to:

1.18.1.1 Comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C.

§ 8103, et seq.;

1.18.1.2 Comply with U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and

1.18.1.3 Follow and facilitate compliance with U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

1.18.2 *Alcohol Misuse and Prohibited Drug Use Requirements*. Contractor agrees to comply and assures that its Subcontractor will comply with:

1.18.2.1 Federal transit laws, specifically 49 U.S.C. § 5331;

1.18.2.2 FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655; and

1.18.3 Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR Part 40.

1.18.4 *Remedies for Non-Compliance*. Contractor agrees that if FTA determines that Contractor or a Subcontractor receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR Part 655, the Federal Transit Administrator may bar that Recipient or Subcontractor from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

1.19 **Notice to U.S. DOT Inspector General**. Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, and MTS, if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between Contractor and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative

agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of Contractor, including divisions tasked with law enforcement or investigatory functions.

2. ADA Paratransit Requirements

2.1 ADA paratransit eligibility: Process.

- 2.1.1 Each public entity required to provide complementary paratransit service by Sec. 37.121 of this part shall establish a process for determining ADA paratransit eligibility.
- 2.1.2 The process shall strictly limit ADA paratransit eligibility to individuals specified in Sec. 37.123 of this part.
- 2.1.3 All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.
- 2.1.4 If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.
- 2.1.5 The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.
- 2.1.6 The public entity shall provide documentation to each eligible individual stating that he or she is "ADA Paratransit Eligible." The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.
- 2.1.7 The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals.
- 2.1.8 The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.
 - 2.1.8.1 The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
 - 2.1.8.2 The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
 - 2.1.8.3 The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.
 - 2.1.8.4 The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.
 - 2.1.8.5 Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.
 - 2.1.8.6 Before suspending service, the entity shall take the following steps:
 - 2.1.8.7 Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.
 - 2.1.8.8 Provide the individual an opportunity to be heard and to present information and arguments;
 - 2.1.8.9 Provide the individual with written notification of the decision and the reasons for it.
 - 2.1.9 The appeals process of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.
 - 2.1.10 In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

2.2 Service criteria for complementary paratransit. The following service criteria apply to complementary paratransit required by Sec. 37.121 of this part.

- 2.2.1 **Service Area--(1) Bus.**
 - 2.2.1.1 The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.
 - 2.2.1.2 Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.
 - 2.2.1.3 For purposes of this paragraph, the core service area is that area in which corridors with a width of three-

fourth of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

- 2.2.1.4 Jurisdictional boundaries. Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.
- 2.2.1.5 Response time. The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.
- 2.2.1.6 The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.
- 2.2.1.7 The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.
- 2.2.1.8 The entity may use real-time scheduling in providing complementary paratransit service.
- 2.2.1.9 The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of Sec. 37.131(b) and (c).
- 2.2.2 Fares. The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.
 - 2.2.2.1 In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.
 - 2.2.2.2 The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under Sec. 37.123 (f) of this part, shall be the same as for the ADA paratransit eligible individuals they are accompanying.
 - 2.2.2.3 A personal care attendant shall not be charged for complementary paratransit service.
 - 2.2.2.4 The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).
 - 2.2.2.5 Trip purpose restrictions. The entity shall not impose restrictions or priorities based on trip purpose.
 - 2.2.2.6 Hours and days of service. The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.
 - 2.2.2.7 Capacity constraints. The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:
 - 2.2.2.8 Restrictions on the number of trips an individual will be provided;
 - 2.2.2.9 Waiting lists for access to the service; or
 - 2.2.2.10 Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons. Such patterns or practices include, but are not limited to, the following:
 - 2.2.2.11 Substantial numbers of significantly untimely pickups for initial or return trips;
 - 2.2.2.12 Substantial numbers of trip denials or missed trips;
 - 2.2.2.13 Substantial numbers of trips with excessive trip lengths.
 - 2.2.2.14 Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.
- 2.2.3 Additional service. Public entities may provide complementary paratransit service to ADA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under Sec. Sec. 37.151-37.155 of this part.

Note: Contractor will use Federal Transit Administration definition for "trip denial." Contractor will track trip denials, untimely pick-ups, missed trips and excessively long trips and report findings in writing to the City on a monthly basis. Contractor will meet with the City no less than quarterly to ensure that all capacity constraints are continuously avoided.

- 2.3.1 Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.
- 2.3.2 Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.
- 2.3.3 This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

2.4 Keeping vehicle lifts in operative condition: Public entities. This section applies only to public entities with respect to lifts in non-rail vehicles.

- 2.4.1 The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.
- 2.4.2 The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.
- 2.4.3 Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.
- 2.4.4 If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.
- 2.4.5 In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

2.5 Lift and securement use. This section applies to public and private entities.

- 2.5.1 All common wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.
 - 2.5.2 For vehicles complying with part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that Part.
 - 2.5.3 For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.
 - 2.5.4 The entity may require that an individual permit his or her wheelchair to be secured.
 - 2.5.5 The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.
 - 2.5.6 The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.
 - 2.5.7 Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.
- 2.5.8 The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. Provided, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

2.6 Other service requirements. This section applies to public and private entities.

- 2.6.1 On fixed route systems, the entity shall announce stops as follows:

- 2.6.2 The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.
- 2.6.3 The entity shall announce any stop on request of an individual with a disability.
- 2.6.4 Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.
- 2.6.5 The entity shall permit service animals to accompany individuals with disabilities in vehicles and facilities.
- 2.6.6 The entity shall ensure that vehicle operators and other personnel make use of accessibility-related equipment or features required by part 38 of this title.
- 2.6.7 The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service. The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.
- 2.6.8 The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials (49 CFR subtitle B, chapter 1, subchapter C).
- 2.6.9 The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.
- 2.6.10 When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:
 - 2.6.10.1 Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);
 - 2.6.10.2 Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.
 - 2.6.10.3 This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.
 - 2.6.10.4 The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.
 - 2.6.10.5 In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

2.7 Training requirements.

Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)
49 CFR Part 661

Applicability to this procurement: The Buy America requirements apply to this contract since it pertains to this Acquisition of Goods or Rolling Stock and is valued at more than \$150,000.

Flow Down Requirements: The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. Buy America - 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 final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and 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 MTS the signed and fully completed appropriate Buy America certification (below) with all bids or offers except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. **Only sign ONE certification.**

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

The bidder or offeror hereby certifies that it **will meet** the requirements of 49 U.S.C. 5323(j)(2)(c) and the applicable regulations in 49 CFR Part 661.5.

Date _____
Signature _____
Company 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 C.F.R. 661.7.

Date _____
Signature _____
Company Name _____
Title _____

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The proposer certifies to the best of its knowledge and belief that its principals, owners, officers, shareholders, key employees, directors and member partners: (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 the date of 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 charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in (2) of this certification; and (4) have not within a three-year period preceding the date of this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Authorized Signature: _____ Date: _____

Printed Name: _____ Title: _____

Company: _____

**CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS,
LOANS AND COOPERATIVE AGREEMENTS**

The undersigned 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance 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 section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative