

**City of Waukesha
Tire Lease Contract**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and the following Contractor:

Contractor name: The Goodyear Tire & Rubber Company

Authorized Representative of Contractor: Mr. Walter L. Welker, Manager Business Operations, Contract Acquisition & Compliance Mileage Sales, Lease & Service

Contractor address: 200 Innovation Way D710, Akron, OH 44316-0001

Contractor telephone: (330) 796-2862

Contractor email: walt_welker@goodyear.com

Recitals

The City published a Request for Proposals, referred to as the RFP, for leased tires for transit buses for the City of Waukesha Transit Commission. The RFP contained a specific scope of work to be incorporated into the successful bidder's contract.

The Contractor submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Contractor is willing to perform transit operation services according to the requirements stated in the RFP and the Contractor's responsive Proposal, and to accept the award of the contract for the Project.

Now, therefore, the City and the Contractor agree and contract as follows:

- 1. Scope of Work.** The Contractor shall perform the following Work, according to the terms and conditions of this Contract:
 - a. Tires furnished under this contract shall be of current design and manufacture. Tires will conform to all standards of the Tire and Rim Association of America, and the Federal Motor Vehicle Safety Standards for design, operation and safety. Tires will be the size and type approved by coach manufacturer.
 - b. Steel belted radial tires furnished shall be tubeless City / Suburban Transit Mileage type with a load range H or J designation. The following radial tire sizes are currently in use: 305/85R22.5, 305/70R22.5 and LT225/75R16. Tires are to be rated for 55 mile per hour operation. Radial tires to include built in sidewall wear indicators. Original tread depth shall be 23/32-inch minimum. Contractor may conduct a brake heat study test before putting radial tires into service.
 - c. The City will not re-groove tires and retread tires are not acceptable.
 - d. The City will provide monthly tire change information that identifies the number of the Contractor's tires applied/removed by vehicle number and the date of change to properly prorate times, if necessary.
 - e. The Contractor shall deliver all tires furnished under this contract to the City at the Tire Suppliers expense. Tire Supplier shall provide a sufficient number of tires to meet the needs of the Waukesha Transit Commission.
 - f. All needed supplies including but not limited to patches, cement, valve stems, valve cores, wheel weights, tire lube and any special tools needed to repair flats will be supplied by the tire supplier at no additional charge.

- g. The Tire Supplier is required to provide a Tire Inspector to inspect tire wear. The Tire Inspector will inspect tires removed from service at least every 90 days, with a report provided on each inspection visit.
- h. Tires removed from service must be scrapped and / or removed from the Waukesha Transit Commission property within 15 days of Tire Supplier scrapping, at the Tire Suppliers expense.
- i. The City shall be responsible for mounting, dismounting, flat tire repair, and installation and removal of tires from vehicles. The City shall also be responsible for keeping the tires properly inflated.
- j. The Contractor shall follow the standard practice of the City for computing and recording tire mileage on its vehicles as outlined in the Invitation for Bids document.
- k. The City may be purchasing other additional buses during the terms of this contract. The Contractor shall furnish tires to the North American bus manufacturer for delivery purposes. These tires shall be of the type and size recommended by the vehicle manufacturer, and will be run out under the terms of this contract.

If the bus manufacturer requires a type or size currently furnished under the terms of this contract, the contractor shall furnish these tires at the mileage rate in effect at the time these tires are ordered. If the bus manufacturer requires a type or size of tire not currently supplied under the terms of this contract, the City reserves the right to negotiate a separate rate with the Contractor.

- l. If, during the term hereof, the City shall sell, or in any manner, dispose of any of its buses, it will remove the leased tires from the bus and use them elsewhere.
- m. Cost for “normal damaged” tires shall be included in the rate per tire mile. “Normal damage” to a tire means for abuse by partial or total destruction of a tire by means other than normal wear (cuts and bruises), including but not limited to irregular wear, damage for brake heat, curbing, road hazards, and misalignment. Tires, which are damaged beyond repair by an accident or fire, vandalism, or have been lost, sold, or purchased, shall be paid for by the City by paying for any mileage remaining. The remaining mileage in each tire shall be prorated by determining the percentage of useable rubber remaining multiplied by the fixed cost per 32nd of rubber remaining.
- n. The City agrees to provide a safe, suitable place in an enclosed building for storage of spare tires and tires unfit for further service so the tires are not subject to damage by the elements. The City further agrees to either keep each transit bus equipped with at least one properly inflated spare tire or provide adequate road service for its transit bus fleet; and pay the Contractor for any loss resulting from accident, fire, vandalism, theft or tires lost, sold or purchased. When a tire is not available for inspection to apply the formula below whether lost, stolen, or otherwise missing, or destroyed by fire, or involved in an accident, reimbursement shall not be in excess of fifty percent (50% of the current value of a similar tire, unless the tire supplier can provide an auditable accounting of the tire’s accurate mileage just prior to the loss.)

Schedule of Value

<u>Tire Size</u>	<u>Description</u>	<u>Billable Tread Depth</u>	<u>Billing Price per 32nd</u>	<u>Casing Value</u>
B305/70R22.5	L MM G652	21	\$19.74	\$0.00
B305/85R22.5	J MM G652	21	\$24.28	\$0.00
LT225/75R16	Wrangler HT	10	\$17.25	\$0.00

- o. Upon the termination by full performance and expiration of this Agreement, unless the parties enter into a new Tire Lease Agreement to become effective at the date of expiration of the previous Agreement, the City will, within 30 days after termination pay for the unused mileage in each remaining tire on vehicles, on the City’s garage, in process or repair, in transit or in accordance with the provisions hereof. Alternatively, the City will upon 30 days written notice via CERTIFIED MAIL prior to the expiration date of this Agreement, and all addenda, elect to continue using (“run out”) all the tires in the City’s possession at the rate or rates in effect

during the six months prior to termination until permanently removed from service, but in no event shall such period exceed thirty-six (36) months after the normal termination date. Payment for original tires shall be prorated by determining the 32nds of useable rubber remaining multiplied by the cost per 32nds as outlined in the table in N.

During said thirty-six month period, the City shall to the extent practicable, continuously use such tires on its highest mileage runs until they are rendered permanently unfit for service.

During said run out period all terms and conditions of this Agreement shall continue in effect; provided, however, that the Contractor shall not be obligated to furnish any equipment, supplies, or service to the City or to furnish replacement tires for those tires removed from service.

At the expiration of said run out period, the City shall pay for remaining original tread tires at the price and in the manner set forth above. Any payment for tires required to be purchased by the City under this section of the Agreement or any other provision of this Agreement shall be made within thirty (30) days after date of invoice covering purchase thereof. The City will acquire each such used tire as is, and the Contractor makes no warranties as to the condition or fitness for continued use of such tires.

- p. The required pull point for tires will be when tread depth reaches 4/32.
- q. The City reserves the right to install tires of other makes for test purposes at any time on up to 10% of its vehicle tire positions.
- 2. **Term.** The term of this Agreement shall be for five years commencing on October 1, 2019.
- 3. **Cooperation by City.** The City shall cooperate with Contractor in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
- 4. **Fees.** Provided Contractor timely performs its obligations in substantial compliance with the Scope of Work and the terms and conditions of this Contract, City shall pay Contractor as follows:

On all mileage run by the transit buses on and after the dates specified, the rate(s) per tire mile paid by the City to the Contractor shall be as follows:

	Goodyear Metro Miler G652 Product #: 158-877-627 Size: 305/85R22.5	Goodyear Metro Miler G652 Product #: 158-170-627 Size: 305/70R22.5	Goodyear Wrangler HT Product #: 744-830-900 Size: LT 225/75R16
Year 1 (10/1/19-9/30/20)	0.008794	0.006726	0.003470
Year 2 (10/1/20-9/30/21)	0.008794	0.006726	0.003470
Year 3 (10/1/21-9/30/22)	0.008968	0.006860	0.003540
Year 4 (10/1/22-9/30/23)	0.009192	0.007030	0.003628
Year 5 (10/1/23-9/30/24)	0.009468	0.007242	0.003736

Contractor shall invoice the City on a monthly basis submitted to the City for payment at the following address: Waukesha Metro Transit, Attn: Kari Bloedow, 2311 Badger Drive, Waukesha, WI 53188-5932. All invoices and statements shall be payable net 30 days.

- 5. **Permits and Licenses.** Contractor shall be responsible, at Contractor's expense, for obtaining all permits and licenses required for the performance of the Work.

6. Insurance

Contractor shall maintain insurance of the following kinds and for not less than the following limits, at Contractor's sole expense, at all times during Contractor's performance of its obligations under this contract:

- A. Worker Compensation and Employer's Liability Insurance – Statutory worker compensation benefits and employer's liability insurance with limits not less than statutory requirements. Contractor shall require subcontractors not protected under its insurance to take out and maintain such insurance.
- B. Commercial General Liability Insurance or self-insurance coverage – Policy shall be written to provide coverage for, but not limited to, the following: (1) premises and operations (2) personal injury (3) blanket contractual (4) independent contractor coverage. Limits of liability not less than \$3,000,000 per occurrence and \$3,000,000 aggregate.
- C. Automobile Liability Insurance – Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limit of liability not less than \$1,000,000.
- D. Umbrella Liability Insurance – Coverage to be in addition to employer's liability, general liability, and automobile liability insurance required above. Limits of liability not less than \$3,000,000 each occurrence, \$3,000,000 aggregate.

All policies shall be occurrence, and not claims-made, policies. Contractor shall obtain an endorsement naming the City of Waukesha, its boards, commissions, agencies, officers, employees and representatives as additional insureds, and Contractor's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of the contract, Contractor shall deliver a certificate of insurance to City showing that all requirements of this section are met.

Failure to submit an insurance certificate, as required, can make the Contract voidable at the City's. Additionally, the Contractor shall not allow any subcontractor to commence work until the insurance certificates, where applicable, have been obtained from the subcontractor.

- 7. **Indemnification.** Contractor shall indemnify and hold the City and its' officers, officials, and employees, harmless from any and all damages, causes of action, judgments, obligations and all other liabilities arising from or connected in any way with, the Contractor's performance of its obligations under this contract, including court costs and actual attorney fees.
- 8. **Integration.** This Contract constitutes the agreement of the parties formed by the City's RFP and the Contractor's responsive proposal; however, in the event of any conflict between the RFP, Contractor's proposal, and this Contract, this Contract shall control. Reference may be made to the RFP and Contractor's proposal only for interpretation in the event of an ambiguity in this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
- 9. **Relationship of Parties.** The City and the Contractor are independent contractors, and this Contract shall not be construed to create a partnership, joint venture or any other relationship creating vicarious liability or authority for either party to bind the other to contract.
- 10. **Financial Assistance Contract.** Contractor shall comply with all terms and conditions required of third-party contractors by current contracts between the City, the Federal Transit Administration, and the Wisconsin Department of Transportation, as shown in Appendix A, which is incorporated into this Contract.

11. **Assignment.** This Contract, and the Contractor's responsibility to perform the Work under this Contract, may not be assigned by the Contractor without the City's written consent, which shall not be unreasonably withheld, conditioned or delayed.
12. **Termination.** The City may terminate this Contract before its termination date in accordance with the Federal Termination Clauses outlined on of this Contract without cause by giving written notice to The Goodyear Tire & Rubber Company at any time.
13. **Notices.** Notices to the Contractor shall be mailed to the address shown in the preamble to this Contract. Notices to the City shall be mailed or personally delivered to the attention of Brian Engelking, Transit Manager, Waukesha Transit Commission, 2311 Badger Drive, Waukesha, Wisconsin 53188.
14. **Audit and Inspection of Records.** The Contractor shall permit an authorized representative of the City to inspect and audit all data and records of the Contractor relating to its performance under this Agreement. The right of audit and inspections shall extend to authorized representatives of the U.S. Department of Transportation, the Wisconsin Department of Transportation, and the Comptroller General of the United States. The right to audit and inspect records shall extend until the expiration of three (3) years after the final payment under this agreement.

The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the City, the Wisconsin Department of Transportation, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontracts, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor.

The periods of access and examination described above, for records which relate to appeals, litigation of the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

15. **Corporate Authorization.** The person executing this Contract on behalf of the Contractor represents and warrants that he or she is duly authorized to do so, and that this Contract is a binding obligation of the Contractor.
16. **Costs of Enforcement.** The parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching party will pay the non-breaching party's costs incurred in such legal action, including actual attorney fees. If judgment is taken against the breaching party, then such actual costs of enforcement will be added to the non-breaching party's judgment.
17. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the parties to this Contract.
18. **Severability.** If any term of this Contract is unenforceable under law for any reason, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it shall be so severed, and the remainder of this Contract shall remain in effect and enforceable.
19. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the Circuit Court for Waukesha County, Wisconsin. The parties consent to personal jurisdiction in Wisconsin, and waive all jurisdictional defenses.

The Goodyear Tire & Rubber Company

Print name: _____
Title: _____
Date: _____

Print name: _____
Title: _____
Date: _____

City of Waukesha

Shawn N. Reilly, Mayor
Date: _____

Attest: Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are available for payment:

Richard L. Abbott, Finance Director
Date: _____

Appendix A

Required Federal Certifications and Clauses

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1. Notification of Federal Participation

This project is expected to be funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5307, 5337 and/or 5339 . This notification of federal participation will be included in each subcontract financed in whole or in part with federal assistance provided by FTA.

2. Full and Open Competition

In accordance with 49 U.S.C. § 5325(h), all procurement transactions shall be conducted in a manner that provides full and open competition.

3. Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the Bidder shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

4. Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Bidder shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Bidder shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Bidder's failure to so comply shall constitute a material breach of this contract.

5. No Obligation by the Federal Government

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

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

6. Program Fraud and False or Fraudulent Statements or Related Acts

(a) The Bidder acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this procurement. Upon execution of the underlying contract, the Bidder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Bidder further acknowledges that if it makes, or causes to be made, a

false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Bidder to the extent the Federal Government deems appropriate.

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

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

7. Access to Records

The following access to records requirements apply to this Contract:

(a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a Subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Bidder agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Bidder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Bidder also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Bidder access to Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Where the Purchaser is a State and is the FTA Recipient or a Subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Bidder agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Bidder, access to the Bidder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

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

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

(e) The Bidder agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(f) The Bidder agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Bidder agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

8. Federal Changes

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

9. Drug and Alcohol Testing

Pursuant to 49 U.S.C. §5331, 49 CFR Parts 653 and 654, the Bidder agrees to participate in a FTA-compliant drug and alcohol testing program. The Bidder shall allow the recipients and/or FTA's periodical oversight and inspection of the program to ensure compliance with the rules and requirements of the drug and alcohol testing program. The Bidder shall maintain up-to-date information and records on provided forms documenting the drug and alcohol testing program. The information on these records will be reported to the Federal Transit Administration by the recipient, as required.

10. Contracts Involving Federal Privacy Act Requirements

Pursuant to 5 U.S.C. 552, when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply. The following requirements apply to the Bidder and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

11. Disadvantaged Business Enterprise

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Waukesha Transit Commission's goal for participation of Disadvantaged Business Enterprises (DBE) is 1.5%.

(b) The Bidder shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Bidder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Bidder to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each

subcontract the Bidder signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) If a separate contract goal has been established, Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

(d) If no separate contract goal has been established, the successful Bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(e) The Bidder must promptly notify the Recipient whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Bidder may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.

PROMPT PAYMENT AND RETURN OF RETAINAGE

The Bidder is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Bidder's receipt of payment for that work from the Recipient. In addition, the Bidder may not hold retainage from its Subcontractors or must return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the Recipient and Bidder's receipt of the partial retainage payment related to the Subcontractor's work.

12. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Bidder shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the Recipient to be in violation of FTA terms and conditions.

13. Energy Conservation

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

14. Recycled Products

All contracts for items designated by the EPA, when the Purchaser or Bidder procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The Bidder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

15. Clean Water Requirements

Pursuant to 33 U.S.C. 1251, Bidder shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Bidder shall report each violation to the municipal corporation and understands and agrees that the municipal corporation shall, in turn, report each

violation as required to FTA and the appropriate EPA Regional Office. Bidder shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

16. Clean Air

Pursuant to 42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18, Bidder shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Bidder shall report each violation to the municipal corporation and understands and agrees that the municipal corporation will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Bidder shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

17. Access Requirements for Persons with Disabilities

Bidder shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Bidder shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

18. Breaches and Dispute Resolution

Pursuant to 49 CFR Part 18, FTA Circular 4220.1F, disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the municipal corporation's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Bidder mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, Bidder shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon Bidder and Bidder shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the municipal corporation, Bidder shall continue performance under this contract while matters in dispute are being resolved.

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

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

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the municipal corporation or Bidder shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

19. Termination

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

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

(c) Opportunity to Cure. The Recipient in its sole discretion may, in the case of a termination for breach or default, allow Bidder an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If Bidder fails to remedy to the Recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Bidder or written notice from the Recipient setting forth the nature of said breach or default, the Recipient shall have the right to terminate the Contract without any further obligation to Bidder. Any such termination for default shall not in any way operate to preclude the Recipient from also pursuing all available remedies against Bidder and its sureties for said breach or default.

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

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

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

(g) Termination for Default (Transportation Services). If Bidder fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if Bidder fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to Bidder a notice of termination specifying the nature of default. Bidder shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while Bidder has possession of the Recipient goods, Bidder shall, as directed by the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. Bidder and the Recipient

shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that Bidder was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the Recipient's convenience.

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

Bidder's right to proceed shall not be terminated nor shall Bidder be charged with damages under this clause if:

(1) Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Bidder. Examples of such causes include: acts of God, acts of the Recipient, acts of another Bidder in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

(2) Bidder, within 10 days from the beginning of any delay, notifies the Recipient in writing of the causes of delay. If in the Recipient's judgment, delay is excusable, the time for completing the work shall be extended. The Recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of Bidder's right to proceed, it is determined that Bidder was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the Recipient's convenience.

(i) Termination for Convenience or Default (Architect & Engineering). The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of Bidder's failure to fulfill contract obligations. The Recipient shall terminate by delivering to Bidder a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, Bidder shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the Recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for Bidder's failure to fulfill contract obligations, the Recipient may complete the work by contract or otherwise and Bidder shall be liable for any additional cost incurred by the Recipient. If, after termination for failure to fulfill contract obligations, it is determined that Bidder was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the Recipient's convenience.

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

servicing a notice of termination for default, the Recipient determines that Bidder has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of Bidder, the Recipient, after setting up a new work schedule, may allow Bidder to continue work, or treat the termination as a termination for convenience.

20. Civil Rights Requirements

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, Bidder shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Bidder shall also comply with applicable Federal implementing regulations and other requirements.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, Bidder shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Bidder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Bidder shall comply with any implementing requirements FTA may issue.

(ii.) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, Bidder shall refrain from discrimination against present and prospective employees for reason of age. Bidder shall also comply with any implementing requirements FTA may issue.

(iii.) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, Bidder shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Bidder shall also comply with any implementing requirements FTA may issue.

(c) Bidder shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

21. Transit Employee Protective Agreements

If the contract involves transit operations financed in whole or in part with FTA assistance, the Bidder shall comply with the terms and conditions of the Special Warranty for the Urbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.] Bidder shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

22. Contract Work Hours and Safety Standards Act

(a) Overtime requirements - No Bidder or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (a) of this section, Bidder and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Bidder and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (a) of this section.

(c) Withholding for unpaid wages and liquidated damages - the municipal corporation shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by Bidder or subcontractor under any such contract or any other Federal contract with the same prime Bidder, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime Bidder, such sums as may be determined to be necessary to satisfy any liabilities of such Bidder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (b) of this section.

(d) Subcontracts - Bidder or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime Bidder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

23. Charter Bus Requirements

Pursuant to 49 U.S.C. 5323(d), 49 CFR Part 604, the Bidder agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

24. School Bus Requirements

Pursuant to 49 U.S.C. 5323(F), 49 CFR Part 605, Recipients and Subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

25. Real Property

Bidder shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49

CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Bidder's failure to so comply shall constitute a material breach of this contract.

26. Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

27. Cargo Preference - Use of United States Flag Vessels

The Bidder agrees to:

(a) Use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) Furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Bidder in the case of a Subcontractor's bill-of-lading.); and

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

28. Fly America Requirements

The Bidder agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that Recipients and Subrecipients of Federal funds and their Bidders are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Bidder shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Bidder agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

29. Conformance with ITS National Architecture

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

30. Ineligible Bidders and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible Bidders for federally-assisted contracts shall be ineligible to act as a subcontractor for Bidder pursuant to this contract. If Bidder is on the Comptroller General's list

of ineligible Bidders for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

31. Government-Wide Debarment and Suspension

(a) Background and Applicability: In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions." Grantees, Bidders, and Subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified.

They do this by (1) Checking the Excluded Parties List System, (2) Collecting a certification from that person, or (3) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required; 49 CFR 29.300.

Grantees, Bidders, and Subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

(b) Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(c) Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Bidder is required to verify that none of the Bidder, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Please read, sign and date the certification on the following page and return it with your bid proposal.

**Government-Wide Debarment and Suspension
CERTIFICATION**

The Bidder is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Recipient. If it is later determined that the bidder or Bidder knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature of Bidder's Authorized Official

DATE _____

Name and Title of Bidder's Authorized Official

32. Lobbying

Pursuant to 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20, Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Bidders who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Please read, sign and date the certification on the following page and return it with your bid proposal.

**Lobbying
CERTIFICATION**

I, _____, hereby certify
Name and Title of Authorized Official

On behalf of _____ that:
Name of Bidder/Company Name

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, and 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.

If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.

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, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or Print Name _____

Signature of Authorized Representative _____ Date _____

APPENDIX B

NO VALUE TIRE AGREEMENT

Notwithstanding anything to the contrary set forth in the Agreement:

1. Contractor will furnish "No-Value Tires" to City (upon availability basis) for the sole and exclusive purpose of equipping City's obsolete or out-of-service vehicles. It is understood that a "No-Value Tire" means any tire furnished under the Agreement which has been determined by Contractor to be permanently unfit for further service under the Agreement. Each "No-Value Tire" furnished under this Agreement shall be listed on the document entitled **710-15 Mileage Tire Disposition** and shall reflect the tire as "**uncut-60**", under casing disposition. It is also understood that obsolete or out-of-service vehicle means any vehicle furnished with tires under the Agreement which has been determined by City to be unfit for further service under the Agreement and which will not, under any circumstances, be used on any public road or highway or on any public property of any kind and will not be used to transport any person.
2. In consideration of the accommodation and benefit given City, City agrees to use the "No-Value Tires" furnished for the sole and exclusive purpose of equipping City's obsolete or out-of-service vehicles and further agrees to insure that such "No-Value Tires" are properly disposed of if and when they are removed from such obsolete or out-of service vehicles.
 - a. **City will acquire each "No-Value Tire" as is, and Contractor makes no warranties as to the condition or fitness for continued use of such tire. City further agrees to assume all liability for use of, possession of, or disposal of any "No-Value Tires" furnished hereunder.**
 - b. City agrees not to file or assert against Contractor any claim, action or cause of action for loss, liability or damage arising out of City's use of, possession of, or disposal of "No-Value Tires" furnished under this Agreement.
 - c. City agrees to indemnify, defend and hold Contractor harmless against all claims of any party for loss, liability or damage, including injury, resulting from Contractor's furnishing of "No-Value Tires" to City hereunder, including any and all costs, legal fees, expenses and attorneys' fees resulting from such claims.
 - d. City agrees to dispose of each "No-Value Tire" in full compliance with applicable Federal, State and local laws, rules and regulations. City agrees to indemnify, save harmless and defend Contractor from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereto, (including costs of defense, settlement and reasonable attorneys' fees), which Contractor may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, caused, in whole or in part, by the disposal by City of "No-Value Tires" furnished to City hereunder.
 - e. Title and all other incidents of ownership to the "No-Value Tire" shall be transferred from Contractor and vested in City at the time Contractor delivers to City a copy of the **710-15 Mileage Tire Disposition** designating the tires as "**uncut-60.**"
3. It is further agreed that Contractor and City shall have the right, at their option, without prejudice to any other rights and remedies, to decline to further provide/utilize "No-Value Tires".

4. Notwithstanding the termination of this Agreement, Article 2 herein shall survive such termination.
5. If any provision hereof is held to be illegal or invalid, the validity of the remaining portions of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal or invalid. The terms and provisions of this Agreement shall be construed under and governed by the laws of the State of Wisconsin, without regard to the conflict of laws principles thereof. Any action to enforce any of the terms and provisions of this Agreement shall be filed in state or federal court in Waukesha County, Wisconsin.