

FIXED PRICE PRODUCT & SERVICES MAINTENANCE SUPPORT AGREEMENT

This Fixed Price Product & Services Maintenance Support Agreement (the "Agreement") is made as of this _____ day of April 2021 by and between GMV SYNCROMATICS CORPORATION, a California corporation, doing business as GMV SYNCROMATICS (the "Contractor") and the City of Waukesha ("Agency", "Recipient", or "Awarding Agency"). Each of the Contractor and Agency are considered a "Party" and together, the "Parties."

RECITALS

WHEREAS, the Contractor has created and sells Intelligent Transportation Systems, vehicle tracking products and other related products and services; and

WHEREAS, Agency wishes to purchase products and services from the Contractor as described below and in the proposal (the "Proposal") attached as Attachment B.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Scope: Products and Services. The Contractor shall provide Agency with the products (the "Products") and services (the "Services"), described and detailed in final pricing schedule (the "Order"), referenced collectively as the "Proposal" contained in Attachment B. The prices specified in the Order for the Products and Services specified therein shall be guaranteed for the initial five (5) year term. Any additional Products and/or Services requested or optioned by Agency shall be made pursuant to an additional Order signed by both Parties.
2. Price & Payment. The acquisition cost for this Fixed Price Product & Services Maintenance Support Agreement for the term of Five (5) Years and shall be for Three Hundred Forty One Thousand Two Hundred Thirty Dollars and no cents (\$341,230.00) (the "Fees"). All Fees for Products and Services owed to the Contractor shall be paid pursuant to the payment and deliverables schedule attached as Attachment F ("Contract Milestones").
3. Term. The term of this Agreement shall end Five (5) years after the In Service Date, unless terminated or extended by agreement between the parties (considered together, the "Term").
4. Deployment, Operations and Final System Acceptance. Contractor shall install and configure the Products and Services during a period of time beginning upon the execution of the

Agreement and extending for a period of time estimated to be approximately seven (7) months but which may be shortened or extended by mutual agreement of the parties.

- a. Contractor shall work with Agency to finalize a plan and schedule for the installation, configuration, training and testing of the Project. Agency shall appoint a person to be the designated point of contact (The "POC") between Contractor's Project Manager (the "PM") and Agency relating to all decision-making, operational requests for support and to approve elements of the Project as deployment proceeds.
 - b. The PM and the POC shall work together to determine the method of delivery of the Products and the Services, and assign responsibilities as between Syncromatics and Agency. The POC's support during the deployment is especially important to enable the PM to deliver a functional system that meets Agency's needs for the Project. To assist Agency in understanding the support needed from the POC and Agency, Attachment C is a document outlining the Standards of Operations for the Project.
 - c. Upon written notice from Contractor to Agency that it has fully completed the installation, testing and documentation (the "Notice of Completion"), Agency shall have a period not to exceed thirty (30) days (the "Final Acceptance Period") in which to conduct additional testing and validation, at the end of which time or earlier Agency shall issue a Final Acceptance notification. The Final System Acceptance checklist of agreed upon deliverables and system functionality ("Checklist") is attached as Attachment D.
 - d. Should Agency find problems or concerns during the Final Acceptance Period where an item does not perform as stipulated in the Checklist, it shall provide written notice ("Correction Notice") to Contractor of any such problems or concerns and allow Contractor sufficient time to correct. Should thirty (30) days elapse from the date of Notice of Completion yet there remain outstanding issues from a Correction Notice, the Final Acceptance Period shall be extended to the date fifteen (15) days after Contractor provides notice to Agency of the corrections being completed.
 - e. The date upon which the Final Acceptance notification is issued shall be the Final Acceptance Date. Should Agency issue neither any Correction Notices nor a written Final Acceptance notification, the Final Acceptance Date shall automatically be deemed the day which is thirty-one (31) days after Contractor's Notice of Completion.
5. License. For the Term, the Contractor grants to Agency a non-exclusive license to use the central hosted software component of the Intelligent Transportation System ("ITS") as provided for in this Agreement and the Proposal. The ITS System central hosted software is offered as a fully managed system for which Agency shall have a permanent and perpetual right to use and receive all upgrades free of charge, provided recurring service fees are paid. The onboard vehicle components, both hardware and software, are the exclusive and permanent property of Agency and may be used by Agency for any purpose, independent of the central software. Agency shall also be entitled to software upgrades to onboard

hardware, free of charge as Contractor may release them during the term of this Agreement. Contractor will not install any software at Agency's fixed facility, nor is any special software needed to operate the ITS system beyond what is specified herein. The implementation of the ITS System for Agency will be an exclusive configuration. Only authorized Contractor and Agency personnel will be provided access unless otherwise authorized by Agency in their sole and absolute discretion.

6. Service Dates. For each system installed that has an associated maintenance/support fee, the first of the month following installation of that system on all vehicles will be considered the date on which services begin (the "In Service Date") and upon which the recurring fees are timed, regardless of when the fees are actually paid.
7. Sales Taxes. The contract Fees do not include local sales tax based upon Agency's affirmation that it is exempt from payment of such taxes.
8. Federal Clauses. If any portion or all of the funding for this Agreement has been derived from Federal sources, Contractor must abide by the additional Federal clauses as contained in Attachment A and which are herewith incorporated into and made a part of this Agreement.
9. Optional Items. Contractor may provide pricing for suggested optional hardware and services from time to time. Should Agency exercise or purchase any optional items after Final Acceptance, Contractor shall pro-rate any service fees applicable for that option so as to coincide with the remainder of the Term from the optional item's In Service Date.
10. Cellular Connections, Use of Third Party Data Connections. Agency shall provide a recommendation to the Contractor prior to the procurement of any hardware which (if any) cellular provider that the Agency prefers or believes to provide better cellular service in the service area. As available, Agency shall provide the ability for Contractor's in-vehicle hardware to connect to Contractor's data center through the use of existing broadband connection devices ("Third Party Connections") previously installed at the time of writing. Contractor will be provided an opportunity to conduct a preliminary investigation and determine that this data channel is a viable alternative to the use of Contractor's proposed standalone cellular connection. Contractor will need to validate the software and hardware connectivity in a test environment to make a final determination. The Parties each acknowledge that any such Third Party Connection is operated in conjunction with a separate entity that is not a party to this Agreement, and no warranty, express or implied, is included in this Agreement with respect to the reliability of such equipment or its data service. Responsibility for the maintenance and reliability of the Third Party Connections shall be the sole responsibility of Agency. In the event that Agency and Contractor find that the data connection is unsuitable for their needs, Contractor can provide separate, optional costs for an independent cellular connection, which Agency may elect to implement at its sole discretion.
11. Ownership of Data. Agency shall be the exclusive owner of the actual data entered into or

collected by the ITS system during the Term and which was collected by Agency's vehicles operating with the Products. This shall include, but not be limited to: geo-location of all vehicles at all times during the Term; vehicle status information collected; route, schedule and performance information; driver and dispatcher information; website(s) created by the Contractor for Agency and branded with Agency's logo and/or name; statistical reports, database files and any other such related data. Presentation of, and access to, this data is limited to those reports, formats, or Application Programming Interfaces ("APIs") presented in the Proposal. Additional custom data exports can be executed, by Syncromatics, for the Agency, free of charge, but no more than once per month, and as engineering resources are available for such work.

12. Notices. Any notices that either of the Parties may need to deliver to the other Party shall be sent as follows:

If to Agency via Certified US Mail to:

Waukesha Metro Transit
Transit Manager
2311 Badger Drive
Waukesha, WI 53188-5932
ATTN: Mr. Brian Engelking

If to Contractor via Certified US Mail to:

GMV Syncromatics
523 West 6th Street
Suite 444
Los Angeles, CA 90014
Attn: President

& to Contractor via email to: sales@gmvsyncromatics.com

13. Option to Extend. Agency shall have the right to extend the Term in its sole and absolute discretion, provided that: a) it provides Contractor with notice of its intent to extend the Term no more than nine (9) months and no less than two (2) months prior to the end of the current Term, b) Agency specifies the length of the desired extended term, and c) Agency and Contractor mutually agree to the additional cost for the optional term extension.
14. Warranty, Product Replacement and Liability. For the Term, Contractor shall provide a one (1) or two (2) year full replacement warranty on all Products provided hereunder such that if any Product shall fail to perform as specified in the Proposal, upon receiving written notice of such failure, the Contractor shall replace such Product as specified in the Proposal at no cost to Agency. Warranty dates for each system (including optional items) shall begin on each

system's In Service Date. The OpenMDT carries a two (2) year warranty, all other hardware a one (1) year warranty. Replacement of Products shall only be for a failure of the Product itself, and not for any damage to the unit caused by actions or negligence of Agency or Agency's employees, agents or assigns. Should Contractor discontinue support for and fully deprecate any one or more of the Products during the Term, Contractor agrees that in the event of a Product failure, Contractor shall replace the failed unit with the Contractor's then current replacement product at no additional cost to Agency. In no event shall either Party be liable to the other for any indirect, incidental, special, punitive or consequential damages in any manner in connection with or arising out of this Agreement, regardless of the form of action or the basis of the claim or whether or not such Party has been advised of the possibility of such damages. In no event shall either Party's total liability hereunder, regardless of the form in which any legal or equitable action may be brought, exceed the total amount paid under this Agreement. Agency may elect at any time during an existing warranty period in effect, to purchase extended warranty coverage at the optional pricing provided in Attachment B.

15. Service Level Agreement & Technical Support. During the Term, the Contractor shall provide technical support to Agency and also be responsible for the maintenance and operation of the ITS system that is specified in the Proposal. The Contractor warrants that the ITS system shall perform as indicated. The specific terms of this service agreement are contained in the Service Level Agreement attached hereto as Attachment E. The Service Level Agreement provides that Contractor shall provide to Agency free upgrades to software whenever Contractor releases new versions or new features. Contractor is a software company engaged in continuous software development. While not all new features and products developed by Contractor are anticipated to be free of charge, Agency can anticipate one or more new, free features per year and as many as one new software update (either to the back end system or the installed MDT software) per month. Releases, updates and most new features will be at no additional cost to Agency.
16. Antitrust Claims. The Contractor by signing this contract hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
 - a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - i. Public purchase means a purchase by means of competitive bids of goods, services, or materials by the Agency or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professional Code.
 - ii. Public purchasing body means the Agency or the subdivision of Agency making a public purchase. Government Code Section 4550.
 - b. The Contractor agrees to assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15)

or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Contractor. Government Code Section 4552.

17. Examination of Records. The Agency shall have access to any books, records, and documents of the Contractor and its subcontractors that are pertinent to this Contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The Contractor shall include a clause to this effect in every subcontract entered into relative to the Project.
18. Publication, Reproduction and Use of Material. Except as specifically authorized by Agency in writing, information and other data developed or acquired by or furnished to Contractor in the performance of this Agreement shall be used only in connection with services provided to Agency.
19. Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify, protect, save and hold harmless the Agency, its officers, directors, employees, and agents from and against any and all claims, liability, loss, cost, damage or expense arising after the effective date of this Agreement from Contractor's use of Agency 's facilities or from the conduct of its employees or agents or from any activity, work, unauthorized disclosure of sensitive personal information, or thing done permitted or suffered by Contractor, its partners, agents, servants, contractors, representatives, guests, employees, invitees or customers in or about Agency premises or elsewhere, or for any default in the performance of any obligation on Contractor's part to be performed under this Agreement or from any intentional act or negligence of Contractor or its guests, employees, invitees or customers.
20. Integrated Document. This Agreement and any attached Schedule, Exhibit, or Addendum, etc. shall embody the entire agreement between Agency and Contractor for the scope of services and the terms and conditions. No verbal agreements or conversation with any officer, agent or employee of either party prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement.
21. Severability of Provisions. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
22. Controlling Provisions. In the case of an inconsistency between the provisions of this Agreement and any Schedule, Exhibit, or Addendum attached hereto, the terms of this Agreement shall govern.

23. Amendments. This Agreement may be amended at any time by mutual written agreement of the parties hereto.
24. Applicable Law. This Agreement 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.
25. Force Majeure. If the Agency's performance of obligations under this Agreement is materially hampered, interrupted, or interfered with for reasons including, but not limited to: fire, casualty, lockout, strike, labor conditions, unavoidable accident, riot, war, earthquake, landslides, or other acts of God, or by the enactment, issuance, or operation of any municipal, county, State, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree, or by any local or national emergency, the Agency shall be excused from performance of this Agreement and will not be responsible for payment of services not yet rendered.
26. Termination:
- a. **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 Contractor at any time.**
 - b. Payment upon Termination. Should Agency terminate the Agreement, it agrees that it shall promptly pay Contractor for any outstanding materials delivered and/or installed and services provided.
27. Disputes. The Agency and the Contractor shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the authorized Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Agency Representative shall make a written decision regarding the dispute and will provide it to the Contractor. The Contractor shall have an opportunity to challenge the Agency Representative's determination but must make that challenge in writing within ten (10) working days to the Agency's Executive Director or his/her designee. If the Contractor challenge is not made within the ten (10) day period, the Agency Representative shall become the final decision of the Agency. The Agency and the Contractor shall submit written, factual information and supporting data in support their respective positions. The decision of the Agency shall be final, conclusive and binding regarding the dispute
28. Insurance. 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. Contractor shall require all subcontractors to maintain equal insurance. Policies shall be occurrence, and not claims-made, policies. Contractor shall obtain an endorsement making the City and Waukesha County, and their respective officers, officials and employees, additional insureds. 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 this Contract, Contractor shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, \$2,000,000 per occurrence, \$4,000,000 aggregate.
- b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
- c. Umbrella, \$2,000,000.
- d. Worker compensation, statutory requirements.
- e. Cyber professional liability, \$2,000,000 per occurrence, \$2,000,000 aggregate.

29. Potential Subcontractors. No Relationship Between the Agency and Third-Party Contractor. Nothing contained in this Contract or otherwise, shall create any contractual relation, obligation or liability between the Agency and any third-party contractors, and no third-party contract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its third-party contractors is an independent obligation from the California Department of Transportation's obligation to make payments to the Contractor. As a result, the Agency shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

- a. Third-Party Contracts and Sub-agreements Affected. To the extent applicable, Federal requirements extend to third-party contractors and their contracts at every tier, and to the subcontractors of third-party contractors and their subcontracts at every tier. Those requirements are delineated in Attachment A. Accordingly, the Contractor agrees to include, and to require its third-party contractors to include, Attachment A in each third-party contract and each subcontract financed in whole or in part with financial assistance provided by FTA.
- b. Agency Approval of All Third-Party Contracts. The Agency shall approve in writing all proposed third-party contract contracts, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The Contractor agrees that it will not enter into any third-party contracts unless the same are approved in writing by the Agency. Any proposed amendments to such third-party contracts must be approved by the Agency prior to implementation.

30. Independent Contractor. It is the express intention of the Parties that the Parties are independent contractors, and Agency is not an employee, agent, joint venturer, or partner

of the Contractor, and that company is not an employee, agent, joint venturer or partner of Agency.

- 31. Assignment. This Agreement may not be assigned by Contractor except with the consent of the Agency, which consent may not unreasonably be withheld.
- 32. Complete Understanding; Modification. This Agreement, including referenced attachments, constitutes the complete and exclusive understanding and agreement of the Parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the Parties hereto.
- 33. Signatures. Contractor hereby represents and warrants to Agency that Contractor has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and that signature and execution of this Agreement has been duly authorized.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be executed individually or by their duly authorized representatives, effective as of the date first above written.

GMV SYNCROMATICS

By: Christopher Welch, Chief Financial Officer

Date: _____

City of Waukesha

By Shawn N. Reilly, Mayor

Date: _____

Attested by Gina L. Kozlik, City Clerk

Date: _____

To certify that funds are provided for payment:

Bridget M. Souffrant, Director of Finance

Date: _____

ATTACHMENTS:

- A. FEDERAL CLAUSES AND REQUIREMENTS (IF REQUIRED)
- B. THE PROPOSAL
- C. ITS AND SYSTEM STANDARDS
- D. SYSTEM ACCEPTANCE CHECKLIST
- E. SERVICE LEVEL AGREEMENT
- F. CONTRACT MILESTONES

Attachment A - Required Federal Certifications and Clauses

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 Contractor 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. Contractor 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. Contractor 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. Contractor's failure to so comply shall constitute a material breach of this contract.
5. No Obligation by the Federal Government. (a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.
6. Program Fraud and False or Fraudulent Statements or Related Acts. (a) The Contractor 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

Contractor 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 Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor 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 Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor 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 Contractor 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor'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, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor'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, Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

9. Drug and Alcohol Testing. Pursuant to 49 U.S.C. §5331, 49 CFR Parts 653 and 654, the Contractor agrees to participate in a FTA-compliant drug and alcohol testing program. The Contractor 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 Contractor 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 Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) The Contractor 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 Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor 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 Contractor 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 2.5%.

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

11.5 Prompt Payment and Return of Retainage. The Contractor 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 Contractor's receipt of payment for that work from the Recipient. In addition, the Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The Contractor 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, Contractor 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. Contractor 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. Contractor 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, Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor 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. Contractor 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. Contractor 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. Contractor 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, Contractor mails or otherwise furnishes a written appeal to the municipal corporation's CEO. In connection with such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the municipal corporation's CEO shall be binding upon Contractor and Contractor shall abide by the decision.

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

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

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

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available 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 Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach 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 Contractor when it is in the Recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the Recipient. If Contractor is in possession of any of the Recipient's property, Contractor shall account for same, and dispose of it as the Recipient directs.

(b) Termination for Default [Breach or Cause]. If Contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and Contractor fails to perform in the manner called for in the contract, or if Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to Contractor setting forth the manner in which Contractor is in default. Contractor 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 Contractor had an excusable reason for not performing, such as a

strike, fire, or flood, events which are not the fault of or are beyond the control of Contractor, the Recipient, after setting up a new delivery or performance schedule, may allow Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor. Any such termination for default shall not in any way operate to preclude the Recipient from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that the Recipient elects to waive its remedies for any breach by Contractor 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 Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall deliver to Contractor a notice of termination specifying the nature of default. Contractor 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 Contractor 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 Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor 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 Contractor has possession of the Recipient goods, Contractor shall, as directed by the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. Contractor 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 Contractor 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 Contractor 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 Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to Contractor 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. Contractor and its sureties shall be liable for any damage to the Recipient resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall Contractor 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 Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and (2) Contractor, 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 Contractor's right to proceed, it is determined that Contractor 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 Contractor's failure to fulfill contract obligations. The Recipient shall terminate by delivering to Contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, Contractor 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 Contractor's failure to fulfill contract obligations, the Recipient may complete the work by contract or otherwise and Contractor shall be liable for any additional cost incurred by the Recipient. If, after termination for failure to fulfill contract obligations, it is determined that Contractor 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 or termination on Contractor. The notice shall state whether termination is for convenience of the Recipient or for default of Contractor. If termination is for default, the notice shall state the manner in which Contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the Recipient, or property supplied to Contractor 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 Contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the Recipient and the parties shall negotiate the termination settlement to be paid to Contractor. If termination is for the Recipient's convenience, Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the Recipient determines that Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of Contractor, the Recipient, after setting up a new work schedule, may allow Contractor 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, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor 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, Contractor 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. Contractor 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, Contractor 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, Contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor 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, Contractor 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. Contractor shall also comply with any implementing requirements FTA may issue.

(c) Contractor 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 Contractor 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.] Contractor 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 Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any 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, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor 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 Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime Contractor, such

sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (b) of this section.

(d) Subcontracts - Contractor 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 Contractor 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 Contractor 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. Contractor 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. Contractor'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 Contractor 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 loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office

of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a Subcontractor's bill-of-lading.); 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 Contractor 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 Contractors 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

29. Conformance with ITS National Architecture. Contractor 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 Contractors and Subcontractors. Any name appearing upon the Comptroller General's list of ineligible Contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for Contractor pursuant to this contract. If Contractor is on the Comptroller General's list of ineligible Contractors 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, Contractors, 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, Contractors, 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 Contractor is required to verify that none of the Contractor, 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 Contractor 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 proposer 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 proposer 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 proposer 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 proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

Signature of Contractor's Authorized Official, Date

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.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a

member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

CERTIFICATION

I, _____, hereby certify on behalf of _____ (Contractor name)
that:

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 Contractor

Type or Print Name

Signature of Authorized Representative

PLACEHOLDER PAGES FOR ATTACHMENT B

SYNCROMATICS ATTACHMENT C – ITS AND SYSTEM STANDARDS

PURPOSE: All Intelligent Transportation Systems require certain inputs and oversight from drivers, dispatchers, and planners to function properly, and provide good data, reliable arrival predictions, and metrics that can be used by the Agency to improve operations. This document is intended to provide a listing of the recommended standards for operations so that the Agency can plan accordingly and operate the ITS system for its maximum potential and benefit. Without adherence to minimum technology, personnel and oversight, GMV Syncromatics cannot ensure the full effectiveness of the product and features promised.

The document is organized into sections intended to make it useable and easier for the Agency to focus on particular operational areas, personnel or IT requirements.

1. Personnel

- a. FOR ALL PERSONNEL, GMV Syncromatics will provide comprehensive training and documentation, in person, and in written and video format, available to all users, at any time, to support consistent and informed use of all systems.
- b. Planner – the GMV Syncromatics ITS system allows for the importing of schedule data for both routes and driver assignments with the goal of helping the Agency monitor and improve its operation. As such, the Agency will need to provide data to enable the building of routes and stops and to prepare and deliver a validly formatted schedule of service (in GTFS or XLS format). It is recommended that an experienced transit planner be employed or contracted by the Agency for planning and scheduling work, or to utilize the services of a specialist using transit scheduling software. On an ongoing basis, any updates to routes and schedules will also be the responsibility of the designated planner, or other responsible Agency personnel. If Syncromatics is providing sub-contracted scheduling services to the Agency as a part of this contract, it is still necessary for the Agency Planner to work with the scheduling subcontractor to create a database of stops, routes, and trips, and work with the scheduling provider to produce an export file ready to be imported into the GMV Syncromatics TRACK system.
- c. Dispatcher – the GMV Syncromatics TRACK system provides multiple tools to assist the Agency in monitoring vehicles and drivers in their daily operations. In order to ensure that routes and schedules are being serviced as planned, a dispatcher or other Agency personnel with sufficient computer skills is highly recommended to use the TRACK system in real time, during daily operations, to monitor the Syncromatics-provided dispatching tools for such things as: accurate driver sign ins, route and schedule performance, to receive and action system alerts provided by these various tools within the Syncromatics system. For systems without an in-bus MDT (driver interface) dispatchers will be required to create assignments prior to the start of service for all vehicles and drivers.
- d. Drivers – For the GMV Syncromatics system to properly capture and assign data for reporting purposes, the Agency must provide minimally technically proficient drivers who can enter on the

MDT for their assignment the following: driver identification number, route, a run/paddle number, and (optionally) trip number for the service that they are going to begin. They must also sign out at the end of their service. If the Agency would like the driver to fulfill additional duties while in service such as sending messages, going on break, counting passengers, etc., even more technical agility may be required of the drivers.

e. Maintenance – while GMV Syncromatics strives for a high level of hardware effectiveness, consistency and durability, cellular devices and in-bus equipment are at times prone to connectivity issues and physical damage due to the rugged nature of the transit environment. Syncromatics requires that on-site maintenance, IT, or support staff with sufficient computer skills be available for preliminary device troubleshooting in the event of such issues. The nature of these efforts will be limited to checking indicator lights, re-cycling power, and reporting the status of physical systems and wiring to our support team, who will then fully action all technical issues to resolution.

2. Computer Requirements

a. The GMV Syncromatics TRACK system can work in many computing environments, but due to the large amount of data transfer required to operate the tools and reports available, for full effectiveness, Syncromatics has the following minimum recommended system requirements:

- i. Windows 7 or higher
- ii. Processor: 1 Ghz or faster
- iii. RAM: 2GB
- iv. Free Disk Space: 16 GB
- v. Internet Download Speed: 10Mbs minimum, 30Mbs preferred
- vi. Windows Chrome, Edge or Firefox web browsers.

3. Routes and Schedules

a. As explained in part above, the building blocks of a Fixed Route ITS system are routes and their corresponding schedules. After the initial deployment, it is the responsibility of the Agency to create and maintain routes and schedules. And, most importantly, for the TRACK system to be set up for proper operation, each trip on an imported schedule file must have a stop sequence that matches that of a route already drawn in the Syncromatics system.

b. Syncromatics provides a route editor tool in the TRACK system that will allow the Agency staff to draw and update route shapes and stop locations for initial setup and as changes are needed. Syncromatics will train the Agency staff on how to use this Route creator/editor. Syncromatics expects Agency personnel to be a part of drawing the routes and setting up stops the first time as part of their training so that they can action any necessary edits autonomously for system sustainability.

c. Syncromatics also provides a schedule validator and import tool. The Agency is responsible for creating a GTFS or XLS file of its scheduled services (with or without the services of a private or sub-contracted scheduling service provider), and the validator tool will allow the Agency to analyze the file for (1) Formatting Errors, (2) Internal Disagreements (situations where, for example, consecutive trips overlap each other), and (3) Route Mismatches (situations where trips in the schedule file do not have a stop sequence that matches a route drawn in the GMV Syncromatics TRACK system). Once validated, the schedule import tool will allow the Agency to import and set the imported schedules to begin on any future date. GMV Syncromatics will work closely with the

Agency for this first import to ensure that the schedule format is correct and adheres to industry best practices, and that the Agency staff is well trained in the schedule importing process.

d. After the initial deployment, any updates to routes or schedules during this agreement become the responsibility of the Agency.

4. Vehicle Operations

a. It is required, and the GMV Syncromatics TRACK system is built on a platform that assumes, that all vehicles perform all trips of all routes as they are drawn in the TRACK route management setup, following the sequence of stops shared by the routes and matching schedules. Only on this basis can the ITS system properly calculate reliable arrival predictions as well as provide alerts and/or reporting of exceptions like route deviations, schedule deviations, skipping stops, missed trips, etc.

i. Arrival Predictions: When a vehicle deviates from route, public arrival predictions for the off-route vehicle will be removed from the real-time passenger information list, and instead, scheduled bus times, rather than actual real time arrival times for the off-route vehicle will be provided. This is done to prevent unhappy riders who may be unknowingly awaiting a vehicle that has deviated and will never return to route to service their stop.

ii. Stop Times: When a vehicle deviates from route, it may also prevent the GMV Syncromatics system from recording stop times. In order for the system to record a stop time at a given stop, a vehicle needs to be travelling on route when it services that stop. And, since Stop Times are the key building block of report information, deviations from route may prevent valid data from being collected by the GMV Syncromatics system.

1. There are many tools that Syncromatics provides to assist agencies in dealing with off-route behavior, such as the concept of a manual "Stop Area," which creates larger deviation areas for certain transfer and layover locations, and "On-Break" scenarios for drivers who deviate from route for layover, refueling, or shift change maneuvers, but the core model requires routes to be followed as drawn.

iii. Deadheads: When drivers sign in to the first trip of their service while still in a yard location, and must drive a considerable distance (> 1 mile) to the first stop of the first trip of their service, scheduled arrival predictions will be provided to passengers while the vehicle is performing that "deadhead" portion of service on its way to the first stop. Actual arrival predictions based on a real-time ETA will not be provided, because there is no route upon which the vehicle is traveling, and therefore no prediction of travel time can be provided.

iv. Passenger Counts: Valid driver assignments and proper servicing of the route, as drawn, are also required for accurate passenger counting reports in the GMV Syncromatics TRACK system. GMV Syncromatics will always count passengers that board and alight the vehicle, however, if the vehicle has deviated from route, or if there is no assignment information at all, passenger counts will be assigned to an "unknown stop" category. This will allow the Agency to retain all counting statistics and improve operations in areas where drivers are deviating from route, not signing in, or picking up passengers in locations where they should not be.

5. Reports

a. GMV Syncromatics' TRACK reports are designed both to (1) provide valuable analytical insights into the performance of the Agency's transit system and (2) provide insights into where the Agency, or its drivers and staff, are not operating as designed. Thus, at times, missing data from certain reports is not necessarily the result of a failure in the GMV Syncromatics system, but instead an indicator of improper or incomplete service on the part of the Agency. The following is a notable example:

i. The Daily Schedule Performance (DSP) is a key reporting page used by many Agencies to track On Time Performance (OTP). Every scheduled trip in an Agency's daily service will be listed in the DSP with schedule stop times for each stop (or timepoint), for each trip. As vehicles perform their trips throughout the day, actual service times for each stop will populate beside the scheduled time in the DSP, and the stop will be color-coded as "Early," "On time," or "Late," depending on parameters set by the Agency, as well as the calculated time of deviation. In order for data to arrive on the DSP, there must be (1) Properly working and connected vehicle equipment, (2) a valid driver assignment, and (3) vehicles following the route and its stops, as drawn, in proper sequence. If these requirements are not met, the DSP may not load data, show only partial data or a message of either "Missed Trip" or "No Assignment" will appear. This does not mean that the Syncromatics system is not working. In fact, the Syncromatics DSP, by not recording data exactly as expected, is showing the dispatch and operations team where vehicle equipment is failing, drivers are not signing in as directed, or where drivers are not servicing the route or its stops as drawn. Syncromatics has, in this respect, designed the tool to provide valuable operational benefit from such missing data, and will provide training to the Agency staff in how to utilize this tool to improve operational efficiency and to ensure the reliability of hardware themselves, without the need to just open a technical support ticket.

6. Integrations

a. If GMV Syncromatics is integrating with a pre-existing sub-system on your vehicles, it is the responsibility of the Agency to ensure that the sub-system is working effectively prior to the Syncromatics integration, and it is the sole responsibility of the Agency to maintain the effective operability of those systems not installed by Syncromatics. For example,

i. If the Agency has a pre-existing Automatic Passenger Counter (APC) system, it is expected that the APC system will be in working order, calibrated correctly, and accurately counting passengers, and Syncromatics will require evidence of this accuracy and effectiveness prior to integration. Syncromatics' responsibility to integrate with such equipment extends only to retrieving the counts provided by that system and displaying those counts in the TRACK software management portal. Should the accuracy of those counts come into question, it will be the responsibility of the Agency to show that the equipment was providing accurate data prior to the integration.

ii. Similarly, if the Agency is using the Syncromatics Automatic Vehicle Announcement System (AVAS), it is understood that any microphones, and radios running into the AVAS system, and any internal or external speakers already installed on the vehicle are in working order and will be maintained by the Agency.

iii. This is not an exhaustive list, but merely two frequently encountered examples.

b. As it pertains to head signs/destination signs, fare boxes or other peripheral devices that require a sign in code, Syncromatics will configure the system to allow a single point of sign on, but it is the responsibility of the Agency to ensure that schedules, route names, and sign in codes are all provided consistently across all systems to ensure a seamless deployment of these integrations. Syncromatics will provide details on this in Kick Off and Training.

7. Timeline

a. All proposed timelines for this deployment are based on the final date of contracting or official notice to proceed. Any change in the date of reaching a final agreement or receiving a final notice to proceed may result in comparable or possibly greater delays in each proposed phase of the deployment and system launch.

SYNCROMATICS ATTACHMENT D – Final System Acceptance Checklist

SYNCROMATICS ATTACHMENT E – Service Level Agreement

Placeholder for Attachment F