

**City of Waukesha
Transit Operations Contract**

Waukesha County Transit Paratransit Service

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: National Express Transit Corporation

Authorized Representative of Contractor: Ms. Judith Crawford , Chief Executive Officer

Contractor address: 2160 Navistar Drive, Lisle, IL 60532

Contractor telephone: (630) 821-5400

Contractor email: judith.crawford@nellc.com

Recitals

The City published a Request for Proposals, referred to as the RFP, for paratransit operation services for Waukesha County. The RFP contained a specific scope of work to be incorporated into the successful Contractor'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. Operation of Waukesha County Paratransit service between central Waukesha County, Wisconsin, and downtown Milwaukee, Wisconsin and the University of Wisconsin-Milwaukee campus. This is complementary paratransit service to the Waukesha County Route 901. The service area description including a route map, service parameters and statistics are shown in Appendix A, which is incorporated into this Contract. This is a turnkey operation where the Contractor supplies the vehicles, employees, garage, insurance, maintenance, and most administrative services to operate the service. The service is to be operated as origin to destination paratransit service. Service must meet all federal ADA regulations. A next-day reservation system must be in place. Up to 50% of trips may be by subscription.

Only certified riders and their personal care attendant may be transported. Visitors that are ADA certified by another transit system must be carried according to ADA regulations. Visitors are defined as persons visiting the Waukesha County area who can show an "ADA Paratransit Eligible" identification card issued by another transit system, or who can provide proof of disability, or who can self-certify as to inability to ride Waukesha Metro Transit or Waukesha County Transit. A visitor may use Waukesha Metrolift or Waukesha County Paratransit ADA complementary paratransit service for 21 days within a 365 day period. After 21 days of service within the 365 day period, the visitor must be certified by Waukesha Metro Transit to use complementary paratransit service offered by Waukesha Metrolift or Waukesha County Paratransit.

- b. Contractor is to charge and retain the applicable paratransit fare as listed in the effective Waukesha County Transit Fare Tariff per zone the trip occurs in. Fares are to be credited against the cost of the service on

invoices to the City. Fares may change during the duration of the contract and will be reflected in a new Fare Tariff. The Contractor will be issued the newly effective Fare Tariff when changes occur.

- c. Invoices shall be prepared monthly and submitted to the City of Waukesha for payment at the following address: Waukesha Metro Transit, Attn: Kari Bloedow, 2311 Badger Drive, Waukesha, WI 53188-5932.
- d. Contractor is responsible for passenger reservations and must furnish the equipment and technology for reservations. Reservations are to be taken a minimum one (1) calendar day to maximum fourteen (14) calendar days prior to the trip. Reservations may be taken on less than one (1) day notice as space permits. All ADA "windows" for trip times must be followed.
- e. Invoices must be accompanied by operating statistics in order for the City of Waukesha to maintain various reporting requirements, including National Transit Database statistics and safety and security reports. Safety and security data will be submitted to Waukesha Metro on a monthly basis, no later than 20 days after the end of each monthly period, in a format to be determined prior to execution of contract. Drug and alcohol testing data will be submitted to Waukesha Metro on an annual basis, no later than 40 days after the end of each calendar year, in a format to be determined prior to execution of contract. Operating statistics will be submitted via e-mail in Microsoft Excel format in addition to hardcopy format. Each month, the following daily statistics will be reported to Waukesha Metro Transit: Revenue miles, revenue hours, total miles, total hours, passengers and revenue per zone as well as total passengers and total revenue, passenger miles (using an FTA acceptable method of calculation), client trips, PCA trips, companion trips, total trips provided, missed trips, advanced cancels, late cancels, cancels at the date, no shows, same day cancels, denials; all provided in compliance with all applicable State and Federal regulations.
- f. In addition to the statistical reporting requirements above in e, complaints, incidents, and accidents involving this service must be reported to the City within five days of the occurrence.
- g. Contractor shall meet with Waukesha Metro Transit staff on a quarterly basis to allow Waukesha Metro Transit staff to review operations, documentation and compliance requirements. These meetings will periodically include inspection of facilities and vehicles.
- h. All safety-sensitive employees performing work under this contract will be subject to FTA drug and alcohol testing rules. The Contractor is responsible for testing and for maintaining a drug and alcohol testing policy. By February 10 of each year of the 5-year contract, Contractor will submit a report on the previous year's activity for drug and alcohol testing on the forms prescribed. All subcontractors performing work for the Contractor in conjunction with this contract are subject to FTA drug and alcohol testing rules as required.
- i. Contractor shall utilize ADA accessible vans or buses that have a minimum of two of wheelchair positions and seats to effectively meet passengers' needs. Equipment must be in excellent working condition, meet and pass all current applicable Wisconsin State inspection requirements and meet FTA (Altoona) and ADA standards (fully accessible). All buses must have air-ride suspension and be heated and air-conditioned.
- j. Contractor is responsible for obtaining permission from property owners to operate off-street, if required for drop offs or pick-ups.
- k. Contractor shall comply with the ADA service provisions prescribed in Appendix B, which is incorporated into this Contract.

- I. Contractor may “co-mingle” service by carrying other types of trips (Title 19, etc) at the same time. Contractor must keep the statistics for this paratransit service separate from other trips provide to meet the requirements of the National Transit Database (NTD) and other requirements in this contract.
- 2. **Term.** The term of this Agreement shall be for five years commencing on May 1, 2018.
- 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. The City will provide an initial list of all certified clients. The City will handle client certifications and provide new client information to the Contractor upon approval. The City shall also provide the Contractor an attendant policy and no-show policy. In addition, marketing of the service will responsibility of the City. Brochures, public information pieces and website/social media will be handled by the City. The Contractor may market the service with prior approval of the City.
- 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:

Year 1 (May 1, 2018-April 30, 2019)	\$54.40 per Standard Zone Trip
.....	\$58.40 per Extended Zone Trip
Year 2 (May 1, 2019-April 30, 2020)	\$57.66 per Standard Zone Trip
.....	\$61.66 per Extended Zone Trip

For subsequent Contract years, the per trip fee shall be increased from the previous year's fee as follows: The Employment Cost Index, Private Industry Workers, Midwest Area (Dec. 2005 = 100) published by the Bureau of Labor Statistics, percent change for the 12 months ended on the most-recent March, shall be multiplied by the previous year's fee, and the result shall be the fee for the subsequent contract year; provided, however, the fee shall not be increased by more than 3%, and the fee shall not be adjusted downward.

The amount invoiced to City shall be adjusted as provided in section 5. Contractor shall invoice the City on a monthly basis. All invoices and statements shall be payable net 30 days.

- 5. **Fuel Cost Adjustment.** The fee charged according to section 4 shall be adjusted for fuel cost changes. The fuel cost adjustment shall be calculated as follows:

For each monthly invoice, Contractor shall find the price per gallon, as of the week that the Contractor's fee invoice is generated, of Regular Gasoline, Midwest Area (PADD 2), as published by the U.S. Energy Information Administration. \$2.394 shall be subtracted from that price, and the resulting figure shall then be multiplied by the number of gallons of fuel used by the Contractor since the last month's invoice. If the resulting dollar amount is a negative number, then it shall be deducted from the amount being invoiced to the City. If the resulting dollar amount is positive, then it shall be added to the amount being invoiced to the City. The number of gallons of fuel used by the Contractor shall be determined by dividing the total miles reported on the invoice by 13.0.
- 6. **Permits and Licenses.** Contractor shall be responsible, at Contractor's expense, for obtaining all permits and licenses required for the performance of the Work.
- 7. **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, including products-completed operations, \$5,000,000 per occurrence, \$5,000,000 aggregate.
 - b. Automobile liability, \$5,000,000 bodily injury, \$5,000,000 property damage.
 - c. Umbrella, \$5,000,000.
 - d. Worker compensation, statutory requirements.
8. **Indemnification.** Contractor shall indemnify and hold the City and Waukesha County, and the City's and County's 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.
9. **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.
10. **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.
11. **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 C, which is incorporated into this Contract.
12. **Assignment.** Contractor agrees that this contract may be assigned from the City of Waukesha to a successor administrator by Waukesha County, in the County's sole discretion. After such assignment, this contract shall remain binding in all respects upon the Contractor.
13. **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 National Express Transit Corporation at any time.
14. **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.
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.

National Express Transit Corporation

 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

Waukesha County ADA Paratransit Service Complementary to the Route 901

Service Hours: Same hours as Route 901. The hours of service for Route 901 at the start of this contract are: 5:15am to 7:20pm Monday – Friday

No service is provided on New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Paratransit service hours may change due to changes to Route 901 service hours during the duration of the contract.

Standard Paratransit Zone

Approximately 0.75 mile radius of all bus stops along the fixed Route 901 operating between downtown Waukesha in Waukesha County and downtown Milwaukee in Milwaukee County as well as the University of Wisconsin-Milwaukee campus on Kenwood Boulevard on the east side of the City of Milwaukee in Milwaukee County. Map of Route 901 is on the next page. The Standard Paratransit Zone fare is twice the Adult fare for Route 901.

Extended Paratransit Zone

Service is allowed beyond the 0.75 mile zone into the following extended zones:

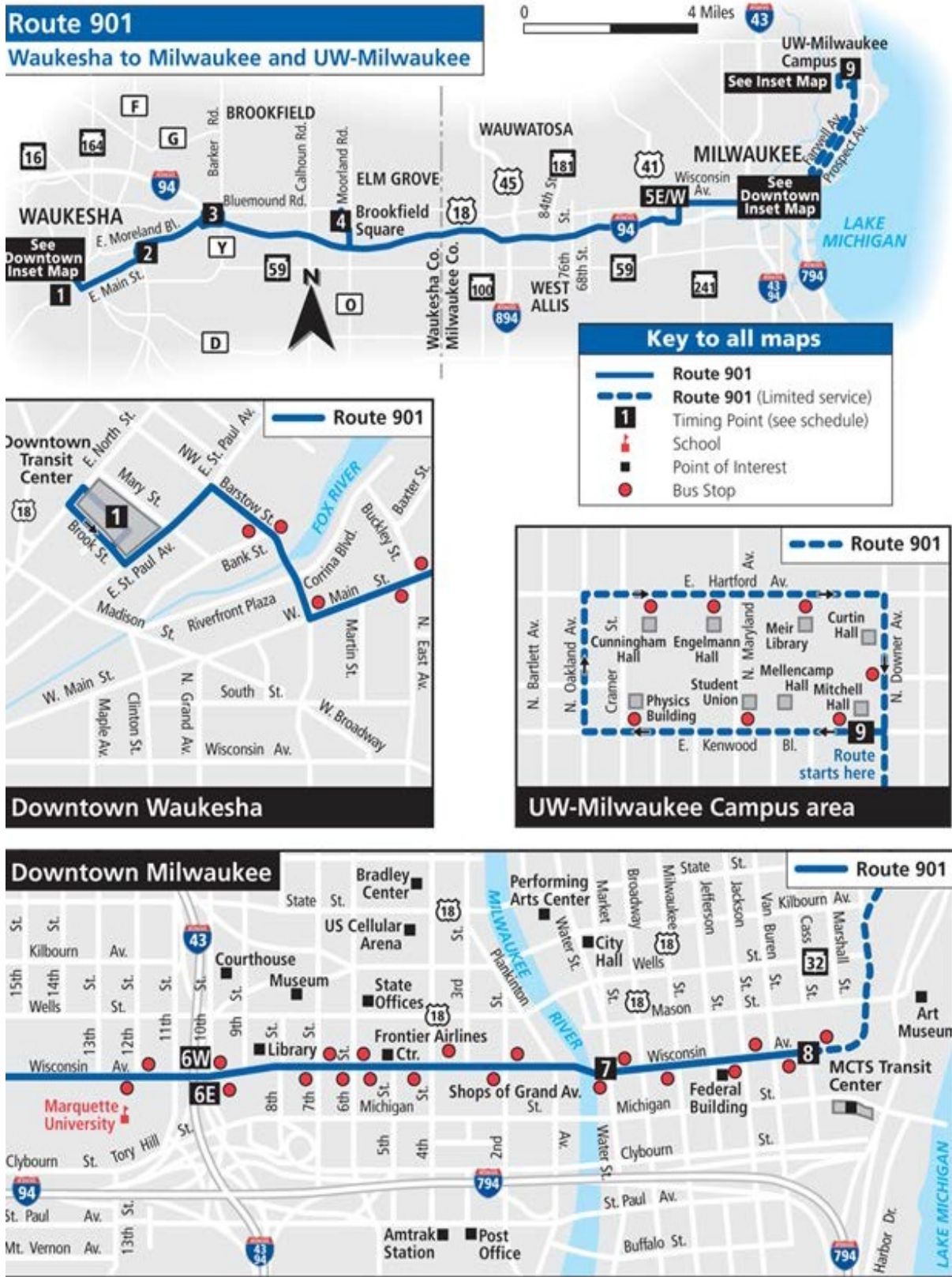
- an additional 0.25 mile beyond the 0.75 radius of all Rt. 901 bus stops,
- along W. Bluemound Rd. east of Goerkes Corners and west of Brookfield Square outside of a one mile radius of a current Route 901 bus stop,
- in the City of Waukesha Metrolift service area that is beyond the 901 Standard Zone, and
- to the Clement J. Zablocki VA Medical Center in Milwaukee, Wisconsin.
- to the Milwaukee Medical Complex in Wauwatosa, Wisconsin.

The Fare for the Extended Paratransit Zone is the Standard Paratransit Zone Fare plus a premium charge.

A map of the standard and extended service zones is available at:
<http://www.waukeshametro.org/DocumentCenter/View/6851>

The Standard and Extended Paratransit Zones may change over the duration of the contract.

Route 901 Map



Appendix B

CODE OF FEDERAL REGULATIONS REFERENCES FOR ADA COMPLIANCE

Sec. 37.125 ADA paratransit eligibility: Process.

Each public entity required to provide complementary paratransit service by Sec. 37.121 of this part shall establish a process for determining ADA paratransit eligibility.

- (a) The process shall strictly limit ADA paratransit eligibility to individuals specified in Sec. 37.123 of this part.
- (b) All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility shall be made available in accessible formats, upon request.
- (c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.
- (d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.
- (e) The public entity shall provide documentation to each eligible individual stating that he or she is "ADA Paratransit Eligible." The documentation shall include the name of the eligible individual, the name of the transit provider, the telephone number of the entity's paratransit coordinator, an expiration date for eligibility, and any conditions or limitations on the individual's eligibility including the use of a personal care attendant.
- (f) The entity may require recertification of the eligibility of ADA paratransit eligible individuals at reasonable intervals.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

- (1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
- (2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
- (3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

(h) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

- (1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.
- (2) Before suspending service, the entity shall take the following steps:
 - (i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.
 - (ii) Provide the individual an opportunity to be heard and to present information and arguments;
 - (iii) Provide the individual with written notification of the decision and the reasons for it.
- (3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.
 - (i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

Sec. 37.161 Maintenance of accessible features: General.

(a) Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily

accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

Sec. 37.163 Keeping vehicle lifts in operative condition: Public entities.

(a) This section applies only to public entities with respect to lifts in non-rail vehicles.

(b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

Sec. 37.165 Lift and securement use.

(a) This section applies to public and private entities.

(b) All common wheelchairs and their users shall be transported in the entity's vehicles or other conveyances. The entity is not required to permit wheelchairs to ride in places other than designated securement locations in the vehicle, where such locations exist.

(c)(1) For vehicles complying with part 38 of this title, the entity shall use the securement system to secure wheelchairs as provided in that Part.

(2) For other vehicles transporting individuals who use wheelchairs, the entity shall provide and use a securement system to ensure that the wheelchair remains within the securement area.

(3) The entity may require that an individual permit his or her wheelchair to be secured.

(d) The entity may not deny transportation to a wheelchair or its user on the ground that the device cannot be secured or restrained satisfactorily by the vehicle's securement system.

(e) The entity may recommend to a user of a wheelchair that the individual transfer to a vehicle seat. The entity may not require the individual to transfer.

(f) Where necessary or upon request, the entity's personnel shall assist individuals with disabilities with the use of securement systems, ramps and lifts. If it is necessary for the personnel to leave their seats to provide this assistance, they shall do so.

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. Provided, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

Sec. 37.167 Other service requirements.

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

Sec. 37.173 Training requirements.

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

Appendix C

Required Federal Certifications and Clauses

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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.

1. 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.

2. 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.

3. 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.

4. No Obligation by the Federal Government

(a) The City 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 City, 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.

5. 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.

6. Access to Records

The following access to records requirements apply to this Contract:

(a) Where the City 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 City, 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 City 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 City, 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 City 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 City, 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 City 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 City, 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 City, 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.

7. 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 City 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.

8. 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.

9. 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.

10. 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 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, Contractors/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 Contractor/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.

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.

11. 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.

12. 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.

13. Recycled Products

All contracts for items designated by the EPA, when the City 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 of 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a Subcontractor's bill-of-lading.); 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.

27. 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.

28. 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.

29. 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.

30. 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 Contractor or Contractor 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 Contractor or Contractor 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 Contractor or Contractor 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 Contractor or Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature of Contractor's Authorized Official

DATE _____

Name and Title of Contractor's Authorized Official

31. 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.

**Lobbying
CERTIFICATION**

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

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

Type or Print Name _____

Signature of Authorized Representative _____ Date _____