

## **TIRE LEASE AGREEMENT**

**AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_ 2014, by and between The Goodyear Tire & Rubber Company, a corporation located in Akron, Ohio (hereinafter referred to as "Contractor"), and the City of Waukesha, d/b/a the City of Waukesha Transit Commission, a municipal corporation located in Waukesha, Wisconsin (hereinafter referred to as the "City").

1. **TERM**

The term of this Agreement shall be five years commencing 12:01am on October 1, 2014 and ending at 11:59pm on September 30, 2019.

2. **SCOPE OF SERVICES**

Contractor agrees to complete all aspects of the Scope of Services as set forth in this Scope of Services section of this Agreement. In addition, the Scope of Services in the Request for Proposals are incorporated herein as additional provisions to this contract. In the event of a conflict, the terms of this Agreement have precedent over the terms set forth in the Request for Proposals.

Goodyear will furnish the City with tires for use on transit buses currently owned/operated by the City under the terms and conditions set forth in this Agreement; however, the City may use tires in its possession, not furnished by the Contractor under any similar mileage contract previously in effect, until such tires are unfit for further service.

A tire means a casing, for a tubeless tire; and a vehicle means any transit bus of ten (10) or more passenger carrying capacity, designed for operation on tubeless tires and used publicly for the transportation of passengers.

Tires furnished shall be in sufficient quantity to keep all transit buses fully equipped and to provide a reserve supply, at a maximum level determined by the Contractor, as spare stock inventory to be mounted on rims and kept in the City's garage for use in case of emergency. To assure its effective use, existing spare stock shall be applied prior to application of new inventory. Transit buses will be equipped with the sizes and types of rims of sufficient strength to permit inflation necessary for the load carrying capacity required and spaced to conform to the approved standards of The Tire & Rim Association of America, Inc.

Subject to paragraph 2 above under the Scope of Services section, the City agrees to use exclusively tires furnished by the Contractor; however, the City may use up to 10% of its transit bus fleet, for test purposes, on tires of other manufacturers. The City will not transfer, sublet, or lend the tires furnished by the Contractor, or permit the tires to be used by anyone other than the City, without the prior written consent of the Contractor.

**a. Mileage Reports and Tire Records**

The City shall keep an accurate record of the total number of miles run by each transit bus during the term of this Agreement and submit a monthly mileage report to the Contractor of such total mileage on each transit bus prior to the 10<sup>th</sup> day of the month following the month the miles were run. Transit bus mileage shall be determined either by means of an instrument which will accurately record mileage being run on each transit bus, or by multiplying the number of trips of each transit bus by the number of miles over the route it is driven and adding all miscellaneous mileage that may be run to and from the routes, such as in testing vehicles and instructing drivers.

If the latter method is used, the City shall furnish the Contractor a schedule of the established routes covered by its transit buses and shall advise the Contractor of any changes, additions, or deletions in such routes.

The Contractor shall have access to such recording instruments and /or mileage records at all times. On a monthly basis, the City will provide to the Contractor the following information:

- The number of Contractor leased tires applied/removed by transit bus, tire size, and date (until the transit bus is 100% equipped with Contractor leased tires);
- Brand numbers of new tires applied;
- Spare stock tire inventory, original tread indicating number of tires by size; and
- Receipt of tire deliveries.

For any tires not reported by the city to be in spare stock, the Contractor shall have the right, but not the obligation, to apply such tires to the City's most active transit buses as of the beginning of the report month.

**b. Additional Transit Buses**

If the City acquires new transit buses, the City agrees: (1) to acquire such transit buses less tires, (2) to give the Contractor ample notice upon signing of an Agreement for such acquisition, and (3) to have such transit buses equipped with Goodyear tires of sufficient carrying capacity to conform to the approved standards of The Tire & Rim Association of America, Inc. A separate rate and value may apply to any make/model of transit buses not shown in section 3a that is placed in operation during the term of this Agreement on any transit buses requiring a different size tire. Upon the Contractor's delivery of the tires to the North American OE manufacturer, refurbished, or other outside source designated by the City, the City agrees to assume responsibility for such consigned tires in accordance with all terms of this Agreement. If such transit buses equipped with the Contractor's tires are driven overland during delivery, the Contractor shall receive payment at the usage rate specified in accordance with the Compensation schedule in part 3 of this Agreement.

**c. Title to Tires and Liens on Transit Buses**

Title to all tires furnished shall remain with the Contractor until the City, if required to do so under this Agreement, purchases tires. The City will hold the Contractor harmless against any claim on the Contractor's tires made by any holder of a lien on any transit buses on which the City uses such tires. The City agrees to keep the Contractor advised of such liens.

**d. Service**

The city agrees to apply to, remove from, and remount on rims or wheels tires furnished, and to perform all other tire service, including repair of flat tires, as required by the Contractor to keep them in proper operating condition. The City will install and maintain in its garage suitable facilities for inflation of tires and will keep said tires inflated to conform to the approved standards of The Tire & Rim Association of America, Inc. The City will determine at all times when tires are to be removed from transit buses. The Contractor will determine the fitness for return to service of a particular tire or tires; however, the City will not be obliged to use tires which, because of their condition, interfere unreasonably with the use and operation of transit buses. All tires determined by the Contractor to be permanently unfit for further service shall be returned to the Contractor promptly by the City.

**e. Use, Care and Storage of Tires**

The City agrees to provide a safe, suitable place in an enclosed building for storage of spare tires and tires unfit for further service so that such tires are not subject to damage by the elements; to either keep each transit bus equipped with at least one properly inflated spare tire or provide adequate road service for its transit bus fleet; and to pay the Contractor for any loss resulting from accident, fire, vandalism, theft; or have been lost, sold or purchased. The value of original tread shall be determined by multiplying the number of 32nds of an inch of tread rubber remaining on each tire by the applicable cost per 32<sup>nd</sup> then in effect as shown below. When a tire is not available for inspection to apply the formula, reimbursement shall not be in excess of fifty percent (50%) of the current value of a similar tire, unless the tire supplier can provide an auditable accounting of the tire's accurate mileage just prior to the loss. The Contractor will periodically inventory or reconcile the City's consigned inventory and invoice the City for any shortages of consigned tires.

Schedule of Value				
<u>Tire Size</u>	<u>Description</u>	<u>Billable Tread Depth</u>	<u>Billing Price per 32<sup>nd</sup></u>	<u>Casing Value</u>
B305/70R225	H MM G152 TL	27	\$21.70	\$0.00
B305/85R225	J MM G152A TL	34	\$18.20	\$0.00
LT225/75R16	COMMERCIAL TIRE	14	\$13.20	\$0.00

**f. Sale or Disposition of Transit Bus**

If the city sells or in any manner disposes of any transit bus which shall have been equipped with tires supplied under this Agreement, or if the City places tires in storage or renders a transit bus inactive through discontinuance of its business or discontinuance of the use of any such tires or vehicles for a period exceeding ninety (90) days, The Contractor shall have the option to (a) require the City to remove tires from inactive transit buses or spare stock inventory and reapply on active wheel positions, or (b) require the City to pay Goodyear for the residual value in each such tire, including spares and/or obsolete spare stock, at prices to be computed as set forth above, plus any applicable taxes.

#### g. Leased Transit Buses

The City represents and warrants that it owns outright or has legal possession of all vehicles comprising the fleet operated by it. If the City acquires the right to operate any transit buses not owned by it ("Leased Vehicles"), the City agrees (a) to notify Goodyear of the details of such arrangement, (b) that all leased transit buses will be furnished to the City by the owner without tires so that they may be equipped with tires furnished by the Contractor under this Agreement, and (c) to obtain an agreement acceptable to the City, whereby the City acknowledges Goodyear's ownership and right to possession of all tires supplied by it and waives all rights by virtue of their use on leased transit buses or otherwise. Should the City surrender or otherwise lose possession of any of the leased transit buses equipped with tires supplied by the Contractor, the City shall follow the value designated in Section 2e of this Agreement. The term "leased transit buses" shall not apply to any transit bus rented or borrowed for temporary use for a period not to exceed 120 days.

### **3. COMPENSATION**

#### a. Rates

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

<u>Period</u>	<u>Effective from:</u>	<u>Effective through:</u>	<u>Rate</u>	<u>Rate Group</u>
Year 1	October 1, 2014	September 30, 2015	\$0.007186	A
Year 1	October 1, 2014	September 30, 2015	\$0.005996	B
Year 1	October 1, 2014	September 30, 2015	\$0.002788	C
Year 2	October 1, 2015	September 30, 2016	\$0.007472	A
Year 2	October 1, 2015	September 30, 2016	\$0.006236	B
Year 2	October 1, 2015	September 30, 2016	\$0.002900	C
Year 3	October 1, 2016	September 30, 2017	\$0.007772	A
Year 3	October 1, 2016	September 30, 2017	\$0.006484	B
Year 3	October 1, 2016	September 30, 2017	\$0.003016	C
Year 4	October 1, 2017	September 30, 2018	\$0.008082	A
Year 4	October 1, 2017	September 30, 2018	\$0.006744	B
Year 4	October 1, 2017	September 30, 2018	\$0.003136	C
Year 5	October 1, 2018	September 30, 2019	\$0.008406	A
Year 5	October 1, 2018	September 30, 2019	\$0.007014	B
Year 5	October 1, 2018	September 30, 2019	\$0.003262	C

Rate groups are defined as:

<u>Rate Group</u>	<u># of Vehicles</u>	<u>Make of Bus</u>	<u>Model</u>	<u>Tire Size</u>	<u># of Wheels</u>
A	20	Gillig	Low Floor	B305/85R22.5	Six
A	3	Gillig	Phantom	B305/85R22.5	Six
B	4	Blue Bird	XCEL 102	B305/70R22.5	Six
C	3	Arboc	Spirit Mob	LT225/75R16	Six

#### b. Taxes

The City agrees to furnish state and federal tax exemption certificates to the Contractor for any sales, excise, use, processing, disposal, or similar tax or fees, including any state imposed new tire fee or tax, imposed upon the goods sold or services rendered hereunder.

#### c. Possession and Cancellation

Should the City breach the terms of this Agreement through non-payment, non-payment on total amount due at termination, impaired credit standing, assignment for the benefit of creditors, failure to report miles operated, application of Goodyear leased tires, spare stock inventory or receipt of tires, in accordance with Article 2a, or erroneous reporting of miles run, or is placed in receivership or adjudicated bankrupt, then, under any of the above conditions, the Contractor shall have the right, at its option, without prejudice to any other rights and remedies, to stop shipping tires, take possession of inventory, and bill the City for the cost of removing tires. Should the Contractor exercise any of these options, The Contractor shall be relieved from any further obligation under this Agreement; however, this shall not relieve the City from its obligation to pay for the use of tires furnished or from its liability for all damages caused by such breach. The Contractor's failure to exercise any or

all of the above options upon the City's default shall not constitute a waiver by the Contractor of its right to exercise any or all of the above options upon any subsequent default by the City.

d. Termination Costs

To the extent not in conflict with the provisions of Appendix A attached, the City and Contractor agree to the following termination costs:

Upon the termination by full performance and expiration of this Agreement, unless the parties enter into a new Tire Lease Agreement to become effective at the date of expiration of the previous Agreement, the City will, within 30 days after termination pay for the unused mileage in each remaining tire on vehicles, on the City's garage, in process or repair, in transit or in accordance with the provisions hereof. Alternatively, the City will upon 30 days written notice via CERTIFIED MAIL prior to the expiration date of this Agreement, and all addenda, elect to continue using ("run out") all the tires in the City's possession at the rate or rates in effect during the six months prior to termination until permanently removed from service, but in no event shall such period exceed thirty-six (36) months after the normal termination date. Payment for original tires shall be prorated by determining the 32nds of useable rubber remaining multiplied by the cost per 32nds as outlined in the table in Article 2e.

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

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

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

e. Payment

The City shall pay the Contractor for mileage run on the leased tires during the month immediately proceeding, and for any tires invoiced in accordance with Sections 2e and 3d of this Agreement, at the effective rate per tire mile for transit buses as shown in Section 3 of this Agreement. Billing terms on invoices shall be Net 30 days.

4. **NOTICES**

Communication to Contractor means notice in writing to The Goodyear Tire & Rubber Company, Attention: Manager, Mileage Sales D/710, 1144 E. Market Street, Akron, OH 44316-0001. Communication to the City means notice to the contracting officer in writing to Brian Engelking, Transit Manager, City of Waukesha Transit Commission, 2311 Badger Drive, Waukesha, WI 53188-5932.

5. **OWNERSHIP OF REPORTS AND DOCUMENTS**

All documents pertaining to the work performed under this Agreement shall become the property of the City.

6. **FORCE MAJEURE**

Contractor shall not be liable to the City for any failure, delay or interruption of service or for any failure or delay in the performance of any obligation under this Agreement due to strikes, walkouts, acts of God, governmental restrictions, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, or other similar acts beyond the reasonable control of Contractor.

7. **NO PERSONAL LIABILITY**

No officer, director, or employee of the City or of the Contractor shall be personally liable for the fulfillment of the conditions of this Agreement.

8. **INDEMNIFICATION**

The Contractor will save, indemnify and hold harmless the City of Waukesha and the City of Waukesha Transit Commission against all claims, liability, judgments, costs, expenses, and attorney's fees of any kind whatsoever which may in any way come against the City of Waukesha and/or the City of Waukesha Transit Commission as a

consequence of granting of the Agreement, or by reason of negligent act or omission of the Contractor or the contractor's agents, employees, subcontractors, or assignees, arising out of the performance of the Contract.

**9. INSURANCE**

Contractor at its own expense shall self-insure or maintain insurance coverage as follows:

Comprehensive General Liability

General Liability including Products or Completed Operations

Bodily Injury Liability - \$1,000,000/\$1,000,000/\$1,000,000

Property Damage Liability - \$1,000,000/\$1,000,000

Automobile Liability

Bodily Injury - \$1,000,000/\$1,000,000

Property Damage Liability - \$1,000,000

Worker's Compensation

Statutory - \$100,000

Excess Liability (Umbrella)

General Aggregate - \$1,000,000

Each Occurrence - \$1,000,000

At the time of execution of the Agreement, Contractor will provide to the City a current certificate of insurance evidencing the insurance required above. The certificate of insurance shall name the City as an additional insured. The insurance required above shall be maintained by Contractor for the duration of the Agreement. Contractor agrees to keep such insurance in force for a period of five (5) years following the date of completion of this Agreement. Upon request of the City, Contractor will provide a certificate of insurance for this extended period.

The City will indemnify and hold the Contractor harmless against all claims, action, or causes of action for damage or injury arising out of the use of or possession of any tires furnished, except as noted in Section 8 above. In no event shall the Contractor be liable to the City for any incidental or consequential damages. Upon request, the City is required to evidence workers compensation, general liability, and automobile liability insurance. Upon request, the City will provide the Contractor with a certificate of insurance evidencing the coverage, and providing thirty (30) days written notice to the Contractor of material change or cancellation.

**10. FINANCIAL ASSISTANCE CONTRACTS**

This Agreement is subject to a financial assistance contract between the City and the U.S. Department of Transportation, Federal Transit Administration (FTA).

Contractor is required to comply with all terms and conditions prescribed for third party contractors as prescribed in current grant contracts between the City and the FTA and set forth in Appendix A. Appendix A is incorporated herein by reference as additional terms to the Agreement. In the event that there is a conflict, the provisions of Appendix A control.

**11. SEVERABILITY AND INTENT**

Should any part of this Agreement be declared to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision will not affect the validity of the remainder of this Agreement, which will continue in full force and effect.

This Agreement is not intended to be a third party beneficiary contract and confers no rights on anyone other than the City and Contractor.

**12. ASSIGNMENT**

This Agreement shall not be assigned, transferred, hypothecated, or pledged by either party without the prior written consent of the other party. This Agreement shall be binding upon the successors or assigns of the respective parties.

**13. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Wisconsin, the City of Waukesha, and the rules and regulations of the Federal Transit Administration.

**14. SECURITY**

Contractor will require its employees to wear picture identification badges while at the Badger Drive Operations and Maintenance facility. Contractor will be required to comply with all security measures required by the City for the facility. There is no smoking allowed at the Badger Drive facility.

**15. PERMITS AND LICENSES**

Contractor is responsible for all permits and licenses required by federal, state, or local regulation to carry out this work.

**16. CHANGES TO AGREEMENT**

It is agreed and understood that the scope of services and associated costs may need to be adjusted during the life of this Agreement, and this will be done by written contract amendment, and upon mutual agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers:

Witness:

**City of Waukesha, Wisconsin**

\_\_\_\_\_  
Gina Kozlik, Clerk/Treasurer

by \_\_\_\_\_  
Shawn Reilly, Mayor

**The Goodyear Tire & Rubber Co.**

\_\_\_\_\_  
Assistant Secretary

by: \_\_\_\_\_  
Contract Manager, Mileage Sales and Marketing

# LARGE PURCHASES

(\$100,000 or greater)

## Required Federal Certifications and Clauses

### TABLE OF CONTENTS

<a href="#">1. Notification of Federal Participation</a>	8
<a href="#">2. Full and Open Competition</a>	8
<a href="#">3. Prohibition Against Exclusionary or Discriminatory Specifications</a>	8
<a href="#">4. Compliance with Federal Regulations</a>	8
<a href="#">5. No Obligation by the Federal Government</a>	8
<a href="#">6. Program Fraud and False or Fraudulent Statements or Related Acts</a>	9
<a href="#">7. Access to Records</a>	9
<a href="#">8. Federal Changes</a>	11
<a href="#">9. Disadvantaged Business Enterprise</a>	11
<a href="#">PROMPT PAYMENT AND RETURN OF RETAINAGE</a>	11
<a href="#">10. Incorporation of Federal Transit Administration (FTA) Terms</a>	12
<a href="#">11. Energy Conservation</a>	12
<a href="#">12. Recycled Products</a>	12
<a href="#">13. Clean Water Requirements</a>	12
<a href="#">14. Clean Air</a>	13
<a href="#">15. Access Requirements for Persons with Disabilities</a>	13
<a href="#">16. Breaches and Dispute Resolution</a>	13
<a href="#">17. Termination</a>	14
<a href="#">18. Civil Rights Requirements</a>	17
<a href="#">19. Real Property</a>	17
<a href="#">20. Interest of Members or Delegates to Congress</a>	18
<a href="#">21. Cargo Preference - Use of United States Flag Vessels</a>	19
<a href="#">22. Fly America Requirements</a>	19
<a href="#">23. Conformance with ITS National Architecture</a>	19
<a href="#">24. Ineligible Contractors and Subcontractors</a>	20
<a href="#">25. Buy America</a>	20
<a href="#">26. Government-Wide Debarment and Suspension</a>	20
<a href="#">CERTIFICATION</a>	22
<a href="#">27. Lobbying</a>	23
<a href="#">CERTIFICATION</a>	24

## **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. § 5311 - Formula grants for other than urbanized areas (CFDA 20.509). 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. 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.

### **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.

## **10.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.

## **11.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.

## **12.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.

## **13.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.

## **14.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.

## **15.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.

## **16. 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.

## **17.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.



## **18.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.

## **19.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.

## **20. 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.

## **21.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.

## **22.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.

## **23.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.

## **24. 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.

## **25. Buy America**

This procurement is subject to Federal law which makes the purchase of American made products a requirement. The law is found under 49 U.S.C. 5323(j), and the related regulations are written under Title 49 of the Code of Federal Regulations, Part 661. The law and regulations establish a general requirement as well as certain exceptions.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

## **26. 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\_\_\_\_\_

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

## **27.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 Bidder/Company Name

☐ No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

☐ If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form – LLL](#), “Disclosure Form to Report Lobbying,” in accordance with its instructions.

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

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

Name of Bidder/Company Name \_\_\_\_\_

Type or Print Name \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative