

**Intergovernmental Agreement
Route 1 Bluemound Rd. Transit Operations
City of Waukesha – Waukesha County**

This Intergovernmental Agreement (“Agreement”) is entered into between Waukesha County (“County”), and the City of Waukesha (“City”), a Wisconsin municipal corporation. Together the County and the City are referred to as the “Parties.”

Waukesha County intends to contract with the City of Waukesha to provide transit service on the Waukesha County Route 1 which is an extension of the City’s Route 1. The City is also contracting with Milwaukee Transport Services, Inc. to further extend Route 1 into Milwaukee County to the Regional Medical Center.

Recitals

Waukesha County funds a transit system designed to address the mass transit needs of employers and employees commuting between Waukesha County and neighboring counties with transit services provided by third party contracts.

The City of Waukesha owns and operates a public mass transportation system and has acted as administrator for the Waukesha County Transit System since the Waukesha County Department of Public Works began outsourcing this work in 2004.

Waukesha County pays for the transit operations outside the City of Waukesha within Waukesha County.

§66.0301, Wis. Stats. promotes intergovernmental cooperation, including agreements as set forth herein.

Therefore, in consideration of the mutual promises of the Parties stated herein and the authority under §66.0301, Wis. Stats., the Parties enter into an Agreement as follows:

1. **Scope of Services.** The City shall provide transit service for a route known as the Route 1 from Swenson Drive south of Hwy 18 in the Town of Brookfield to Bluemound Rt. & 124th St in the City of Brookfield. The Route 1 (Waukesha-Brookfield) will be extended along Bluemound Road from 124th Street via Brookfield Square Mall to Goerke’s Corners to Barker Road and Swenson Drive at a frequency of approximately 17 - 35 minutes.
 - a. City shall provide Core Service as follows:

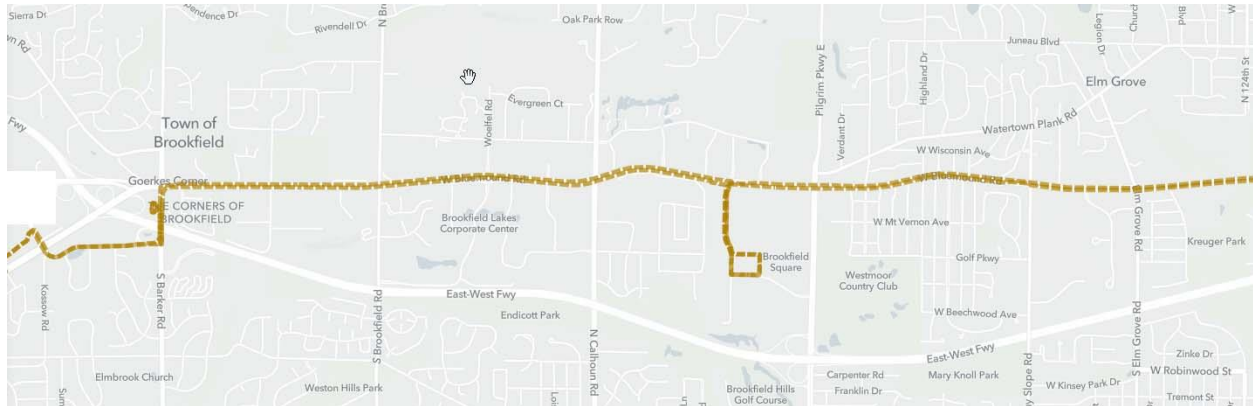
Weekdays: Approximately 37.5 revenue hours/day (Approximately 5:30 am to 11:40 pm)

Saturdays: Approximately 30.2 revenue hours/day (Approximately 6:30 am to 11:30 pm)

Sundays and Holidays: Approximately 16.3 revenue hours/day (Approximately 7:20 am to 10:00 pm)

The annual revenue service hours of provided is approximately 12,000. Revenue hours/day are calculated from the first time a westbound bus passes 124th & Bluemound Road to Swenson Drive to the last time an eastbound bus travels from Swenson Drive and passes 124th & Bluemound Road.
 - b. Additional hours of service may be added to meet passenger demand beyond the Core service hours upon mutual agreement by the City and the County. In addition, Core service hours may be reduced if a funding shortfall or a significant decrease in ridership occurs during the course of the contract.
 - c. City shall also provide ADA-mandated paratransit services during fixed route revenue service hours.

d. Routing of Service



2. Reporting and Invoices.

- a. The City shall prepare monthly invoices and submit them to the County Department of Public Works (DPW) Business Manager. Invoices should be forwarded to the following address or e-mailed:

Waukesha County Department of Public Works
Attn: Ms. Rhiannon Cupkie
515 W. Moreland Blvd.
Waukesha, WI 53188
e-mail:rcupkie@waukeshacounty.gov

- b. Invoices must be accompanied by operating statistics to maintain various reporting requirements, including National Transit Database statistics, and safety and security reports.

3. **Drug/Alcohol Testing.** All safety-sensitive employees performing work under this agreement are subject to FTA drug and alcohol testing rules found in 49 CFR Part 655. The City will comply with these regulations and must be ready and able to pass a federal drug and alcohol audit at any time during the term of this agreement. The County reserves the right to verify the City's compliance with the FTA drug and alcohol testing rules at any time during the term of this agreement.
4. **Marketing.** The City will raise public awareness of service and build ridership by marketing the service. By February 1 of each year of the agreement, the City shall provide the County with a marketing plan. In addition, Public Timetables will be created and published in print and electronic format by the City. The City also agrees to utilize its real time bus tracking and other trip planning capabilities to build ridership.
5. **Bus Stops.** All bus stop signs, bus stop pads and bus shelters shall be maintained by the City. The City and County will mutually agree on location of all bus stops and bus shelters. The City will provide and install the bus stop poles and signs. The County will pay for bus shelters and/or bus stop pads and installation of them unless provided and installed by a third party.
6. **Americans with Disabilities Act (ADA) Service Requirements.** The City agrees to comply with the Code of Federal Regulations regarding ADA service requirements set forth in the attached Appendix B.
7. **Collaboration.** The parties agree to collaborate on Route 1 service levels/hours of service, schedule and routing that is mutually beneficial to both parties. The parties also agree to consider the levels of service of the Milwaukee County portion of Route 1 when determining these matters.

8. **Payment.** The route operated by the City will be billed in the manner described below:

The total operating costs of the service minus passenger revenues received will be invoiced to Waukesha County on a monthly basis. The County agrees to pay for all revenue bus hours operated in the Waukesha County funded area of Route 1 as well as one third of the layover and deadhead (non-revenue travel) hours of the entire Route 1. The total platform hours include revenue and non-revenue hours is approximately 13,800 per year. The platform per hour rate for Waukesha County in 2023 is \$105.05. Passenger revenue will be calculated at the rate of \$1.00 per passenger, based on 2023 fare structure. The City is responsible for counting passengers carried by this route.

On an annual basis, by December 1st, the parties agree to negotiate and agree upon a platform per hour rate, fare revenue credit and per paratransit trip for the next calendar year.

9. **Term.** The City's duties shall commence the day after the Waukesha County Gold Line service ceases with an expected date of June 4, 2023. This Agreement if for a Five (5) year period.
10. **Changes.** This Contract can only be amended by the written mutual agreement of the Parties. No change to the scope of the services, or the total amount to be paid to City, shall be effective unless done by the written mutual agreement of the Parties.
11. **Insurance.** The City shall maintain insurance of the following kinds and for not less than the following limits, at the City's sole expense, at all times during its performance of this Contract. Policies shall be occurrence, and not claims-made, policies. The City shall obtain an endorsement making County, its boards, commission, agencies, officers, employees and representatives an additional insured, and the City'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, the City shall deliver a certificate of insurance to County showing that all requirements of this section are met.

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

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

12. **Condition to Enforceability.** The enforceability of this Contract is conditioned on the City successfully negotiating and executing a financial assistance contract with the U.S. Department of Transportation, Federal Transit Administration, and the Wisconsin Department of Transportation.
13. **Third-Party Compliance.** The City and County shall comply with all terms and conditions required of third-party by current contracts between the City, the Federal Transit Administration, and the Wisconsin Department of Transportation, as shown in Appendix A.
14. **Assignment.** This Agreement shall not be assigned, transferred or pledged by either party without the prior written consent of the other party, except if the City ceases to administer the Waukesha County Transit System route(s) covered by this Agreement for any reason, including but not limited to termination or expiration of its transit services contract with Waukesha County, The City consents to assignment of all terms of this Agreement to the party Waukesha County designates in writing as the successor administrator of Waukesha County Transit System services. This Agreement shall be binding upon the successors or assigns of the respective parties.
15. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

To the City:
Attention Brian Engelking
City of Waukesha Metro Transit
2311 Badger Drive
Waukesha WI 53188
e-mail: bengelki@waukesha-wi.gov

To County:
Waukesha County Department of Public Works
Attn: Ms. Allison Bussler, Director
515 W. Moreland Blvd.
Waukesha, WI 53188
e-mail: abussler@waukeshacounty.gov

16. **Audit and Inspection of Records.** The City shall permit an authorized representative of the County to inspect and audit all data and records relating to its performance under this Agreement. The right of audit and inspections shall extend to authorized representatives of the U.S. Department of Transportation, the Wisconsin Department of Transportation, and the Comptroller General of the United States. The right to audit and inspect records shall extend until the expiration of three (3) years after the final payment under this agreement.

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

The periods of access and examination described above, for records which relate to appeals, litigation of the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this

Agreement as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

- 17. **Parties Are Independent** Nothing in this Contract shall be construed to create any relationship between the Parties. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
- 18. **Indemnification.** The City agrees to indemnify, hold harmless and indemnify the County, its officers, agents and employees from any and all liability, including claims, demands, damages, actions or causes of action; together with any and all losses, costs or expense, including attorney fees, where such liability is founded upon or grows out of the acts, error or omissions of the City, its employees, agents or subcontractors.
- 19. **Ownership of Records.** All documents, records, reports, recordings, photos or other information collected, generated or kept in connection with the performance of this Contract shall be the property of the County, and is kept in the City's custody, shall be delivered to the County promptly upon request. The County acknowledges that the City will retain these records for the applicable time period to comply with Wisconsin Open Records statutes and other local, state and federal regulations.
- 20. **Force Majeure.** Neither the County nor the City shall be in breach of this Contract if the Parties' failure to perform is due to unforeseen circumstances beyond the Parties' control, provided the Parties resume performance promptly upon the cessation of the circumstances.
- 21. **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.
- 22. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, 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 will be so severed, and the remainder of this Contract will remain in effect and enforceable.
- 23. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin, and the applicable regulations of the Federal Transit Administration. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are provided for payment:

Joseph Ciurro, Director of Finance
Date: _____

Waukesha County

By Allison Bussler
Waukesha County Public Works Director
Date: _____

Appendix A

Required Federal Certifications and Clauses 1. Notification of Federal Participation. This project is expected to be funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5307, 5337 and/or 5339. This notification of federal participation will be included in each subcontract financed in whole or in part with federal assistance provided by FTA.

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

3. Prohibition Against Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the City 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. City 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. City 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. City's failure to so comply shall constitute a material breach of this contract.

5. No Obligation by the Federal Government. (a) The Purchaser and City 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, City, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The City 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 City who will be subject to its provisions.

6. Program Fraud and False or Fraudulent Statements or Related Acts. (a) The City 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 City 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 City 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 City to the extent the Federal Government deems appropriate.

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

(c) The City 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 City 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 City 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 City which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. City also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO City access to City'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, City agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO City, access to the City'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, City 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 City 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 City 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 City 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 City 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 City 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. City 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. City's failure to so comply shall constitute a material breach of this contract.

9. Drug and Alcohol Testing. Pursuant to 49 U.S.C. §5331, 49 CFR Parts 653 and 654, the City agrees to participate in a FTA-compliant drug and alcohol testing program. The City 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 City shall maintain up-to-date information and records on provided forms documenting the drug and alcohol testing program. The information on these records will be reported to the Federal Transit Administration by the recipient, as required.

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

(a) The City 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 City agrees to obtain the express consent of the Federal Government before the City or its employees operate a system of records on behalf of the Federal Government. The City 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 City also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

11. Disadvantaged Business Enterprise. (a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Waukesha Transit Commission's goal for participation of Disadvantaged Business Enterprises (DBE) is 2.5%.

(b) The City shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The City shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the City 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 City signs with a City 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 City must promptly notify the Recipient whenever a DBE Contractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Contractor to perform at least the same amount of work. The City may not terminate any DBE Contractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.

11.5 Prompt Payment and Return of Retainage. The City is required to pay its Contractor's performing work related to this contract for satisfactory performance of that work no later than 30 days after the City's receipt of payment for that work from the Recipient. In addition, the City may not hold retainage from its Contractors or must return any retainage payments to those Contractors within 30 days after the work related to this contract is satisfactorily completed or must return any retainage payments to those Contractors within 30 days after incremental

acceptance of the Contractor's work by the Recipient and Contractor's receipt of the partial retainage payment related to the Contractor's work.

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

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

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

15. Clean Water Requirements. Pursuant to 33 U.S.C. 1251, City 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. City 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. City shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

16. Clean Air. Pursuant to 42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18, City shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. City 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. City shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

17. Access Requirements for Persons with Disabilities. City 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. City shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

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

Performance During Dispute - Unless otherwise directed by the municipal corporation, City 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 City 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 City shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

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

(b) Termination for Default [Breach or Cause]. If City does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and City fails to perform in the manner called for in the contract, or if City 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 City setting forth the manner in which City is in default. City 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 City 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 City, the Recipient, after setting up a new delivery or performance schedule, may allow City 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 City 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 City 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 City 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 City. Any such termination for default shall not in any way operate to preclude the Recipient from also pursuing all available remedies against City 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 City 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 City fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the City fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall deliver to City a notice of termination specifying the nature of default. City 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 City 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 City 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 City 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 City a notice of termination specifying the nature of default. City 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 City has possession of the Recipient goods, City shall, as directed by the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. City 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 City 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 City refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified, or any extension, or fails to complete the work within this time, or if City 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 City 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. City and its sureties shall be liable for any damage to the Recipient resulting from City's refusal or failure to complete the work within specified time, whether or not City's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

City's right to proceed shall not be terminated nor shall City 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 City. Examples of such causes include: acts of God, acts of the Recipient, acts of another City in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and (2) City, 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 City's right to proceed, it is determined that City 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 City's failure to fulfill contract obligations. The Recipient shall terminate by delivering to City a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, City 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 City's failure to fulfill contract obligations, the Recipient may complete the work by contract or otherwise and City shall be liable for any additional cost incurred by the Recipient. If, after termination for failure to fulfill contract obligations, it is determined that City

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 City. The notice shall state whether termination is for convenience of the Recipient or for default of City. If termination is for default, the notice shall state the manner in which City has failed to perform the requirements of the contract. City shall account for any property in its possession paid for from funds received from the Recipient, or property supplied to City 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 City in proportion to the value, if any, of work performed up to the time of termination. City shall promptly submit its termination claim to the Recipient and the parties shall negotiate the termination settlement to be paid to City. If termination is for the Recipient's convenience, City 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 City 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 City, the Recipient, after setting up a new work schedule, may allow City to continue work, or treat the termination as a termination for convenience.

20. Civil Rights Requirements. (a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, City shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. City 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, City 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. City 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, City 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, City shall refrain from discrimination against present and prospective employees for reason of age. City 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, City 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. City shall also comply with any implementing requirements FTA may issue.

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

21. Transit Employee Protective Agreements. If the contract involves transit operations financed in whole or in part with FTA assistance, the City 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.] City shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

22. Contract Work Hours and Safety Standards Act. (a) Overtime requirements - No City or City contractor 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, City and any Contractor responsible therefore shall be liable for the unpaid wages. In addition, such City and Contractor 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 City or Contractor 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 City or Contractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (b) of this section.

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

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

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

25. Real Property. City 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. City's failure to so comply shall constitute a material breach of this contract.

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

27. Cargo Preference - Use of United States Flag Vessels. The City 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 City in the case of a City's bill-of-lading.); and

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

28. Fly America Requirements. The City 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 City 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 City agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

30. Ineligible Contractors and Sub-Contractors. 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 a contract pursuant to this contract. If City is on the Comptroller General's list of ineligible Contractors for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR

29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions." Grantees, City, and Contractors (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, City, and Sub-Contractors 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 City is required to verify that none of the City, 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 City 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 City's Authorized Official, Date

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

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

CERTIFICATION

I, _____, hereby certify on behalf of _____ (City of Waukesha) that:

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Name of City

Type or Print Name

Signature of Authorized Representative

Date

33. Notification of Legal Matter. For contracts equal to or exceeding \$25,000, the City acknowledges that the provisions of the FTA Master Agreement, Section 39(b), apply to its actions pertaining to this project. Upon execution of the underlying contract, the City certifies or affirms that if a current or prospective legal matter that may affect the Federal Government emerges, the City must notify Waukesha County. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interest in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements. The City agrees to include the above clause or similar clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

Appendix B

City agrees to comply with the following provisions of the Code of Federal Regulations regarding ADA service requirements:

a. 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.

b. **Sec. 37.131 Service criteria for complementary paratransit.**

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

(a) Service Area--(1) Bus.

(i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.

(ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.

(iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(3) Jurisdictional boundaries. Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity

does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.

(b) Response time. The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

(1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day

when the entity's offices are not open before a service day.

(2) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.

(3) The entity may use real-time scheduling in providing complementary paratransit service.

(4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of Sec. 37.131(b) and (c).

(c) Fares. The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.

(1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.

(2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under Sec. 37.123 (f) of this part, shall be the same as for the ADA paratransit eligible individuals they are accompanying.

(3) A personal care attendant shall not be charged for complementary paratransit service.

(4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).

(d) Trip purpose restrictions. The entity shall not impose restrictions or priorities based on trip purpose.

(e) Hours and days of service. The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

(f) Capacity constraints. The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

(g) Additional service. Public entities may provide complementary paratransit service to ADA paratransit eligible individuals exceeding that provided for in this section. However, only the cost of service provided for in this section may be considered in a public entity's request for an undue financial burden waiver under Sec. Sec. 37.151-37.155 of this part.

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

c. 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.

d. 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.

e. 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).

f. 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.

g. 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.