

**2014 SECTION 5339 CAPITAL ASSISTANCE GRANT AGREEMENT
BETWEEN THE
STATE OF WISCONSIN
AND THE
CITY OF WAUKESHA**

This Grant Agreement is made by and between the State of Wisconsin, Department of Transportation, hereinafter referred to as "Department" and the City of Waukesha, hereinafter referred to as "Recipient."

PRELIMINARY STATEMENT

The Department is authorized by sections 85.20 (3) (d) and 85.23, Wisconsin Statutes, to administer the Bus and Bus Facilities Formula Grant Program authorized under 49 U.S.C. § 5339. The purpose of this program is to replace, rehabilitate and purchase buses and related equipment and construct bus-related facilities. The Recipient has requested funds to assist in financing capital purchases under this program. The Department agrees to provide financial assistance with program monies made available under 49 U.S.C. § 5339 in accordance with the terms and conditions of this Grant Agreement.

The Project is financed with appropriations for transit capital assistance for the Formula Grants for Rural Areas Program authorized by 49 U.S.C. § 5339.

In consideration of the reciprocal promises expressed in this Grant Agreement, the Department and the Recipient mutually agree as follows:

Article I: Payment by the Department

- A. Payment under the terms of this Grant Agreement is based on 49 U.S.C. §5339, as amended, and the Wisconsin Administrative Code, Chapter TRANS 6.
- B. The Department agrees to pay the Recipient **\$646,400.00**, or 80 % of the purchase price, whichever is less of the items specified in Attachment A, Project Budget. Project Budget Quantities are limited to the number shown in the quantity column in Attachment A.
- C. The Department shall make payment to the Recipient upon receipt of invoices prepared by the manufacturer or dealer showing the actual costs of purchased equipment or in the case of a construction project, upon receipt of invoices in accordance with the payment schedule as specified in the construction contract. Progress payments on capital equipment would be made only at the discretion of the Department and in compliance with all applicable federal requirements.
- D. If the Department's audit establishes that payment to the Recipient under the terms of this Grant Agreement has exceeded the allowable maximum as defined in Article I.B., the Recipient shall refund to the Department upon demand a sum sufficient to reduce the payment to comply with Article I.B of this Grant Agreement and with Chapter TRANS 6.03, Wisconsin Administrative Code.

- E. Consistent with Articles I.B and notwithstanding other provisions of this Grant Agreement, the Department may reduce the payments otherwise due under paragraph B of this article. The Department under this paragraph may reduce those payments only by an amount equal to any overpayments made to Recipient under this Grant Agreement or under any prior capital assistance Grant Agreement. The Department may determine the amount of any such overpayment by conducting an audit under Article III. If the Department finds an overpayment, the Department may set off that overpayment against the amount payable to Recipient under paragraph B of this article until the amount payable under paragraph B of this article equals the overpayment.

Article II: Responsibility of Recipient

- A. The purchase of all equipment and facilities financed pursuant to this Grant Agreement shall be undertaken by the Recipient and shall be in accordance with applicable state and federal laws and regulations. The Master Agreement between the State of Wisconsin and the Federal Transit Administration (FTA) contains all required clauses that should be included in agreement between the State of Wisconsin and the Recipient and said Master Agreement is therefore included in this agreement by reference. (An online version can be found at <http://www.fta.dot.gov/documents/20-Master.pdf>.) Project equipment, facilities, and construction projects shall be purchased or constructed in accordance with the appropriate procedures as specified in the Wisconsin Department of Transportation Procurement Manual online at <http://www.dot.wisconsin.gov/localgov/docs/procurement.pdf>
- B. The Recipient shall complete all projects included in this Grant Agreement ***within a period of two (2) years from the date of execution.*** If the Recipient fails to complete a given project(s) within the two (2) year period, the Department shall take necessary actions to withdraw any remaining uncommitted funds in the Grant Agreement at that time. The uncommitted funds may be reassigned to other subrecipients or surrendered to the federal government.
- C. Title to project equipment and rolling stock shall be in the name of a public body, subject to the restrictions on use and disposition of the project equipment and rolling stock set forth herein. The title holder shall ensure that the Department is listed as a secured party when application for title/registration is originally filed. Copies of form MV-1, Application for Title/Registration, must be filed with the Bureau of Transit and Local Roads before reimbursement of the federal share of the cost for any rolling stock is processed for payment.
- D. The Recipient may not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way affects the federal interest in any project real property or equipment. Nor may the Recipient obligate itself, in any other manner, to any third party with respect to project real property or equipment, unless such transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation is expressly

authorized in writing by the Department; nor may the Recipient, by any act or omission, adversely affect the federal interest or impair the Recipient's continuing control over the use of project real property or equipment.

- E. The Recipient agrees that the project equipment and rolling stock shall only be used for the provision of transportation service to the general public and rolling stock shall be clearly marked for public use. The Recipient shall keep satisfactory records with regard to the use of the equipment and rolling stock and submit to the Department upon request such information as may be required to assure compliance with this section. Project equipment and rolling stock shall be operated only within the transit service area described in the capital and operating grant applications that are made part of this Grant Agreement by reference for the duration of its useful life. If during the useful life, the project equipment and rolling is withdrawn from transportation service, the Recipient shall immediately notify the Department and request disposition instructions.
- F. The Recipient shall develop a written maintenance plan in accordance with Department requirements and shall perform preventive maintenance on the equipment, facilities, and rolling stock purchased with FTA funds, including accessibility equipment, at a level no less than the manufacturer's recommended specifications. Adequate records of preventive maintenance on each piece of equipment, rolling stock, and facilities shall be maintained by the Recipient. The equipment, facilities, and rolling stock shall be properly maintained at all times. The Department shall have the right to conduct periodic inspections and reviews for the purpose of confirming that proper maintenance policies and procedures are being followed.
- G. The Recipient shall make available the equipment and rolling stock including maintenance and/or usage records to the Department upon demand for the purpose of an annual verification or other inspections deemed necessary by the Department.
- H. The Recipient shall immediately notify the Department in all cases where project equipment or rolling stock is used in a manner substantially different from that described in the application. The Recipient shall obtain prior written concurrence from the Department for any proposed sale of equipment or rolling stock, title transfer, or lease to another agency.
- I. The Recipient shall maintain in an amount and form satisfactory to the Department such insurance or self-insurance (including property, personal injury and collision coverage) as will be adequate to cover the current value of project equipment and rolling stock throughout the period of required use.
- J. The Department reserves the right to require the Recipient to restore equipment and rolling stock or pay for damages to the equipment and rolling stock as a result of abuse or misuse of such equipment and rolling stock with the Recipient's knowledge and consent.

Article III: Records and Audits

- A. The Recipient shall have a single, organization-wide, financial and compliance audit performed by a qualified independent auditor if required to do so under federal law and

regulations. (See federal Office of Management and Budget (OMB) Circular No. A-133 and the provisions of OMB A-133 Compliance Supplement, dated March 2002.)

- B. This audit shall be performed in accordance with Federal Circular A-133 issued by the federal OMB, its Compliance Supplement, and state single audit guidelines issued by the Wisconsin Department of Administration (DOA).
- C. The Recipient agrees to maintain appropriate accounts and records relating to this transportation project. Such accounts and records will be made available upon request to the Department for inspection and audit purposes.
- D. The Recipient shall permit the Department, The Comptroller General of the United States, and The Secretary of the United States Department of Transportation, or their authorized representatives, access to inspect: (1) all vehicles, facilities, and equipment purchased by the Recipient as part of the project; (2) all transportation services rendered by the Recipient by the use of such vehicles, facilities, and equipment; and (3) all relevant project data and records. The Recipient shall also permit the above-named agencies to audit the books, records, documents, and accounts of the Recipient pertaining to the project.

Article IV: Labor Protection

The Recipient agrees that it will comply with the terms and conditions of the Special Section 5333(b) Warranty for Application (formerly known as Section 13(c)) to the Small Urban and Rural Program as promulgated by the U.S. Department of Labor. The Recipient further agrees that it will assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

Article V: Prohibited Interests

- A. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Grant Agreement, or to any benefit arising there from.
- B. No member, officer, or employee of the Department or of the Recipient during his or her tenure or for one year thereafter shall have any personally benefiting interest, direct or indirect, in this Grant Agreement or the proceeds thereof.

Article VI: Applicable Law

This Grant Agreement is governed under the laws of the United States, State of Wisconsin and Tribal Law. In the event any conflict in these laws may arise relating to the obligations under this Grant Agreement, the affected parties shall meet and resolve the conflict with the intent of each fulfilling the terms of this Grant Agreement. The Recipient shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Grant Agreement and which in any manner affect the work or its conduct.

Article VII: Safety Requirements

All materials, equipment, and supplies acquired through this Grant Agreement by the Recipient, must comply fully with all safety requirements as set forth in law or rule by the State of Wisconsin and all applicable Occupational Safety and Health Administration Standards.

Article VIII: Notification of Federal Participation

The recipient must include the following notification language of federal participation in all its requests for proposals, solicitations, contracts, press releases, brochures, web site, or other publications, etc. funded under this grant:

“This project is expected to have 80% of funding provided by the Federal Transit Administration under 49 USC §5339 (CFDA 20.526).”

Article IX: Department Approval of Contracts and Procurements

The Department shall be in receipt of all draft procurements for services mentioned as part of this Grant Agreement, as well as any contracts between the Recipient and any vendor that is slated to receive funds under this Grant Agreement. The Department shall review such draft contracts and determine their conformance with the provisions of this Grant Agreement. Upon authorization by the Department, the Recipient and the Transit System may execute such contracts.

Article X: Termination

- A. The Department may terminate this Grant Agreement at any time that the Secretary determines that the Recipient or their subcontractor has failed to perform in the manner called for in the contract or has failed to fulfill contract obligations. Failure of the Recipient or their subcontractor to comply with the terms and conditions of its grant application and/or the provisions of this Grant Agreement shall be considered cause for termination.
- B. The Recipient may terminate this Grant Agreement if so directed by their appropriate governing body for whatever reason such request to terminate is made.
- C. Both parties agree that notice of intent to terminate the Grant Agreement shall be made in writing through "return-receipt certified mail," at least 30 calendar days prior to the proposed termination date.
- D. Upon termination of this Grant Agreement under the provisions of paragraphs A, B or C of this Article, the Recipient agrees to dispose of the project facilities, equipment, and/or rolling stock, in accordance with Wisconsin Department of Transportation instructions.

Article XI: Attachments and Appendices

All attachments and appendices to this Grant Agreement are incorporated herein by annexation. The Recipient agrees to comply with the standard federal contract clauses listed in Appendix I.

Witness the execution of this Grant Agreement by the parties hereto in the manner most appropriate to each.

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION**

By: _____
Aileen Switzer, Administrator
Division of Transportation Investment Management

Date: _____

City of Waukesha

By: _____

Title: _____

Date: _____