

## SECTION C: USDOT/FTA TERMS AND CONDITIONS

Federal Financial Assistance and Federal Changes: Up to 80% of the total cost of the deliverables described in the Contract will be financed with Federal monies from the Federal Transit Act of 1964, as amended.

**1. No Government Obligation to Third Parties:** The Contractor agrees that it will comply the U.S. Department of Transportation regulations relating to contractual liability of the Federal Government to third parties as follows:

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not party to the Contract) pertaining to any matter resulting from the underlying Contract.

**2. Incorporation of FTA Terms.** The provisions in this section include, in part, certain standard terms and conditions required by USDOT/FTA, whether or not expressly set forth in these provisions. All contractual provisions required by USDOT/FTA, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT/FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Madison requests, which would cause the City of Madison to be in violation of the USDOT/FTA terms and conditions.

The Contractor agrees that it will comply at all times with 49 CFR Part 18; U. S. Department of Transportation regulations relating to applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement Form FTA MA (11) dated October 2004, between the City and U. S. Department of Transportation/Federal Transit Administration (USDOT/FTA), as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

These grant agreements and FTA Circular 4220.1E, "Third Party Contracting," are available for examination at the Office of the Transit Finance Manager, 1101 East Washington Avenue, Madison, WI 53703-3052, 608/267-8766 (voice), 608/267-8778 (fax) or jetzler@ci.madison.wi.us.

**3. Procurement Protest Procedure:** In accordance with USDOT/FTA Circular 4220.1E, the City of Madison has a written procurement protest procedure, which is available upon request from the Office of the Transit Finance Manager. Protests against the City's responses to requests for approved equals and/or exceptions, unclear or restrictive specifications, the procurement process, alleged improprieties, etc. must be submitted in writing, in accordance with said procedure.

**4. Compliance with Local, State and Federal Laws:** The services and/or equipment provided shall be in compliance with all requirements of the laws and regulations of the City of Madison, the State of Wisconsin and the United States of America.

**5. Ethics:**

a. Prohibited Interest: The Contractor guarantees that no employee, officer, or agent of the City during his or her tenure or one (1) year thereafter has any interest, direct or indirect, in this contract or the proceeds thereof. Such a conflict would also arise when any employee, officer or agent's family member or partner or organization that employs, or is about to employ any of the above, has a financial or other interest in the Contractor selected for award.

b. Interest of Members of or Delegates to Congress: The Contractor guarantees that he or she has not offered or given to any member of, or delegate to the Congress of the United States, any share or part of this contract or to any benefit arising therefrom.

c. Covenant Against Gratuities: The Contractor guarantees that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, officer or agent of the City with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of the proposal or proposed contract.

d. Collusive Agreements: The Contractor guarantees that the Contract submitted is not a product of collusion with any other Contractor and no effort has been made to fix any overhead, profit or cost element of any Contract price.

e. Program Fraud and False or Fraudulent Statements and Related Acts:

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also understands and acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

6. **Civil Rights** - The Contractor shall comply with the following requirements:

a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying Contract:

1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to 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, or sex. 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, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:**

In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, creed, age, disability, sex or national origin.

5. **Information and Reports:** The Contractor shall provide all information and reports required by the Federal Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the USDOT/FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who

fails or refuses to furnish this information, the Contractor shall so certify to the City or to the USDOT/FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of this section entitled "Civil Rights" (Section 6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City or the USDOT/FTA may direct as a means of enforcing non-compliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the United States.

7. **Penalties:** Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the withholding of payments to the Contractor under the contract until the Contractor complies; cancellation, termination or suspension of this Contract; ineligibility for future Contracts; or such other remedy as the City or USDOT/FTA deems appropriate in order to assure compliance with applicable civil rights standards as required by law.

7. **Disadvantaged Business Enterprise:**

The requirements of 49 C.F.R. Part 26 and the City's USDOT/FTA approved Disadvantaged Business Enterprise (D.B.E.) Program are incorporated in this Contract by reference.

1. **Policy.** It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of Contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

2. **Obligation.** The Contractor and its subcontractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, all Contractors or their subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all contracts and sub agreements supported with Federal assistance from the U.S. DOT.

3. **Penalty:** Failure by the Contractor or its subcontractor 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 City deems appropriate.

8. **Reservation of the Right to Inspect Work:** At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at anytime during the duration of this proposed contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials, workmanship or professional services strictly in accordance with the instructions, Contract requirements and specifications.

9. **Audit and Inspection of Records:**

a. The Contractor shall maintain intact and readily accessible all data, documents, reports, records, Contracts, and supporting materials relating to this proposed contract during the course of this proposed contract and for three (3) years thereafter. The Contractor shall permit the authorized representations of the City, as required by USDOT/FTA, and the Comptroller General of the United States to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to this Contract.

b. The Contractor further agrees to include in all his or her subcontracts hereunder a provision to the effect that the subcontractor agrees to the requirements of the above paragraph. The term "subcontractor" as used in this clause exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

c. The periods of access and examination described above, for records which relate to (1) appeals under the disputes clause of this Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, and (3) costs and expenses of this Contract as to which exception has been taken by the Comptroller General or any of his/her duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

10. **Labor:** The Contractor agrees to comply with and assures compliance with applicable employee protection requirements for non-construction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 332, and implementing USDOL regulations, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act), 29 C.F.R. Part 5.

**11. Government-wide Debarment & Suspension Non-procurement:** Executive Order 12549, as implemented by 49 CFR Part 29, prohibits FTA Contractors and sub-Contractors from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted Contracts. Contractor agrees to submit a certification to the effect that it will not enter into contacts over \$25,000 with suspended or debarred Contractors and that it will require its subcontractors to make the same certification. Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25,000. Thus, the term "lower tier covered participant" and "Lower tier covered transaction", include both Contractors and subcontractors and Contracts and subcontracts over \$25,000. The certification and instruction language is contained at 29 CFR Part 29, Appendix B, and must be included in IFB's and RFP's [for inclusion by Contractors in their offers or Contracts] for all Contracts over \$25,000, regardless of the type of contract to be awarded.

Furthermore, the Contractor agrees to provide the City with immediate written notice if it learns that its submitted certification, which was not erroneous when submitted, has become erroneous by reasons of changed circumstances. Written notice shall be sent to John Etzler, Transit Finance Manager, 1101 East Washington Avenue, Madison, WI 53703-3052.

Any name appearing in the U. S. Comptroller General's List of Ineligible Contractors, will be considered an ineligible Contractor.

**12. Environmental Requirements:**

a. Environmental Protection: The Contractor agrees to comply with any applicable standards, orders, and/or requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 *Fed. Reg.* 7629, February 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality Regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et. seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. Note, this section contains similar or same requirements as FHWA required contract provisions (Section X. Implementation of Clean Air Act and Federal Water Pollution Contract Act).

b. Air Quality: The Contractor agrees to comply with any applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed. The Contractor agrees it will comply with 42 USC ..7401 *et seq.*, 40 CFR Part 15.61, and 49 CFR Part 18; U. S. Department of Transportation regulations relating to clean air. This requirement applies to all Contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Furthermore, all equipment provided through this Contract shall be designed and equipped to limit air pollution as provided in the accordance with the following EPA regulations: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New Motor and In-Use Vehicle Engines; Certification and Test Procedures," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600; and in accordance with applicable Federally-approved State Implementation Plan(s) (in particular, the Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards. Note, this section contains similar or same requirements as FHWA required contract provisions (Section X. Implementation of Clean Air Act and Federal Water Pollution Contract Act).

c. Clean Water: The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA. Note, this section contains similar or same requirements as FHWA required contract provisions (Section X. Implementation of Clean Air Act and Federal Water Pollution Contract Act).

d. Energy Conservation: The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Wisconsin Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*) and 49 CFR Part 18; U. S. Department of Transportation regulations relating to energy conservation.

Violations shall be reported to USDOT/FTA and to the United States Environmental Protection Agency Assistant Administrator for Enforcement.

**13. Prohibition Against the Use of Federal Funds for Lobbying:** The Contractor, in compliance with 49 CFR Parts 19 and 20, hereby assures and certifies that for any Contracts over \$100,000: (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person, to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, an the extension, continuation , renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. (2). If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract or grant, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. (3.) The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers and that all subcontractors shall certify and disclose accordingly. This assurance is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the assurance and certification is a prerequisite for making or entering into this transaction, as imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

**14. Assignment of Contract by City:** At any time during the continuance of the agreement, the City shall have the right to sell, assign and transfer the contract or all or part of the specified deliverables under the contract both the base and/or the option quantities with all its right, title, and interest therein, to any person, firm, or corporation, and the assignee thereof shall acquire all the rights granted to the City and shall be subject to any obligations that the City may have under the contract.