

# CITY OF GREEN BAY

## REQUEST FOR BIDS



RFB #: 2022-53

Title: TIRE LEASING

City Agency: GREEN BAY METRO TRANSIT

Due Date: November 8, 2022  
2:00 PM CT

CC: 97581

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## 1 NOTICE TO BIDDERS

### 1.1 Summary

The City of Green Bay Metro Transit (“City”) is soliciting Bids from qualified vendors for Tire Leasing Vendors submitting Bids (“Bidders”) are required to read this Request for Bids (“RFB”) in its entirety and follow the instructions contained herein.

### 1.2 Important Dates

Deliver Bids no later than the due date and time indicated below. The City will reject all late Bids:

RFB Issue Date: October 12, 2022

Questions Due Date: October 20, 2022

Addendum Posted Date: October 25, 2022

Due Date: **November 8, 2022 2:00 PM CT**

Projected Recommended Award at Transit Commission on 11/16/22

### 1.3 Format

The City will not consider illegible Bids.

Elaborate Bids (i.e., expensive artwork) beyond that sufficient to present a complete and effective Bid, are not necessary or desired.

Complete and return Forms A through E and any mandatory forms to City of Green Bay Purchasing Department with your submittal.

### 1.4 Labeling

All Bids must be clearly labeled:

Bidder’s Name and Address
RFB #: 2022-53
Title: Tire Leasing

All email correspondence must include RFB 2022-53 in the subject line.

### 1.5 Delivery of Bids

Delivery of hard copies via U.S. Mail or Common Carrier – Delivery to:

City of Green Bay Purchasing Department
100 North Jefferson St. Room 101
Green Bay, WI 54301

Delivery of hard copies to:

City of Green Bay Purchasing Department
100 North Jefferson St. Room 101
Green Bay, WI 54301

Delivery of electronic copy to: via eBidding platform on DemandStar (see section 1.12) or on a commonly used media with the hard copies. Emailed or faxed bids will not be considered.

Bids must be delivered as instructed. Deliveries to other City departments and/or locations may result in disqualification.

Note: When mailing your response via a third party delivery service, the outside of the packaging MUST be clearly marked with the RFB name and number. This ensures that the bid can be delivered to the correct purchasing agent without having to open the bid.

#### 1.6 Appendix A: Standard Terms & Conditions

Bidders are responsible for reviewing this attachment prior to submission of their Bids. City of Green Bay Standard Terms and Conditions are the minimum requirements for the submission of Bids.

#### 1.7 Sample Contract for Purchase of Services

Bidders are responsible for reviewing this attachment prior to submission of their Bids. The Sample Contract for Purchase of Services shall serve as the basis of the contract resulting from this RFB. The terms of this template contract shall become contractual obligations following award of the RFB. By submitting a Bid, Bidders affirm their willingness to enter into a contract containing these terms. (applicable only to bids for services)

The City of Green Bay utilizes a web based electronic signature program (Adobe Sign) for the execution of contracts that do not require notarization. By submitting your bid you are agreeing to the use of this program to sign documents should you receive an award. There is no cost to the bidder associated with this process.

#### 1.8 Multiple Bids

Multiple Bids from Bidders are permitted; however, each must fully conform to the requirements for submission. Bidders must sequentially label (e.g., Bid #1, Bid #2) and separately package each Bid. Bidders may submit alternate pricing schemes without having to submit multiple Bids.

#### 1.9 City of Green Bay Contact Information

The City of Green Bay Purchasing Department administers the procurement function:	Diane Kruse CPM; C.P.I.M. Purchasing Department 100 North Jefferson St. Room 101 Green Bay, WI 54301 PH: (920) 448-3051 FAX: (920) 448-3050 <a href="mailto:purchasingag@greenbaywi.gov">purchasingag@greenbaywi.gov</a>
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Contacting City staff outside of the Purchasing Department regarding this RFB without written consent from the Purchasing Department may result in your bid being rejected.

#### 1.10 Inquiries, Clarifications, and Exceptions

Bidders are to raise any questions they have about the RFB document without delay. Direct all questions, **in writing**, to the Purchasing Department Buyer listed in Section 1.9.

Bidders finding any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB document shall immediately notify the Buyer and request clarification. In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda – see 1.11 below. Bidders are strongly encouraged to check for addenda regularly.

Bids should be as responsive as possible to the provisions stated herein. A prospective vendor may take “exception” to bid terms, conditions, specifications and dates stated within the bid package. However, the City

of Green Bay reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the City's best interests.

### 1.11 Addenda

In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda to its Bids distribution websites – see 1.12 below. It is the Bidders responsibility to regularly monitor the websites for any such postings. Bidders must acknowledge the receipt of any addenda on Form B. Failure to retrieve addenda and include their provisions may result in disqualification.

### 1.12 Bid Distribution Networks

The City of Green Bay posts all Request for Bids, addenda, tabulations, awards and related announcements on two distribution networks – VendorNet and DemandStar. The aforementioned documents are available **exclusively** from these websites. It is the Bidders responsibility to regularly monitor the bid distribution network for any such postings. Bidders failure to retrieve such addenda and incorporate their appropriate provisions in their response may result in disqualification. Both sites offer free registration to City Bidders.

State of Wisconsin VendorNet System: State of Wisconsin and local agencies bid network. Registration is free. <http://vendornet.state.wi.us/vendornet>

DemandStar: National bid network – Free subscription is available to access Bids from the City of Green Bay and other Wisconsin agencies, participating in the Wisconsin Association of Public Purchasers (WAPP). A fee is required if subscribing to multiple agencies that are not included in WAPP.

Home Page: [www.demandstar.com](http://www.demandstar.com)

### 1.13 Oral Presentations/Site Visits/Meetings

Bidders may be asked to attend meetings, make oral presentations, inspect City locations or make their facilities available for a site inspection as part of this RFB process. Such presentations, meetings or site visits will be at the Bidders expense.

### 1.14 Acceptance/Rejection of Bids

The City reserves the right to accept or reject any or all Bids submitted, in whole or in part, and to waive any informalities or technicalities, which at the City's discretion is determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any Bidder responding to this request. The City expressly reserves the right to reject any and all Bids responding to this invitation without indicating any reasons for such rejection(s). Any bids submitted without all required forms as indicated shall be rejected.

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

### 1.15 Withdrawal or Revision of Bids

Bidders may, without prejudice, withdraw Bids submitted prior to the date and time specified for receipt of Bids by requesting such withdrawal before the due time and date of the submission of Bids. After the due date of submission of Bids, no Bids may be withdrawn for a period of 90 days or as otherwise specified or provided by law. Bidders may modify their Bids at any time prior to opening of Bids.

### 1.16 Subcontracting or Third Party Payments

All subcontracting shall be pre-approved upon award by the City before any work begins. Subcontractors must abide by all terms and conditions of the bid. The prime contractor shall be responsible for all subcontractor(s) work and payment.

### 1.17 Non-Restrictive Specifications and Vendor Alternates

Specifications are intended to define the general level of quality and performance of this purchase and not to restrict competition. Vendors may offer one or more alternates with lesser or greater features, however the City reserves the right to make its selection based on the best interest of the City. Vendors offering alternates shall submit, with their quote, an itemized comparison with this specification, documenting equivalence for quality, performance, etc. Failure to identify exceptions or deviations in this manner may be a basis to declare the quote as non-responsive. If in your opinion, any of the specifications, terms and conditions of this RFB prevents you from offering a quote, consideration will be given to a Vendor's request for change.

### 1.18 Non-Material and Material Variances

The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. The determination of materiality is in the sole discretion of the City.

### 1.19 Public Records

Bidders are hereby notified that all information submitted in response to this RFB may be made available for public inspection according to the Public Records Law of the State of Wisconsin or other applicable public record laws. Information qualifying as a "trade secret"—defined in State of Wisconsin Statutes—may be held confidential.

Bidders shall seal separately and clearly identify all information they deem to be "trade secrets," as defined in the State of Wisconsin Statutes. Do not duplicate or co-mingle information, deemed confidential and sealed, elsewhere in your response.

#### S. 19.36(5)

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90(1)(c).

#### s. 134.90(1)(c)

(c) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

The City cannot ensure that information will not be subject to release if a request is made under applicable public records laws. The City cannot consider the following confidential: a bid in its entirety, price bid information, or the entire contents of any resulting contract. The City will not provide advance notice to Bidders prior to release of any requested record.

To the extent permitted by such laws, it is the intention of the City to withhold the contents of Bids from public view—until such times as competitive or bargaining reasons no longer require non-disclosure, in the City's opinion. At that time, all Bids will be available for review in accordance with such laws.

### 1.20 Contract Quantities

The estimated annual quantities identified for each item on the Bid Offer Form are for bid purposes only and are based on historical data. The City does not guarantee to purchase any specific quantity or dollar amount. Bids that state the City must guarantee a specific quantity or dollar amount may be disqualified.

### 1.21 Usage Reports

Annually, the successful Bidders shall furnish to City Purchasing usage reports summarizing the ordering history for each department served during the previous contract year. The report, at a minimum, must include each and every item or service ordered during the period, its total quantities and dollars by item/service and in total. The City reserves the right to request usage reports at any time and request additional information, if required, when reviewing contract activity.

### 1.22 Partial Award

Unless otherwise noted, it will be assumed that Bidders will accept an order for all or part of the items/services priced.

### 1.23 Tax Exempt

The City of Green Bay as a municipality is exempt from payment of federal excise taxes and State of Wisconsin taxes per Wisconsin statute 77.54(9a). Federal Tax ID #39-6005458. A completed Wisconsin Department of Revenue Form S-211 (R.2-00) can be requested through the Purchasing Department. Our tax-exempt number is 008-0000428893-07.

### 1.24 Cooperative Purchasing

Bidders may choose to extend prices offered on bids to other municipalities. Under Wisconsin Statutes, a municipality is defined as a county; city; village; town; school district; board of school directors; sewer district; drainage district; vocational, technical and adult education district; or any other public or quasi-public corporation, officer, board or other body having the authority to award public contracts. This is known as "cooperative" or "piggyback" purchasing, a practice common amongst units of government. The City is not responsible for any contract resulting from a cooperative purchase using this RFB as a basis; they are made solely between the bidders and third party unit of government.

### 1.25 Bidders Responsibility

Bidders shall examine this RFB and shall exercise their judgment as to the nature and scope of the work required. No plea of ignorance concerning conditions or difficulties that exist or may hereafter arise in the execution of the work under the resulting contract, as a consequence of failure to make necessary examinations and investigations, shall be accepted as an excuse for any failure or omission on the part of the Bidders to fulfill the requirements of the resulting contract.

### 1.26 Protest Process

GBM policy requires that all prospective contractors be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any interested party shall have the right to protest alleged inequities in the procurement process and to have its issues heard, evaluated and resolved administratively. "Interested party" is defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

## 1. Submittal Procedures

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file a written submission to:

Transit Director

901 University Avenue

Green Bay WI, 54302

Protest must be filed by certified mail or other delivery method by which receipt can be verified. Electronic submission of protests will not be accepted.

The protest shall include, at a minimum:

- (a) The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an interested party;
- (b) Identity of the contact person for the protestor, including name, title, address, telephone, fax and email addresses. If the contact point is a third party representing the protestor, the same information must be provided, plus a statement defining the relationship between the protestor and the third party.
- (c) Identification of the procurement;
- (d) A description of the nature of the protest, referencing the portion(s) of the solicitation involved;
- (e) Identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
- (f) A complete discussion of the basis for the protest, including all supporting facts, documents or data; and
- (g) A statement of the specific relief requested.

The protestor is solely responsible for the completeness and validity of the information provided. Any documents relevant to the protest should be attached to the written submission. Documents which are readily available on the Internet may be referenced to an appropriate link.

Protests shall be submitted in accordance with the requirements of this chapter and any directions included in the solicitation, and shall be addressed to the Transit Director. GBM may decide a protest solely upon the written submission. The protest submission must therefore include all materials necessary to support the protestor's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the Transit Director. If the procurement uses federal funds, an informal notice of receipt of a protest must be given to the appropriate regional office of the Federal Transit Administration (FTA). The form of notice may be specified by the regional office.

## 2. Protests of the Solicitation Process

A protest related to the technical scope or specification, terms, conditions, or form of a solicitation must be received no later than ten (10) working days prior to the date established for opening of bids or receipt of proposals; if the protest addresses an amendment to the solicitation, it must be received no later than ten (10) working days prior to the date established for opening bids or receipt of proposals or five (5) working days after the date of issuance of the amendment, whichever is later; in no event, however, may a protest of this nature be submitted after bids or proposals are received. The protest must conform in all respects to the requirements set forth in Section 1.10.2 above. Upon receipt of such a protest, the Transit Director shall notify all prospective procurement offerors and other known interested parties of the receipt and nature of the



protest, and shall post a notice of the protest on GBM's procurement web page. Unless the Transit Director determines that delay will be prejudicial to the interest of GBM or that the protest patently lacks substantial merit, the solicitation process will be extended pending resolution of the protest. The protest will be considered and either denied or sustained, in part or in whole, by the Transit Director in writing. A written decision specifying the grounds for sustaining all or part of or denying the protest will be transmitted to the protestor prior to the receipt of bids or proposals in a manner that provides verification of receipt. A notice of the decision shall be provided to all parties given notice of the protest, and posted to GBM's procurement web page. Should the protest be upheld in whole or in substantial part, the contracting officer may either (1) amend the solicitation to correct the document or process accordingly; or (2) cancel the solicitation in its entirety. If the solicitation is amended, the time for receipt of bids or proposals shall be equitably extended to permit all participants to revise their bids or proposals to reflect the decision. If the protest is denied, the solicitation shall proceed as if the protest had not been filed, unless the protester pursues its protest with the Federal Transit Administration (FTA) as defined below, or otherwise appeals the decision of the Transit Director, as defined below. Protests received by GBM after the time periods specified above shall be considered untimely and may be denied on that basis unless the Transit Director concludes that the issue(s) raised by the protest involves substantial prejudice to the integrity of the procurement process.

### 3. Protests of the Evaluation Process

All bidders/proposers will be notified of the recommended award, upon a determination of GBM staff of a recommendation to be made to the Transit Commission as appropriate. This notice will be transmitted to each proposer at the address contained in its proposal form. Transmittal may be by electronic means or by hard copy. Any proposer whose proposal is valid at the time of the staff determination may protest the recommended award on one or more of the following grounds:

- (a) That the recommended award does not meet the requirements of the solicitation;
- (b) That the bid or proposal recommended for acceptance does not meet the criteria of the solicitation for award;
- (c) That the evaluation process conducted by GBM is improper, illegal, or the decision to recommend award is arbitrary and capricious.

The protest must be received by GBM at the address specified in the solicitation, no later than five (5) calendar days after the date such notification is publicly posted or sent to the bidder or proposer, whichever is earlier. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the proposer recommended for award in a manner that provides verification of receipt. Such decision shall be final, except as provided in 1.10.5 below or by applicable law or regulation. Upon receipt of a protest of this type, the Transit Director shall notify all offerors and any other known interested parties of the receipt and nature of the protest and request an extension of the validity period of their offers, if appropriate. Unless the Transit Director determines that delay will be prejudicial to the interest of GBM or that the protest lacks substantial merit, award will be withheld pending disposition of the protest. Should one or more offerors refuse a requested extension of the validity of an offer, the Transit Director may reject such proposal unless it is determined that the protest can reasonably be resolved and the award process continued without need for such extension. Delay in an award shall be considered prejudicial to GBM if:

- (a) The equipment, supplies or services are urgently required; or
- (b) Failure to make a prompt award will economically or operationally damage GBM.

Should the protest be upheld in whole or in substantial part, the Transit Director may either (1) revise the evaluation process to correct the matter protested; or (2) cancel the solicitation in its entirety. In the event that GBM proceeds with an award for one of the reasons stated above, and the protest is subsequently upheld, the Transit Director shall determine whether the performance of the contract will reasonably permit its termination in order to correct the protested matter. Such termination shall be for the convenience of GBM.

#### 4. Evaluation of Protests

A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The Transit Director may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Transit Director shall notify parties involved in the procurement as identified above to determine the validity of the protest. A notice of the receipt of a protest should be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate. The Transit Director may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record. The Transit Director shall redact from any submission under the protest process information which has been identified as proprietary.

#### 5. Protests Filed with FTA

A protestor may file a protest with FTA only after exhausting all administrative

remedies provided by GBM, on the basis described in FTA Circular 4220.1F, Chapter VII, Sec. 1.b. FTA's review of protests will generally be limited to allegations that (1) GBM does not have or fails to follow its protest procedures; (2) GBM failed to review a complaint or protest; or (3) the issue involves violations of Federal law or regulation. The FTA is not obligated to review any protest. Protests addressing GBM's DBE program may be submitted to the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, in accordance with 49 CFR Part 26 and guidance issued there under.

< This section left blank intentionally >

**2 DESCRIPTION OF SERVICES/COMMODITIES**

**2.1 Approximate Specifications**

	<u><b>APPROXIMATE SPECIFICATIONS</b></u>	<b>(√) OR EXCEPTION</b>
1.	<p><b>CONTRACT SCOPE:</b> The City of Green Bay and Green Bay Metro Transit are requesting bids from qualified vendors for a five (5) year leasing agreement for tires for Green Bay Metro Transit's fleet of passenger buses.</p> <p>This contract includes furnishing bus mileage tires for use by Green Bay Metro in its day-to-day operations for a period of five (5) years, plus run-out.</p> <p>It is Green Bay Metro's intent to exercise the "Run-out" clause (Section 18) at the contract expiration date, under the terms and conditions of this agreement at the last tire mileage rate, should there be a change in supplier at that time. Any remaining tires after that 36 month "Run-Out" period may be purchased based upon usable rubber remaining as outlined in section (16.b.).</p>	
2.	<p><b>CONTRACT TERM:</b> The contract will commence on January 1, 2023 and expire on December 31, 2027.</p>	
3.	<p><b>FEDERAL REQUIREMENTS:</b> Green Bay Metro Transit is a sub-recipient of Federal Transit Administration funds and as such, must comply with all applicable Federal procurement requirements. Vendors, to be eligible to bid on this contract, must be in compliance with all Federally required and other model clauses contained in this RFB.</p> <p>Should a mandated FTA regulation be passed which impacts the ability of the Contractor to maintain the pricing structure outlined in the submitted bid, the Contractor and Green Bay Metro will participate in a new pricing structure that is agreeable to both parties.</p> <p>Should Green Bay Metro exercise its rights to terminate the contract according to the City's terms and conditions or FTA required clauses. The Contractor will be compensated for the current stock in possession of Green Bay Metro under the terms of the standard run out clause (section 18).</p> <p>The City and Green Bay Metro Transit do not have authority to make any changes to the Federal Transit Clauses. All requests to amend or make modifications to the FEDERAL TRANSIT ADMINISTRATION CLAUSES WILL BE DENIED.</p>	
4.	<p><b>AWARD:</b></p> <p>This contract will be awarded within sixty (60) days after the bids are opened.</p> <p>Green Bay Metro and the City of Green Bay reserve the right to award a contract having the lowest five (5) year tire leasing cost based on fixed rate bid or bid that proves to be in the best interest of Green Bay Metro and the City of Green Bay.</p>	
5.	<p><b>GENERAL INFORMATION:</b></p> <p>GREEN BAY METRO currently operates a fleet of 36 transit buses, with plans to reduce fleet size to 30 within 12 months, equipped with leased tires, in regular service.</p> <p>Green Bay Metro's projected 2023 annual bus miles, 796,893 tire miles. The specific models of buses, in service and tire sizes, currently in use are listed in section (6).</p> <p>This procurement is subject to financial assistance between the City of Green Bay/Green Bay Metro and the Federal Transit Administration (FTA) and will be made in accordance with their policies.</p>	

	<b><u>APPROXIMATE SPECIFICATIONS</u></b>	<b>(√) OR EXCEPTION</b>																																																
<p><b>6.</b></p>	<p><b>GENERAL REQUIREMENTS:</b>                      All tires furnished under this contract shall be of current design and manufacture. They will conform to all applicable standards of the Tire and Rim Association of America, and the applicable Federal Motor Vehicle Safety Standards for design, operation and safety. Tires will be of a size and type approved by the coach manufacture and the model of buses operated by Green Bay Metro.                      Tires supplied under this contract shall be suitable for the following vehicles:</p> <table border="1" data-bbox="212 527 1214 827"> <thead> <tr> <th>No. of Buses</th> <th>Year</th> <th>Mfg</th> <th>Model</th> <th>Tire Size</th> <th>Load Range</th> </tr> </thead> <tbody> <tr> <td>6</td> <td>2009</td> <td>New Flyer</td> <td>D35LF</td> <td>305/70R22.5</td> <td>H</td> </tr> <tr> <td>10</td> <td>2011</td> <td>Gillig</td> <td>G27B102N4</td> <td>305/70R22.5</td> <td>H</td> </tr> <tr> <td>4</td> <td>2015</td> <td>Gillig</td> <td>G27D102N4</td> <td>305/85R22.5</td> <td>J</td> </tr> <tr> <td>5</td> <td>2018</td> <td>New Flyer</td> <td>XCELSIOR</td> <td>305/70R22.5</td> <td>H</td> </tr> <tr> <td>3</td> <td>2019</td> <td>Gillig</td> <td>G27B102N4</td> <td>305/85R22.5</td> <td>J</td> </tr> <tr> <td>4</td> <td>2020</td> <td>Gillig</td> <td>G27B102N4</td> <td>305/85R22.5</td> <td>J</td> </tr> <tr> <td>4</td> <td>2022</td> <td>Gillig</td> <td>G27E102N2</td> <td>B275/70R22.5</td> <td>J</td> </tr> </tbody> </table> <p>Should Green Bay Metro decide to replace the current type tires with that of another design or construction type or should buses procured during this contract require tires of another size or type, rate adjustments will be mutually agreed upon with the lessor, Green Bay Metro and the City of Green Bay. Should an alternate tire size be proposed, vendor is responsible for all costs associated with ensuring accurate milage and bus software changes.</p>	No. of Buses	Year	Mfg	Model	Tire Size	Load Range	6	2009	New Flyer	D35LF	305/70R22.5	H	10	2011	Gillig	G27B102N4	305/70R22.5	H	4	2015	Gillig	G27D102N4	305/85R22.5	J	5	2018	New Flyer	XCELSIOR	305/70R22.5	H	3	2019	Gillig	G27B102N4	305/85R22.5	J	4	2020	Gillig	G27B102N4	305/85R22.5	J	4	2022	Gillig	G27E102N2	B275/70R22.5	J	
No. of Buses	Year	Mfg	Model	Tire Size	Load Range																																													
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4	2022	Gillig	G27E102N2	B275/70R22.5	J																																													
<p><b>7.</b></p>	<p><b>CURRENT TIRE LEASE RATES:</b>                      305/85R22.5 - \$0.006710/mi.                      305/70R22.5 - \$0.006514/mi.                      B275/70R22.5 - \$0.006514/mi.</p>																																																	
<p><b>8.</b></p>	<p><b>OUT OF SERVICE MILEAGE:</b> Estimate for out of service mileage is 5,000 miles per year. (Size breakdown is unknown).                      Estimated ten (10) damaged tires per year.</p>																																																	
<p><b>9.</b></p>	<p><b>VENDORS SAMPLE LEASE AGREEMENT:</b> The City will review and consider any agreement forms and standard riders submitted with bidder's proposal as necessary and if mutually agreed upon incorporate into contract.</p>																																																	
<p><b>10.</b></p>	<p><b>GENERAL SPECIFICATIONS:</b></p> <ul style="list-style-type: none"> <li>a. Bidder shall furnish new radial tires in sufficient quantity to provide for the operation of Green Bay Metro buses and for the maintenance of a mutually agreed to supply of unmounted spare tires for such operation as determined by the Transit Maintenance Manager.</li> <li>b. Tires shall be of the type widely used throughout the transit industry and suitable for the conditions of city-type passenger transit service.</li> <li>c. The tires must also be suitable for sustained operation at the maximum speed capability of the coach, or national speed limit, whichever is lower.</li> <li>d. Tires furnished by the bidder shall have adequate load carrying capacity to meet or exceed the bus manufactures' GVW. All tires will be rated for speeds up to 65 miles</li> </ul>																																																	

	<b><u>APPROXIMATE SPECIFICATIONS</u></b>	<b>(√) OR EXCEPTION</b>
	<p>per hour.</p> <p>e. Tires provided shall be new radial transit approved tires and <b>must not</b> be regrooved, recapped or blemished.</p>	
<p>11.</p>	<p><b>PREVIOUS TIRE RUN-OUT:</b> The City of Green Bay intends to execute a tire Run-out option with its present lessor. Under said terms, the City of Green Bay will continue to use tires in its possession on January 1, 2023, and until such time as those tires are rendered unfit for further service but not to exceed the 36-month run-out period.</p>	
<p>12.</p>	<p><b>TIRE TESTING:</b></p> <p>a. The City of Green Bay shall have the privilege of installing tires of other makes or design for test purposes at any time during the term of the contract.</p> <p>b. Testing of tires will be limited to not more than 5% of total tires in service, not to include spare stock.</p>	
<p>13.</p>	<p><b>LEASED VEHICLES:</b> Should the city of Green Bay lease vehicles during the term of this agreement, those leased vehicles may be supplied with tires belonging to the leased vehicle owner, unless otherwise negotiated between the vehicle owner, Green Bay Metro, and the tire lessor. The City of Green Bay and Green Bay Metro Transit agrees to Notify contractor of such an agreement. Should the City of Green Bay/Green Bay Metro terminate or otherwise lose possession of any of the Leased Vehicles equipped with Contractor's lease tires, the City is liable to pay for each tire (including spares) as set forth in the contract.</p>	
<p>14.</p>	<p><b>CONTRACT SERVICES AND MAINTENANCE:</b></p> <p>a. All tires furnished, under this contract, shall be delivered within 30 days of receipt of written tire order by the Bidder to the Green Bay Metro facility at Bidder's expense. The Bidder shall provide sufficient new first run tires to meet the on-going needs of the Green Bay Metro operations, as determined by the Transit Maintenance Manager.</p> <p>b. Tires are to be warranted as merchantable and free of defects in materials and workmanship during the lease period. All tires shall be new. No used, regrooved, or remanufactured tires are acceptable without written approval from the City Metro Transit Director. Tires which fail in service due to defects in material and/or workmanship, or tires which are damaged in shipment will be the responsibility of the supplier.</p> <p>c. The City of Green Bay may be purchasing additional/replacement buses during the life of this agreement.</p> <ol style="list-style-type: none"> <li>1. If tire size has established pricing in contract, the tire supplier shall deliver suitable tires to a North American bus manufacturer. Otherwise, a tire lease rate for a new size will be mutually agreed to prior to delivering tires.</li> <li>2. The Contractor will be compensated at the per mile rate for mileage resulting from the delivery of the buses to Green Bay Metro.</li> <li>3. Any tires lost, stolen, or damaged while in the possession of the bus manufacturer, dealer or seller, or while the bus is being delivered shall be paid for by Green Bay Metro. Tires provided by the Contractor to a North American bus manufacturer on behalf of Green Bay Metro shall be considered leased tires and will be run out under the terms of this contract.</li> </ol>	

	<b><u>APPROXIMATE SPECIFICATIONS</u></b>	<b>(√) OR EXCEPTION</b>
	<ul style="list-style-type: none"> <li>d. If Green Bay Metro sells certain buses from its fleet, the tire supplier will allow the use of scrapped tires for the purpose of the vehicle sale, or sell tires to the Green Bay Metro at a price agreeable, based on remaining tread rubber, or prediction of residual mileage remaining based on average tire mileage.</li> <li>e. All tires will be delivered with individual brands clearly legible on both sides, for the purpose of mileage tracking and proper record keeping by Green Bay Metro. Green Bay Metro shall furnish the Contractor with monthly odometer readings for all buses.</li> <li>f. Green Bay Metro shall supply all wheels, maintain tires, mount and dismount tires on wheels and mount tires on vehicles.</li> <li>g. The Contractor shall furnish all tire supplies such as, but not limited to, valve stems, cores, and caps, all supplies to maintain tires to include, at a minimum patches, plugs, cement, cleaners, mounting lubricants and any necessary special tools that may be required to accomplish repairs.</li> <li>h. Green Bay Metro will make available a safe and secure area for the storage of spare tires and tires unfit for further service so that such tires may not be subject to damage by the elements.</li> <li>i. Contractor shall furnish a tire engineer or person of equal qualifications to inspect tire wear, other tire conditions and to assist Green Bay Metro Personnel with any problems associated with the Contractor's tires. The individual shall be on site at Green Bay Metro a minimum of one day per month.</li> <li>j. Disposal of all supplier owned tires shall be the sole responsibility of the supplier, and at no cost to Green Bay Metro. Disposal tires should be removed from Green Bay Metro's facility within one week of inspection by the tire engineer or person of equal qualifications.</li> <li>k. Title to all leased tires and equipment shall be and remain at all times in Contractor's name until Contractor receives full payment of all sums due under the terms of the Contract.</li> </ul>	
<b>15.</b>	<p><b>DAMAGED TIRES:</b> Damages to tires due to road hazards or damage incurred in the normal operation of buses in revenue service, including, but not limited to running flat, curbing, or misalignment are the responsibility of the tire supplier. No additional charges shall be assessed to Green Bay Metro.</p>	
<b>16.</b>	<p><b>LOST OR STOLEN TIRES:</b></p> <ul style="list-style-type: none"> <li>a. Any tires lost or stolen from buses or the possession of Green Bay Metro or are sold irreparably damaged or destroyed by fire, collision, or accident shall be the responsibility of Green Bay Metro.</li> <li>b. The remaining mileage shall be prorated by determining the percentage of usable rubber remaining multiplied by cost per 32nd of an inch.</li> </ul>	

	<b><u>APPROXIMATE SPECIFICATIONS</u></b>	<b>(√) OR EXCEPTION</b>
	<p>c. If a tire is unavailable for inspection to apply the above formula whether lost, stolen, or otherwise missing, or destroyed by fire, Green Bay Metro shall reimburse the lessor fifty percent (50%) of the value of a similar tire, or valued based on an auditable accounting of the tire's accurate mileage prior to the loss by either party, whichever is less.</p>	
<p>17.</p>	<p><b>BONUS CLAUSE:</b> Green Bay Metro <b>does not</b> require a tire bonus clause and does not intend to consider any bonus clause as a determining factor when evaluating bids.</p>	
<p>18.</p>	<p><b>RUN-OUT CLAUSE:</b> Bidders shall provide a "run-out" clause of thirty-six (36) months for the purpose of wearing out all tires that have been put into service prior to the expiration of this contract. Green Bay Metro Transit reserves the right to keep its existing stock of new tires on the property and use them under the terms of the run-out clause, or, at its discretion, return new, unused tires to the original owner/lessor at the expiration of the current contract should there be a change in supplier or type of tire.</p>	
<p>19.</p>	<p><b>SAFETY CERTIFICATION:</b> Bidders shall furnish written certification that tires furnished under this contract will comply with all applicable Federal, State and Local laws and regulations.</p>	
<p>20.</p>	<p><b>PROPOSED CONTRACTUAL FORMS:</b> If any contractual forms are submitted by the contractor, said forms will be considered so long as they do not violate the intent of the specification requirements, and are subject to negotiation and mutual agreement. In case of a discrepancy between the above, Green Bay Metro and the City of Green Bay bid forms and specifications shall prevail. Contract between the awarded bidder and the City shall include all documents mutually entered into at the time of contract award, specifically including the contract document, the solicitation and the response to the solicitation.</p>	
<p>21.</p>	<p><b>F.O.B. DELIVERED TO GREEN BAY, WI:</b> The bid price must include all freight charges for delivery of all materials to the Green Bay Metro Transit, 901 University Avenue, Green Bay, WI 54302. Tires shall be off loaded onto the floor of the Transit garage. The Title to and ownership of all tires and equipment furnished under this Order shall not pass to the Green Bay Metro Transit upon delivery and/or acceptance but will remain with Vendor unless and until the Green Bay Metro Transit has made complete payment therefore.</p>	
<p>22.</p>	<p><b>TAX EXEMPT:</b> Green Bay Metro Transit is exempt from payment of Federal Excise and Transportation taxes, as well as State of Wisconsin tax on products furnished under this contract. These taxes shall not be included in the bid price.</p> <p>Green Bay Metro Transit will provide a tax exemption certificate upon request.</p>	

2.2 Vendor Requirements

Bidder must be an original manufacturer, or distributor, or dealer authorized by manufacturer with service and repair capabilities for the product.

Bidder must be in the business of Tire Leasing for the past three (3) years.

Bidder must supply references of three (3) firms to which similar products / service have been provided during the past three (3) years to a comparable-sized municipality/ institution or company. If contacted, all of those references must verify that a high level of satisfaction was provided. Use Form E to list references.

### 2.3 Insurance Requirements

Awarded contractor must provide Risk a Certificate of Insurance and maintain the minimum limits specified for the term of the contract. All policies must be issued with a 30-day cancellation notice, by an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of A+, and signed by an authorized agent.

#### INSURANCE/INDEMNIFICATION REQUIREMENTS FOR CITY OF GREEN BAY

It is hereby agreed and understood that the insurance required by the City of Green Bay is primary coverage and that any insurance or self insurance maintained by the City of Green Bay, GHBA its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. This insurance shall be written for not less than any limit of liability specified herein, or required by law, whichever is greater, notwithstanding that the policy may have lower limits applying elsewhere in the policy. All applicable insurance and endorsements shall be in full force and evidenced prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

#### 1. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability
  - (a) \$1,000,000 general aggregate
  - (b) \$1,000,000 products - completed operations aggregate
  - (c) \$1,000,000 personal injury and advertising injury
  - (d) \$1,000,000 each occurrence limit
- B. Claims made form of coverage is not acceptable.
- C. Insurance must include:
  - (a) Premises and Operations Liability
  - (b) Blanket Contractual Liability including coverage for the joint negligence of the City of Green Bay, GBHA, its officers, council members, agents, employees, authorized volunteers and the named insured
  - (c) Personal Injury
  - (d) Explosion, collapse and underground coverage
  - (e) Products/Completed Operations
  - (f) Independent Contractors

#### 2. BUSINESS AUTOMOBILE COVERAGE

- A. Minimum Limits - \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident

- B. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

#### 3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY

- A. Must carry coverage for Statutory Workers Compensation and Employers Liability minimum limit of:
  - \$100,000 Each Accident
  - \$500,000 Disease Policy Limit
  - \$100,000 Disease - Each Employee

#### 4. ADDITIONAL PROVISIONS

- \* **Additional Insured** – On the General Liability Coverage, the City of Green Bay, and its officers, council members, agents, employees, and authorized volunteers shall be "Additional Insureds."
- \* **Endorsement** -The Additional Insured and Workers Compensation Subrogation Waiver policy endorsements must accompany the Certificate of Insurance.
- \* **Waiver of Workers Compensation Subrogation** - The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy that arises from the work performed by the named insured for or on behalf of the City of Green Bay.
- \* **Notice** - City of Green Bay requires written notice of cancellation.
- \* **Acceptability of Insurers** - No insurance required hereunder shall be carried with an insurer not authorized to do business in Wisconsin. The City reserves the right to disapprove any insurance company. A minimum AM Best Rating of A-VII is required.



**3 REQUIRED INFORMATION AND CONTENT FOR SUBMITTAL OF BIDS**

- a. Form A- Signature Affidavit
- b. Form B- Receipt Forms and Submittal Checklist
- c. Form C- Contractor Profile Information
- d. Form D- Cost Proposal
- e. Form E- References
- f. Federal form- Wide Debarment and Suspension
- g. Pages 10-14.

	<p><b>Form A: Signature Affidavit</b></p>
	<p><b>RFB #: 2022-53</b></p>

*This form must be returned with your response.*

In signing Bids/Proposals, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise take any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit Bids/Proposals, that Bids/Proposals have been independently arrived at, without collusion with any other Proposers, competitor or potential competitor; that Bids/Proposals have not been knowingly disclosed prior to the opening of Bids/Proposals to any other Bidders/Proposers or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this Bid/Proposal, hereby agrees with all the terms, conditions, and specifications required by the City in this Request for Bids/Proposals, declares that the attached Bids/Proposals and pricing are in conformity therewith, and attests to the truthfulness of all submissions in response to this solicitation.


Bidders/Proposers shall provide the information requested below. Include the legal name of the Bidders/Proposers and signature of the person(s) legally authorized to bind the Bidders/Proposers to a contract.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME OF PERSON SIGNING



**Form B: Receipt of Forms and Submittal Checklist**

**RFB #: 2022-53**


*This form must be returned with your response.*

Proposers hereby acknowledge the receipt and/or submittal of the following forms:

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit		N/A
Form B: Receipt of Forms and Submittal Checklist		N/A
Form C: Vendor Profile		N/A
Form D: Bid Offer Form		N/A
Form E: References		N/A
Statement of Qualifications (SOQ) if necessary		N/A
Appendix A: Standard Terms & Conditions	N/A	
Appendix B: Contract for Purchase of Services	N/A	
Addendum #		
Addendum #		
Federal Clauses	N/A	
Federal Clause Signed Forms: Government- Wide Debarment and Suspension		N/A
Completed pages 10-14		N/A

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COMPANY NAME

	<p><b>Form C: Vendor Profile</b></p> <p><b>RFB #: 2022-53</b></p>
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*This form must be returned with your response.*

**COMPANY INFORMATION**

COMPANY NAME (Make sure to use your complete, legal company name.)			
FEIN		(If FEIN is not applicable, SSN collected upon award)	
CONTACT NAME (Able to answer questions about proposal.)		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS	CITY	STATE	ZIP


**ORDERS/BILLING CONTACT**

Address where City purchase orders/contracts are to be mailed and person the department contacts concerning orders and billing.

CONTACT NAME		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS	CITY	STATE	ZIP

**CREDIT CARD**

STATE IF COMPANY ACCEPTS PAYMENT BY CREDIT CARD:  <b><i>The City does not pay service charges.</i></b>	YES ____ or NO ____  (check one)
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	<h2 style="margin: 0;">Form D: Bid Offer Form</h2> <p style="margin: 10px 0 0 0;"><b>RFB #: 2022-53</b></p>
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*This form must be returned with your response.*

Prepare the bid offer form as all inclusive, not-to-exceed, fixed fees:

- All Inclusive – Covers all direct and indirect necessary expenses including but not limited to; travel, telephone, copying and other out-of-pocket expenses.
- Not To Exceed – The actual fees shall not exceed the amount specified in fee proposal.
- Fixed Fee – All prices, rates, fees and conditions outlined in the proposal shall remain fixed and valid for the entire length of the contract and any/all renewals.

Any pricing increases or additions must be agreed upon in writing by both parties.

YEAR	TIRE SIZE – LOAD RATING 305/70R22.5 - H		TIRE SIZE – LOAD RATING 315/80R22.5 - J	
	BID PRICE PER TIRE MILE annual estimated mileage 796,893	BID PRICE PER 1/32” REPLACEMENT	BID PRICE PER TIRE MILE annual estimated mileage 796,893	BID PRICE PER 1/32” REPLACEMENT
2023	\$	\$	\$	\$
2024	\$	\$	\$	\$
2025	\$	\$	\$	\$
2026	\$	\$	\$	\$
2027	\$	\$	\$	\$
MFGR’S NAME:				
TIRE TYPE:				
LOAD RATING:				
TREAD DEPTH:	(Usable 1/32”)		(Usable 1/32”)	
NEW TIRE COST:	\$		\$	

**Appendix A  
City of Green Bay  
Standard Terms and Conditions**

(STC-Form: 3/5/2020)

General. Throughout this document, "City of Green Bay," "City" and "Purchasing" shall be synonymous and mean the City of Green Bay. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer," "vendor," and "contractor." The phrases "request for proposal," "request for bids," "request for quotes," "quote," "request," "invitation," and "solicitation" shall also be synonymous. As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous.

Entire Agreement, Order of Precedence. These standard terms and conditions shall apply to any Purchase Order issued as a result of this Request for Bid/Proposal, except where expressly stated otherwise in the RFB or in a written instrument covering this purchase signed by an authorized representative of the City and the Contractor, in a form approved by the City Attorney (a "Separate Contract"). If such a separate contract is executed it shall along with these Standard Terms and Conditions, the City's request for proposals/bids, the version of the vendor's response/bid that was accepted by the City, and the City's Purchase Order (if any) shall constitute the entire agreement ("Contract") and no other terms and conditions, whether oral or written, shall be effective or binding unless expressly agreed to in writing by the City.

If a Separate Contract is not executed, these Standard Terms and Conditions, the City's request for proposals/bids, the version of the vendor's response/bid that was accepted by the City, and the City's Purchase Order (if any) shall constitute a contract and will be the entire agreement.

Bid Selection. This invitation for bids does not commit the City to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. The City may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.

The City reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities which at the City's discretion are determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offeror responding to this request. The City expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

Addenda. Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.

Price Proposal. All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior to subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.

Price Inclusion. The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.

Pricing and Discount.

Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea., etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.

In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.

F.O.B. Destination Freight Prepaid. Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.

Award.

The City will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.

The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of the City.

Responsiveness and Responsibility. Award will be made to the responsible and responsive bidder whose bid is most advantageous to the City with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.

Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed Contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.

The City reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to the City, or has failed to perform faithfully any previous contract with the City. If requested, the bidder must present within five (5) working days evidence satisfactory to the City of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.

Cancellation/Termination.

The City reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.

The City may terminate this Contract for any reason, including convenience upon prior written notification to Bidder. Termination for convenience by City will entitle Bidder to payment for only those goods or services delivered, received and accepted and not subsequently rejected by the City.

In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue un-remedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Contract and all rights of the Bidder under the Contract.

Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for Contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel or terminate the Contract without notice.

Specifications.

All bidders must be in compliance with all specifications and any drawings provided with this solicitation.

Exceptions taken to these specifications must be noted on your bid.

When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be

identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. The City shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.

Regulatory Compliance.

Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.

If it is determined by the City that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.

Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for one (1) year from the date of receipt. If bidder or manufacturer offers warranty that exceeds one year, such warranty shall prevail.

Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies, photos and similar materials used to produce a printing job shall become the property of the City. Any furnished materials shall remain the property of the City. Failure to meet this requirement will disqualify your bid.

Nonexclusive Contract. Unless otherwise stated, the City reserves the right to purchase work or materials outside of this Contract.

Item Return Policy. Bidder will be required to accept return of products ordered in error for up to thirty (30) calendar days from date of receipt, with the City paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

Payment Terms and Invoicing. The City will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.

Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the purchase order. Send invoices to Bill To address on the purchase order. Do not send invoices to ship to address.

Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.

Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.

F.O.B. Destination Freight Prepaid. Unless otherwise agreed in writing, the vendor shall bear all handling, transportation and insurance charges. Title of goods shall pass upon acceptance of goods at the City's dock.

Tax Exemption. The City of Green Bay is exempt from the payment of Federal Excise Tax and State Sales Tax. **The City Tax Exempt number is ES 47920.** Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to the City, will be paid by the City.

Nondiscrimination. During the term of this Contract, the contractor, and the employees, representatives, agents and or volunteers thereof, shall not discriminate against any person based on race, color, creed,



religion, sex, national origin, age, ancestry, disability, sexual orientation, gender identity, gender non-conformity, gender expression, transgender status, pregnancy, or marital or parental status.

Prevailing Wage. Where applicable under federal law, the contractor warrants that prevailing wages will be paid to all trades and occupations.

Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of contractor or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers.

Contractor shall reimburse the City of Green Bay, its elected and appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

In the event that contractor employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

Choice of Law and Compliance. This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be Brown County Circuit Court or the United States District Court for the Eastern District of Wisconsin.

The contractor 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 Contract and which in any manner affect the work or its conduct. The City reserves the right to cancel this Contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Contract with any state or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

Contractor shall be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this contract. The contractor shall also be required, when appropriate to obtain the necessary building permits prior to performing work on City facilities.

Independent Capacity/Status of Contractor/Tax Filing. The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the City. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the City.

**Contractor shall provide a valid IRS W9 form to the Purchasing Department, prior to payment.** The contractor is informed that as an independent contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and

obligation of the contractor. The contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this Contract.

Open Records. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, responses and contracts are subject to and conditioned on the provisions of the law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the Contract, and that the contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Contract.

Confidentiality. Each party (on its behalf and on behalf of its subcontractors, employees or representatives, or agents of any kind) agrees to hold and treat all confidential information of the other party, including, but not limited to, trade secrets, sales figures, employee and customer information and any other information that the receiving party reasonably should know is confidential ("**Confidential Information**") as confidential and protect the Confidential Information with the same degree of care as each party uses to protect its own Confidential Information of like nature. Confidential Information does not include any information that (i) falls under Wisconsin Public Records Law (see Open Records) (ii) at the time of the disclosure or thereafter is lawfully obtained from publically available sources generally known by the public (other than as a result of a disclosure by the receiving party or its representatives); (iii) is available to the receiving party on a non-confidential basis from a source that is not and was not bound by a confidentiality agreement with respect to the Confidential Information; or (iv) has been independently acquired or developed by the receiving party without violating its obligations under this Contract or under any federal or state law.

Insurance Requirements.

**Refer to RFB Insurance Requirements**

Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this Contract shall be repaired to the City's satisfaction at the contractor's expense.

Warranty of Materials and Workmanship.

The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The contractor further warrants that all workmanship shall be first class and in accordance with the Contract and shall be performed by persons qualified in their respective trades.

Work not conforming to these warranties shall be considered defective.

This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.

Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the contractor of its obligations to furnish materials and workmanship in accordance with this Contract and its specifications.

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 any time during the duration of this 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 and workmanship strictly in accordance with the instructions, Contract requirements and specifications.

Ownership of Contract Product. All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the contractor prepares pursuant to the terms and conditions of this Contract are the sole property of the City. The contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this Contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from contractor to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this Contract, the contractor hereby assigns to City all of the contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent contractors who prepare portions of the Documents shall be required by the contractor to execute an assignment of ownership in favor of the City before commencing work.

Force Majeure. Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

Software & Technology Purchases.

Software Licenses. All software license agreements shall include the City's mandatory legal terms and conditions as determined by the City Attorney. Please be advised that no City employee has the authority to bind the City by clicking on an End User License Agreement (EULA) or any other click-through terms and conditions without being specifically authorized by the City's Attorney or I.T. Director through procedures approved by the City Attorney and Risk Manager. All legal documents associated with the purchase or download of software must be reviewed by the City Attorney and may only be signed by an individual authorized to do so.

No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as waiver of subsequent breach of the same covenant, term or condition.

Assignability/Subcontracting. Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by contractor and employees of contractor.

Amendment. This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.

Severability. It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

Authority. Contractor represents that it has the authority to enter into this Contract. If the contractor is not an individual, the person signing on behalf of the contractor represents and warrants that he or she has been duly authorized to bind the contractor and sign this Contract on the contractor's behalf.

Counterparts, Electronic Delivery. This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

**>THIS SPACE INTENTIONALLY LEFT BLANK<**

**City of Green Bay  
CONTRACT FOR PURCHASE OF SERVICES**

**1. PARTIES.**

This is a Contract between the City of Green Bay, Wisconsin, hereafter referred to as the "City" and \_\_\_\_\_ hereafter referred to as "Contractor."

The Contractor is a:  Corporation     Limited Liability Company     General Partnership     LLP     Sole Proprietor     Unincorporated Association     Other: \_\_\_\_\_.

**2. PURPOSE.**

The purpose of this Contract is as set forth in Section 3.

**3. SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

Contractor will perform the following services and be paid according to the following schedule(s) or attachment(s):

List all attachments here by name, and attach and label them accordingly.

**Order of Precedence:** In the event of a conflict between the terms of this Contract for Purchase of Services and the terms of any document attached or incorporated herein, the terms of this Contract for Purchase of Services along with City of Green Bay Standard Terms and Conditions, the City's requests for proposals/bids, the version of the Contractor's proposal/bid that was accepted by the City, and the City's Purchase Order (if any) shall control and supersede any such conflicting term.

**4. TERM AND EFFECTIVE DATE.**

This Contract shall become effective upon execution by the Mayor and the City Clerk (or the Purchasing Agent if so authorized) on behalf of the City of Green Bay, unless another effective date is specified in the Attachment(s) incorporated in Section 3. The effective date of this Contract shall be insert date The term of this Contract shall be insert dates or reference attachments as needed.

**5. ENTIRE AGREEMENT.**

This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 3 (hereafter, "Agreement" or "Contract") is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties. If any document referenced in Section 3 includes a statement that expressly or implicitly disclaims the applicability of this Contract for Purchase of Services, or a statement that such other document is the "entire agreement," such statement shall be deemed rejected and shall not apply to this Contract.

**6. ASSIGNABILITY/SUBCONTRACTING.**

Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor.

**7. DESIGNATED REPRESENTATIVE.**

- A. Contractor designates \_\_\_\_\_ as Contract Agent with primary responsibility for the performance of this Contract. In case this Contract Agent is replaced by another for any reason, the Contractor will designate another Contract Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 14, Notices.
- B. In the event of the death, disability, removal or resignation of the person designated above as the Contract agent, the City may accept another person as the Contract agent or may terminate this Agreement under Section 23, at its option.

**8. PROSECUTION AND PROGRESS.**

- A. Services under this Agreement shall commence upon written order from the City to the Contractor, which order will constitute authorization to proceed; unless another date for commencement is specified elsewhere in this Contract including documents incorporated in Section 3.
- B. The Contractor shall complete the services under this Agreement within the time for completion specified in Section 3 and Section 4, the Scope of Services, including any amendments. The Contractor's services are completed when the City notifies the Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Contractor shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.
- C. Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work.
- D. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the City with each invoice under Section 22 of this Agreement, and at such other times as the City may specify, unless another procedure is specified in Section 3.
- E. The Contractor shall notify the City in writing when the Contractor has determined that the services under this Agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

**9. AMENDMENT.**

This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.

**10. EXTRA SERVICES.**

The City may request the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 22(b). Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total Contract price, as set forth in Section 21, unless the Contract is amended as provided in Section 9 above.

**11. NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **NONDISCRIMINATION.**

During the term of this Contract, the parties, and the employees, representatives, agents and or volunteers thereof, shall not discriminate against any person based on race, color, creed, religion, sex, national origin, age, ancestry, disability, sexual orientation, gender identity, gender non-conformity, gender expression, transgender status, pregnancy, or marital or parental status.

13. **SEVERABILITY.**

It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

14. **NOTICES.**

All notices to be given under the terms of this Contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

Procurement Manager, Purchasing Department

100 North Jefferson St. Room 101

Green Bay, WI 54301

FOR THE CONTRACTOR:

15. **STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING.**

The parties hereto agree that the Contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the City. The Contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the Contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the City.

**Contractor shall provide a valid IRS W9 form to the Purchasing Department, prior to payment.**

The Contractor is informed that as an independent Contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this Contract.

16. **GOODWILL.**

Any and all goodwill arising out of this Contract inures solely to the benefit of the City; Contractor waives all claims to benefit of such goodwill.

17. **THIRD PARTY RIGHTS.**

This Contract is intended to be solely between the parties hereto. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

18. **AUDIT AND RETAINING OF DOCUMENTS.**

The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Contract. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this Contract, in order to be available for audit by the City or its designee.

19. **CHOICE OF LAW AND COMPLIANCE.**

This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be Brown County Circuit Court or the United States District Court for the Eastern District of Wisconsin.

The Contractor shall give all notices and 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 Contract and which in any manner affect the work or its conduct. The City reserves the right to cancel this Contract if the Contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Contract with any state or federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

Contractor shall be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this Contract. The Contractor shall also be required, when appropriate to obtain the necessary building permits prior to performing work on City facilities.

20. **CONFLICT OF INTEREST.**

- A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.
- B. The Contractor shall not employ or Contract with any person currently employed by the City for any services included under the provisions of this Agreement.

21. **COMPENSATION.**

It is expressly understood and agreed that in no event will the total compensation under this Contract exceed \$\_\_\_\_\_.

22. **BASIS FOR PAYMENT.**

A. **GENERAL.**

- (1) The City will pay the Contractor for the completed and accepted services rendered under this Contract on the basis and at the Contract price set forth in Section 21 of this Contract. The City will pay the Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this Contract. Such payment shall be full compensation for services



rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.

- (2) The Contractor shall submit itemized invoices, on the form or format approved by the City and as may be further specified in Section 3 of this Contract. The City will pay the Contractor in accordance with the schedule, if any, set forth in Section 3. The final invoice, if applicable, shall be submitted to the City within three months of completion of services under this Agreement.
  - (3) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
  - (4) Final payment of any balance due to the Contractor will be made upon acceptance by the City of the services under the Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this Agreement.
  - (5) The City has the equitable right to set off against any sum due and payable to the Contractor under this Agreement, any amount the City determines the Contractor owes the City, whether arising under this Agreement or under any other Agreement or otherwise.
  - (6) Compensation in excess of the total Contract price will not be allowed unless authorized by an amendment under Section 9, AMENDMENT.
  - (7) The City will not compensate for unsatisfactory performance by the Contractor.
- B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.**
- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 14, NOTICES.
  - (2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this Contract. Unless the Contractor believes the extra services entitle it to extra compensation or additional time, the Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 3 of this Agreement, including any amendments under Section 9 of this Agreement.
  - (3) If in the Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Contractor shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 9 of this Agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
  - (4) The City shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

**23. CANCELLATION/TERMINATION.**

- a. The City reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.
- b. The City may terminate this Contract for any reason, including convenience upon prior written notification to Contractor. Termination for convenience by City will entitle Contractor to payment for only those goods or services delivered, received and accepted and not subsequently rejected by the City.
- c. In the event the Contractor shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue un-remedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Contract and all rights of the Bidder under the Contract.
- d. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for Contract termination. If the Contractor fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel or terminate the Contract without notice.

**24. INDEMNIFICATION.**

Contractor hereby agrees to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, from and against any and all suits, actions, legal or administrative proceedings, claims,

demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable unless liability results from the sole negligence of the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers. Contractor shall reimburse the City of Green Bay, its elected and appointed officials, officers, employees, agent or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. In the event that Contractor employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City of Green Bay, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement. This indemnity provision shall survive the termination or expiration of this Agreement.

25. **LIMITATION OF LIABILITY**

City will not be liable for any loss of use, interruption of business, lost profits, or any indirect, special, incidental, or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), strict product liability, or otherwise, even if it has been advised of the possibility of such damages. In no event shall City's aggregate liability under this agreement exceed the fees paid to Contractor hereunder

26. **INSURANCE.**

Per RFB requirements

The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

**Proof of Insurance, Approval.** The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is still in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

City of Green Bay  
ATTN: Risk Department  
100 North Jefferson St.  
Green Bay, WI 54303

The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

27. **CONFIDENTIAL INFORMATION**

Each party (on its behalf and on behalf of its subcontractors, employees or representatives, or agents of any kind) agrees to hold and treat all confidential information of the other party, including, but not limited to, trade secrets, sales figures, employee and customer information and any other information that the receiving party reasonably should know is confidential ("**Confidential Information**") as confidential and protect the Confidential Information with the same degree of care as each party uses to protect its own Confidential Information of like nature.

Confidential Information does not include any information that (i) falls under Wisconsin Public Records Law (see section 28) at the time of the disclosure or thereafter is lawfully obtained from publically available sources generally known by the public (other than as a result of a disclosure by the receiving party or its representatives); (iii) is available to the receiving party on a non-confidential basis from a source that is not and was not bound by a confidentiality agreement with respect to the Confidential Information; or (iv) has been independently acquired or developed by the receiving party without violating its obligations under this Agreement or under any federal or state law.

28. **OPEN RECORDS**

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, responses and contracts are subject to and conditioned on the provisions of the law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the Contract, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under the Contract.

29. **OWNERSHIP OF CONTRACT PRODUCT.**

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the Contractor prepares pursuant to the terms and conditions of this Contract are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this Contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The Contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from Contractor to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this Contract, the Contractor hereby assigns to City all of the Contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the Contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent Contractors who prepare portions of the Documents shall be required by the Contractor to execute an assignment of ownership in favor of the City before commencing work.

30. **FORCE MAJEURE.**

Neither party shall be in default by reason of any failure in performance of this contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and

unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

31. **AUTHORITY.**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that he or she has been duly authorized to bind the Contractor and sign this Contract on the Contractor's behalf.

32. **COUNTERPARTS, ELECTRONIC DELIVERY.**

This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have set their hands at Green Bay, Wisconsin.

**CONTRACTOR:**

\_\_\_\_\_  
(Type or Print Name of Contracting Entity)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title of Person Signing)

Date: \_\_\_\_\_

**CITY OF GREEN BAY, WISCONSIN  
a municipal corporation:**

By: \_\_\_\_\_  
Eric Genrich, Mayor

Date: \_\_\_\_\_

**Approved:**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title of Person Signing)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title of Person Signing)

Date: \_\_\_\_\_

**SERVICE CONTRACTS – Level 1**  
**(\$1 - \$99,999)**

**Required Federal Certifications and Clauses**

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## **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 Contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

## **4. Compliance with Federal Regulations**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **5. No Obligation by the Federal Government**

(a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or

liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

## **6. Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

## **7. Access to Records**

The following access to records requirements apply to this Contract:

(a) Where the Purchaser is not a State but a local government and is the FTA Recipient or a Subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of



the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Where the Purchaser is a State and is the FTA Recipient or a Subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(c) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(d) Where any Purchaser which is the FTA Recipient or a Subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(f) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

(g). FTA does not require the inclusion of these requirements in subcontracts.

## **8. Federal Changes**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **9. Drug and Alcohol Testing**

Pursuant to 49 U.S.C. §5331, 49 CFR Parts 653 and 654, the Contractor agrees to participate in a FTA-compliant drug and alcohol testing program. The Contractor shall allow the recipients and/or FT's periodical oversight and inspection of the program to ensure compliance with the rules and requirements of the drug and alcohol testing program. The Contractor shall maintain up-to-date information and records on provided forms documenting the drug and alcohol testing program. The information on these records will be reported to the Federal Transit Administration by the recipient, as required.

## **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 Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **1 1. 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 Metro Transit Commission's goal for participation of Disadvantaged Business Enterprises (DBE) is 1.37%.

(b) The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) If a separate contract goal has been established, Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

(d) If no separate contract goal has been established, the successful Bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(e) The Contractor must promptly notify the Recipient whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.

### **PROMPT PAYMENT AND RETURN OF RETAINAGE**

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

## **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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the Recipient to be in violation of FTA terms and conditions.

## **13. Energy Conservation**

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

## **14. Recycled Products**

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

## **15. Access Requirements for Persons with Disabilities**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

## **1 6. Termination**

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

(b) Termination for Default [Breach or Cause]. If Contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and Contractor fails to perform in the manner called for in the contract, or if Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to Contractor setting forth the manner in which Contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Recipient that Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Contractor, the Recipient, after setting up a new delivery or performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure. The Recipient in its sole discretion may, in the case of a termination for breach or default, allow Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the Recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the Recipient setting forth the nature of said breach or default, the Recipient shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the Recipient from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that the Recipient elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

(e) Termination for Convenience (Professional or Transit Service Contracts). The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the Recipient's interest. If the contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of

(f) Termination for Default (Supplies and Service). If Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall deliver to Contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the Recipient's convenience.

(g) Termination for Default (Transportation Services). If Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while Contractor has possession of the Recipient goods, Contractor shall, as directed by the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. Contractor and the Recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the Recipient's convenience.

(h) Termination for Default (Construction). If Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the Recipient resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall Contractor be charged with damages under this clause if:

(1) Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

(2) Contractor, within 10 days from the beginning of any delay, notifies the Recipient in writing of the causes of delay. If in the Recipient's judgment, delay is excusable, the time for completing the work shall be extended. The Recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the Recipient's convenience.

(i) Termination for Convenience or Default (Architect & Engineering). The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of Contractor's failure to fulfill contract obligations. The Recipient shall terminate by delivering to Contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the Recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for Contractor's failure to fulfill contract obligations, the Recipient may complete the work by contract or otherwise and Contractor shall be liable for any additional cost incurred by the Recipient. If, after termination for failure to fulfill contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the Recipient's convenience.

(j) Termination for Convenience or Default (Cost-Type Contracts). The Recipient may terminate this contract, or any portion of it, by serving a notice of termination on Contractor. The notice shall state whether termination is for convenience of the Recipient or for default of Contractor. If termination is for default, the notice shall state the manner in which Contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the Recipient, or property supplied to Contractor by the Recipient. If termination is for default, the Recipient may fix the fee, if the contract provides for a fee, to be paid to Contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the Recipient and the parties shall negotiate the termination settlement to be paid to Contractor. If termination is for the Recipient's convenience, Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the Recipient determines that Contractor has an excusable reason for not performing, such as

strike, fire, flood, events which are not the fault of and are beyond the control of Contractor, the Recipient, after setting up a new work schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

## **17. Civil Rights Requirements**

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, Contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor shall comply with any implementing requirements FTA may issue.

(ii.) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, Contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue.

(iii.) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, Contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining



to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue.

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

## **18. Transit Employee Protective Agreements**

If the contract involves transit operations financed in whole or in part with FTA assistance, the Contractor shall comply with the terms and conditions of the Special Warranty for the Urbanized Area Program that is most current, and any alternative comparable arrangement specified by U.S. DOL for application to the project, in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any revision thereto. [New amendments to U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, were published at 73 Fed. Reg. 47046 et. Seq., August 13, 2008.] Contractor shall also include any applicable requirements in each subcontract involving transit operations financed in whole or in part with FTA assistance.

## **19. Contract Work Hours and Safety Standards Act**

(a) Overtime requirements - No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (a) of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (a) of this section.

(c) Withholding for unpaid wages and liquidated damages - the municipal corporation shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any

such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (b) of this section.

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

## **20. Charter Bus Requirements**

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

## **21. 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.

## **22. Real Property**

Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 29 CFR 18.31, 49 CFR 24 Subpart B, FTA Circular 5010.1D, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **23. 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.

### **24. Cargo Preference - Use of United States Flag Vessels**

The Contractor agrees to:

(a) Use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) Furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a Subcontractor's bill-of-lading.); and

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

### **25. Fly America Requirements**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that Recipients and Subrecipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **26. Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FT Notice, "FT 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.

## **27. Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible Contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for Contractor pursuant to this contract. If Contractor is on the Comptroller General's list of ineligible Contractors for federally financed or assisted construction, the municipal corporation shall cancel, terminate or suspend this contract.

## **28. Government-Wide Debarment and Suspension**

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

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions." Grantees, Contractors, and Subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified.

They do this by (1) Checking the Excluded Parties List System, (2) Collecting a certification from that person, or (3) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required; 49 CFR 29.300.

Grantees, Contractors, and Subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

(b) Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(c) Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

## **Government-Wide Debarment and Suspension CERTIFICATION**

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Recipient. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Recipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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Contractor's Authorized Official

DATE Signature of

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Name and Title of Contractor's Authorized Official