

CITY OF БЕЛОIT
REQUEST FOR PROPOSALS
TRANSIT TECHNOLOGY UPGRADES 2022

OFFICIAL NOTICE
REQUEST FOR PROPOSALS

The City of Beloit is soliciting proposals from transportation technology firms for **Transit Technology Upgrades 2022** under the terms and conditions of this Request for Proposal (RFP) packet.

All proposals must be submitted on the City of Beloit proposal forms that are included in this RFP packet. Proposals are to be received by the Director of Community Development prior to the deadline time and date for receipt of proposals indicated in this notice, or prior to any extension thereof issued to potential vendors. Proposals are to be submitted to Scott Schneider, Project Engineer, schneiders@beloitwi.gov. The deadline for submittal is 10:00 A.M. on October 6, 2022. Any proposals received after 10:00 A.M. on October 6, 2022, will not be considered. All proposal prices shall be firm and are subject to acceptance of proposals within thirty (30) days from date of proposal submittal deadline.

All inquiries and questions regarding this RFP should be submitted in writing to:

Scott Schneider
Project Engineer
2400 Springbrook Ct
Beloit, WI 53511
608-361-6447
schneiders@beloitwi.gov

All questions shall be submitted in writing by 4:00 PM on September 29, 2022. The City will issue a written response to all questions by 4:00 PM on October 4, 2022. The questions and answers will be posted on the website at <https://www.beloittransit.com/>

The City reserves the right to reject any and all proposals, or to accept the proposals deemed most advantageous to the City. No proposals, alterations, or modifications to proposals shall be allowed after the proposal submittal deadline. The City of Beloit shall bear no responsibility for costs incurred by respondents in preparation of proposals.

**REQUEST FOR PROPOSALS
FOR
TRANSIT TECHNOLOGY UPGRADES 2022
CITY OF БЕЛОIT
COUNTY OF ROCK, STATE OF WISCONSIN**

SCOPE OF PROJECT

The City of Beloit, Wisconsin is seeking proposals from transportation technology providers to provide automated voice announcements (AVA), automatic vehicle location (AVL), and other enhancements as decided for the City of Beloit transit fleet consisting of 10 busses.

SITE LOCATION - Owner

Beloit Transit Administration
1255 Willowbrook Road
Beloit, WI 53511

SITE LOCATION – Transfer center

Beloit Transfer Facility
225 Shirland Avenue
Beloit, WI 53511

EXISTING CONDITIONS AND EXPECTATIONS

Beloit Transit is a small-urban transit system located in Beloit, WI, operating in some form or another for the last 112 years. Fixed-route service comprises 6 routes that operate primarily within the City of Beloit. These routes operate weekdays from 5:30 a.m. to 6:00 p.m. and Saturdays by appointment only. All service operates on a pulse schedule, converging at the downtown transfer center. Also, on weekdays, the City operates the Beloit-Janesville Express jointly with the City of Beloit, providing hourly service from 6:00 a.m. to 6:15 p.m. on weekdays only. Paratransit service is provided via contract and not part of this project. Beloit Transit operates ten (10) heavy-duty, transit buses of an age range from 8 year old to new. Beloit Transit will acquire one Gillig replacement bus each year for the foreseeable future. All existing buses have an on board Sierra router AirLink MP70. All busses also have LECIP fareboxes, Model LF-7000. The busses to be acquired in the future will have this same equipment provided at no expense to the bidder of this project. Currently, these routers only transmit data via wifi when located inside of the main transit building. The City of Beloit will provide a data transmission system with a cellular phone company in order to utilize the Sierra routers when deployed at no expense to the bidder of this project.

PROJECT

Beloit Transit is seeking an Automatic Vehicle Location and Computer Aided Dispatch (AVL/CAD) Information System (the system) utilizing Global Positioning System (GPS) technology and vehicle location mapping software to track vehicles en

route in real-time and provide a visual mapping display. The primary purpose of the system is to monitor and improve the quality of Beloit Transit's fixed-route service and emergency response capabilities to the public. The system must provide route and vehicle information in real-time via web interface to passengers, the dispatcher, and managerial personnel. The system must be equipped with reporting capabilities to accurately data stream operation service information (e.g., route timing, passenger wait time, trip counts, operator performance, vehicle speed and movement). This data is essential for the completion of performance metrics, the analysis of daily operation, and long term project planning and analysis. The system must include the functionality for hardware/software components to be installed on at least ten (10) buses.

A. CORE REQUIREMENTS

1. Utilize GPS in conjunction with vehicle location and mapping software to accurately track bus locations en route in real-time and provide a visual mapping display. The GPS readings of the bus location must occur in real-time with vehicle location information posted on a Graphic User Interface (GUI) map display available on a public website and viewable through various devices (Smartphone, Kiosk, Bus Stop, PC, etc.). The system should be equipped with a notification service, whereupon users can subscribe and be able to select one route or multiple routes and be notified when the next bus is coming.

Real time tracking means that a vehicle's location is reported via an automatic vehicle location (AVL) device installed on each vehicle and transmitted to an internet server with a delay of not more than 30 seconds. This is done through the use of GPS for pinpointing the location and a wireless communication system for transmitting the information to an internet server.

2. Provide a GUI real-time automatic vehicle location data display. Vehicle icon on the map display shall clearly indicate Vehicle ID, Route Direction, and Location. Further layered information on the vehicle should include Route, Date/Time and Speed. The Vendor should provide detailed explanation of existing maps and software mapping components and how they work with other components of the system. Screen shots of display windows utilized by dispatch and/or the passenger should be provided describing key features, attributes, and the information available within the mapping component. The Vendor should describe in detail all traveler supported components that it provides, to include the features within each component as well as software and hardware required for implementation.

3. Include one integrated map with detailed maps of the service area region. The map views should include standard map display features (zoom in/out, panning, etc.). The maps should have an automatic refresh feature with the option of refreshing the map view 'upon-demand' by the dispatcher. The geo-spatial object management portion of the system should provide capabilities to trace routes, place

stops and landmarks on the map for dispatchers and the general public to see. The mapping component shall also include a navigational request.

4. Include a route management module which can be utilized by the dispatcher to effectively manage the route and determine the location of any vehicle in service. The system must provide the dispatcher the necessary real-time information to manage vehicle fleets whether they are on fixed shuttle routes, in the yard, or on special on- demand detours on route. The system should display the time each bus arrives at each stop per route and the “wait times” (e.g., how long the bus is at the stop). The software should include a GUI real-time dispatch display that clearly indicate status (i.e., color-coding), with emphasis on bus arrival times at designated stops based on the average speed of the bus and traffic impacts. The vehicle icon on the dispatch display should clearly indicate Vehicle ID, Route, Directional Status, Arrival Time, Departure Time, and Date & Time of last GPS update.

5. Include a public interface that provides customers with bus location information. At a minimum, the bus locations are to be displayed on a map available on the web. Desired functionality includes details available for each bus (showing route, time at last stop or last time point, minutes late/early, etc.). The Vendor should also describe other information distribution interfaces that are available with their product such as stop-based electronic displays, text/SMS messaging, PDA applications, etc. Beloit Transit may not choose to implement these additional features if their ongoing cost is too high, but the availability of multiple interfaces will be an important benefit.

6. Access to all real-time and archived vehicle location data must also be available to third party applications for external development purposes. The VENDOR should indicate which method would be used (XML, RSS, JSON, SQL, etc.)

7. The system must have the capability of providing Automated Voice Annunciation with on-board visual destination display. Activation of the AVA shall be based on GPS and be activated at a predetermined distance from the announcement feature. The database of stored announcement points shall be of sufficient size and robustness so that a bus can switch routes mid-day and be able to change the AVA with minimal effort.

8. The GPS system shall integrate with the existing LECIP fare boxes, model LF-7000, to provide ridership data based on bus/stop location.

9. Provide an electronic presentation of the products and services provided in this proposal. This file shall be readily accessed with standard software, such as a PDF viewer or Google Slides. This file will be used to present the highlights of this project to City Council and the public at large. This file will be posted on the City’s website for public consumption.

10. The Beloit fleet consists of Gillig busses. At the time of the RFP due date, any vendor submitting a proposal for this project must be a Gillig approved supplier of ITS services. Vendors that are not approved by Gillig will not be considered for the award.

B. POTENTIAL ADD ONS

1. Provide a fare box and integration for each bus that is able to process credit and debit cards while deployed.
2. Provide additional line item pricing to add a passenger counting system to each bus. The system shall be able to differentiate between embarking and disembarking. Current passenger count shall be accessible to the management staff either continuously or upon request.
3. Provide on board security cameras on all busses. Two cameras per bus shall be provided, one to watch the occupants, and one to watch the driver and the area immediately in front of the bus. The on board storage capacity shall be sufficient to store 24 hours worth of video. The system shall automatically download the video once the bus returns to the administration building via wifi. The management team shall also have the option to stream video from any bus that they choose.
4. Provide pricing for a maintenance and service package for the products and services provided under this proposal. With the first year covered under the base bid, years 2 - 5 should be offered on a per year basis on this bid.
5. Provide additional end user app features. The customer is to have easy access to last mile providers, such as Lyft, Uber, Bird Scooters, and equivalents. The listed providers is the minimum acceptable other last mile providers to be featured in the app. If the app provided by the vendor does not work directly with those companies, then the interface shall conveniently direct the customer to the proper vendor application.
6. Provide pricing to upgrade new factory supplied Gillig busses with all of the features and requirements detailed in this RFP. The next bus to be acquired by Beloit Transit will be a hybrid bus in 2024. If the entity submitting the RFP is not able to provide a certain portion of the scope of the project, then the response to this alternate should clearly state what is and is not encompassed by the price given.
Components may be salvaged from an existing bus that is to be replaced with the new bus, as long as the components are still supported by the manufacturer. The pricing shall indicate if the pricing given provides new equipment or labor costs of reusing existing equipment.

C. PROPOSAL RESPONSE FORMAT

Proposals should be as thorough and detailed as necessary to allow Beloit Transit to properly evaluate the Vendor's capabilities to provide the required services. Elaborate proposals (e.g. expensive artwork) beyond what is sufficient to present a complete and effective proposal, are not necessary or desired. Proposals should be in PDF format.

Provide a brief cover letter identifying the Vendor by name and address. Describe your understanding of the City and the work to be performed.

Provide a separate overview and history of your firm. Include information about your company so the City can evaluate the Proposer's stability and ability to support the commitments set forth in this RFP. The City may require additional documentation to support and/or clarify requested information. Include all of the information requested below, in the same order as listed:

- a. List the company's complete legal name, full address, headquarters location.
- b. List the contact person for this RFP, name, title, e-mail, and phone.
- c. State how long the company has been in business.
- d. Give a brief overview of your company to include affiliated divisions and locations, main or core areas of expertise and services offered.

Provide a comprehensive statement indicating your understanding and compliance with the entire Scope of Work. Vendor must provide a list of items in the Scope of Work to which they take exception. The list must reference the page and item number for each exception and shall be in the same numerical sequence as the RFP. Where an exception is noted, Vendor shall provide an explanation and may provide an alternative approach to satisfying the requirement.

Provide a written proposal describing in detail the Vendor's recommended solution and how it will fulfill the technical and operational requirements specified herein. Include a statement regarding the Vendor's ability to meet the time constraints proposed by the City.

D. SCOPE OF WORK

1. Highlights

The system must:

- a. Capture and transmit vehicle location information on a real-time basis.
- b. Update at a rate as close to real-time as possible, no more than 2 seconds per update.
- c. Include iPhone, Android & mobile website apps free of charge for end user.

- d. Provide an online map-based interface for administrators to change/update route paths and bus stop locations in real-time, allowing these updates/changes to be effective immediately.
- e. Offer one-click General Time and Frequency Specification (GTFS) for export to Google.
- f. Be cloud hosted.
- g. Provide optional capability and integration of real-time transit data Application Programming Interface (API), including developer documentation that allows for querying data from AVL services, with a JavaScript Object Notation (JSON) document as output. The API should provide real-time vehicle location data and estimated arrival times for vehicles as they approach stops.
- h. Provide Automated Voice Annunciation (AVA) and internal digital signage for American with Disabilities Act (ADA) compliance
- i. Provide interior LED destination signs for the hearing impaired.
- j. Integrate with exterior destination signs (existing are Hanover and Luminator).
- k. Offer playback feature.
- l. Collect on-time performance
- m. Record miles and hours by revenue and deadhead.
- n. Integrate all new equipment with the Sierra routers existing on the busses, or have means to connect to the internet independently.

The vendor must:

- a. Provide a work plan for installation and start up within six months from award.
- b. Provide all non-existing components and ancillary systems and cabling for a turn key installation.
- c. Provide in-person training for the startup and rollout.
- d. Provide detailed explanation on the training process as future updates or changes occur.
- e. Explain integration with radio communication, if provided.

2. Integrations

See highlights.

Passenger Components

3. Automated Voice Announcements (AVA)

- a. System shall have an integrated AVA system that uses vehicle locations and GPS geo fences to announce stops both internally and externally.

- b. System shall give the ability to create and choose which stops and routes are announced via web portal.
- c. System shall give the ability to enter in how route or stop announcements should be pronounced phonetically via web portal.
- d. System shall have the ability to edit current stop or route announcements by turning “off” or “on” via web portal.
- e. System shall have the ability to announce stops or routes using a live map showing the vehicles location in real time via web portal.
- f. When a new route or stop is created the system shall always give the ability to choose whether the route or stop is announced via a web portal.
- g. System shall also announce the upcoming stop on abider provided internal LED sign for hearing impaired individuals.
- h. The voice announcements shall have the ability to be in English and Spanish.

4. Public Website

- a. Riders shall have ability to view only routes that are of interest to them or all.
- b. System should have the ability for route remembrance for users.
- c. System should provide arrival estimates to give riders more detail about anticipated vehicle arrival times.
- d. Users shall have the System remember chosen routes from past times they have loaded the website.
- e. Vendor shall design a banner that uses customer-supplied logos/graphics that clearly identifies the Beloit Transit and a web address that is easy to market to riders.
- f. System shall provide a module that allows content to be provided on Customer’s own website.
- g. System shall differentiate estimated time of arrival for inbound and outbound stops along a particular fixed route.
- h. System shall continuously update the web page (whenever a new estimated time of arrival (ETA) is determined, bus is added/removed, etc.), without the user being required to refresh the webpage.
- i. System shall provide a visual indicator is a bus is off schedule by an amount of time defined by the management staff.
- j. System shall contain a link to the Janesville Public Transportation web site.
- k. Additional RFP selection point will be awarded if the system has the ability to create a route plan if someone needs multiple busses.

5. Mobile Phone Access

- a. For smartphones (iPhone, and Android), System should provide interface that shows steady vehicle movement without reloading.
- b. For smartphones with GPS capability, system should provide geolocation

- c. Features to allow riders to identify location on map.
- d. System should provide a free-to-download native iPhone application.
- e. System should provide a free-to-download native Android application.
- f. Shall provide an optional notification platform for smartphones where riders can enter in a recurring schedule for impending bus arrival notifications. This should work without the rider opening the app.
- g. System should allow riders to access arrival estimates via SMS text messaging (particularly for phones that may not have smartphone & web capability).
- h. Janesville Transit shares one route with Beloit Transit. Janesville Transit already has an AVL/CAD system in place. The app provided in this RFP shall either show the location of the Janesville bus on the shared route, or shall have a button to conveniently redirect the end user to the Janesville AVL app.

6. Public Vehicle Location Displays

- a. System shall provide the ability for Customer to use new or existing flat screen monitors to display a version of the System that requires no user interaction (for example, an LCD screen in a building lobby).
- b. Vendor shall provide the option for a minimum of three (3) outdoor signs that would display real time bus information for the system or specific routes that are suitable for Beloit Transit's outdoor environment.
- c. Vendor shall be responsible for ensuring that all maps, routes, and information properly displays and automatically refreshes on LCD screens at all times.
- d. The display shall include route name and the ability to differentiate routes by design and color.
- e. The display shall include the ability to identify a specific vehicle and its associated route.

Management Components

7. Management Software Requirements

- a. System shall provide a dashboard for dispatchers to monitor current vehicle locations, ability to receive and send canned messages, track and monitor alerts. The system shall also be able to send custom messages when needed.
- b. System shall provide real-time graphical displays of vehicle location using map interface.
- c. System shall provide a management interface to allow assignment of buses to routes by dispatchers.
- d. Interface should be intuitive and simple to use.
- e. System shall allow announcements to be posted immediately or in advance for posting at pre-defined time. System shall also allow

announcements to be removed automatically at a pre-defined time in the future.

- f. System shall have ability to enter/change route data ad-hoc without contacting the Vendor
- g. System shall have ability to enter/change stop data ad-hoc without contacting the Vendor
- h. System shall provide historical playback of vehicle locations.
- i. All back end administrative tools and functions shall be available on cloud based web portal. Solution must be 100% cloud based so that login is able to take place via a web portal at any time of the day.
- j. New accounts for login to the system must be able to be created almost instantaneously upon request. There should be at least three options for account privileges (dispatcher, viewer, admin, etc...)
- k. Certain management functions (e.g. assigning buses, activating routes) shall be allowed from internet-enabled smartphones.
- l. The software shall include visual aids, such as color coding of bus icons designating early / on time / late status.

8. Reports

- a. System shall provide web-based reports that allow customer to run transit system more efficiently. Desired reports include:
 - i. On-Time Performance (available by driver, stop number, and vehicle)
 - ii. Headway Report
 - iii. Travel time Report
 - iv. Hours in service Report
 - v. Mileage Report to include total mileage, scheduled, and actual by day, route, driver and vehicle
- b. Ability to see all of a particular vehicle's arrivals and departures for the day
 - i. Off-Route Report
 - ii. Speeding Report
- c. Reports shall allow for time based comparison (e.g. last week vs. this week) and historical reporting.
- d. Reporting data should be captured and remain accessible for at least three (3) years.
- e. Reports shall be exportable to standard Microsoft document format (Excel, Word) and/or PDF format and should be available to client instantly.
- f. History tool that allows administrators the option to select viewing the entire system at once, by route, or by bus.

9. Support

- a. Vendor will provide 24/7 support when needed in case of severe emergencies.

- b. Vendor should be accessible via phone, web and e-mail, at a bare minimum.
- c. Turnaround response time of Vendor for any mission critical component of the system should not exceed 3 hours.
- d. Vendor shall provide training to all dispatchers, supervisors, administrators, and maintenance technicians prior to deployment of System.
- e. Vendor shall also provide optional web-based training to all dispatchers, supervisors, administrators, and maintenance technicians prior to deployment of System and on an as-needed basis for future trainees.
- f. Vendor shall provide help manuals to allow resolution of straightforward items as expeditiously as possible.
- g. Support shall be available during normal business hours. Standby support shall be available at all other times, including nights, weekends, and holidays.
- h. Vendor shall protect and backup, for a minimum of 60-days, any software configuration settings, any Customer provided data that has been modified for use by the software, and any new data produced by the software itself.

10. Hardware

- a. Beloit Transit is seeking the most user friendly system while requiring the least maintenance. Preference would be to have no onboard servers and the ability to push all information out over wifi or cellular data to the server located at the Transit Administration building.
- b. At the time of installation, the hardware must be the current technology available and compatible with the Vendor's software.
- c. Hardware shall remain under warranty for one year and shall offer options for extending the warranty for up to 5 years.
- d. Vendor shall install a power conditioner in each vehicle to ensure proper voltage to the tracking unit to increase device stability and performance.
- e. Vendor shall install an inline power fuse to tracking units to prevent possible power short conditions and device failure.
- f. Should a malfunction occur which requires hardware to be replaced--during the initial contract; the replacement equipment must be new with the latest technology at the time of replacement and/or installation.
- g. Hardware shall offer the capability for dynamic interface additions/changes over time. Examples should include driver login, route selector, and passenger counting input, on-time performance indicators, etc.
- h. Hardware shall integrate additional components directly into existing hardware. Examples should include the Sierra routers

- i. Hardware shall receive software updates over the air
- j. Vendor shall provide future support options for hardware over the life of the contract

11. Software

- a. At the time of implementation, the software must be the current version and compatible with the Vendor's hardware.
- b. Vendor must always ensure that the Beloit Transit is utilizing the latest approved software version available.
- c. Vendor must be able to supply an on-demand solution as well.

12. Maintenance

- a) Vendor to include maintenance/hosting agreement for the first year in the base cost.
- b) Vendor to provide an annual breakdown of cost for the maintenance/hosting agreement for an additional nine 1-year renewal options.

13. Delivery and Installation

- a. The City prefers a Vendor who can deliver and install a fully functional, tested and operational system four months after award.
- b. All proposals must include a Gantt chart or similar detailed, step by step project management time line, outlining specific tasks, responsibilities, and dates from start to finish for this project.
- c. The chart must include specific dates when Beloit Transit personnel must be available to work with the Contractor.

14. Vendor Compliance

- a) It is the Proposers responsibility to notate any exception taken to the City's requirements (SCOPE OF WORK) specified in this RFP. Proposers taking exceptions shall submit, with their proposal, an itemized comparison with the specification, documenting the nature of their exception. ALL SUCH ITEMIZED LISTS SHALL BE PRESENTED IN THE EXACT SAME ORDER AS THE CITY SPECIFICATIONS AND SHALL REFERENCE THE CITY PAGE & ITEM NUMBER. For example, if your company does not offer 24/7 technical support as required on Item 11.a, you must reference that item number on your exception list and provide information on the support you offer.
- b) Failure to identify exceptions or deviations in this manner may be a basis to declare the proposal as non-responsive.

15. Pricing Format

- a. Proposer must complete and return the included pricing document.

- b. Proposer must provide an additional, separate completed pricing sheet with all hardware and software options distinctly listed, with both unit and extended pricing.
- c. Proposer must provide all operating costs for the solution.
- d. Proposer must provide a yearly breakdown of all projected costs, both capital and operating.
- e. Proposer must provide route deviations/changes free of charge; this must be listed as such on the pricing sheet.
- f. Proposer must provide a cellular cost option.

Alternate Items

16 . Fare Box Upgrades

- a. System shall collect credit/debit card payments while deployed.
- b. System may support other payment methods, such as account cards issued by Beloit Transit, PayPal, Venmo, Apple Pay and similar payment methods.
- c. System may support virtual bus passes that can be purchased via the website, app, kiosk, Transit Administration Building reception desk, and displayed on a smart phone.
- d. If the existing fare box devices need to be removed to accommodate the new equipment, then the new equipment shall also accept cash and Beloit Transit bus tokens. Per the existing contract, LECIP equipment is required.

17. Automatic Passenger Counting (APC) or Digital Passenger Counting (DPC)

- a. The passenger counter must differentiate between people entering and people leaving.
- b. The number of passengers shall meet all of the same requirements for being available to management staff in real time, as well as being able to create reports cross referenced with mile traveled, fare collected, and stop locations
- c. Pricing for this is strictly an add on to the base bid, to be approved or declined by Beloit Transit.
- d. If additional monthly or annual maintenance is needed for this option above and beyond the base bid, then the Vendor must state as much on the bid form.

18. Security Cameras

- a. Three cameras per bus shall be provided. One to observe the passengers, one to observe the driver, and one for the road in front of the bus.

- b. Video shall be stored on the bus while deployed. When the bus returns to the administration building, it shall download the video over the wifi.
- c. On board video storage shall be adequate to store 24 hours of video from both cameras.

19. Other App Redirection

- a. The customer app shall either redirect the user to other applications, or work directly with Lyft, Uber, Bird, and other similar vendors in the area.

SCORING CRITERIA AND POINTS

Description	Possible Points
<p>Company Experience & Qualifications Including but not limited to:</p> <ul style="list-style-type: none"> • Experience & Qualifications of Key Personnel Assigned to City • Favorable References 	15
<p>Compliance with Scope of Work Including but not limited to:</p> <ul style="list-style-type: none"> • Number and significance of exceptions • Alternatives and options proposed 	25
<p>Customer Service and Support Including but not limited to:</p> <ul style="list-style-type: none"> • 24/7/365 support • On-site and Online Training 	20
<p>Pricing Such as but not limited to the following:</p> <ul style="list-style-type: none"> • Initial cost + Total Cost of ownership for 10 years • Cost of proposed options 	20
<p>Vendor Interviews & Demonstrations</p> <ul style="list-style-type: none"> • Proposals will be preliminarily scored by the Evaluation Team. • Highest scoring Vendor(s) will be invited for interview, and demonstration. 	20
TOTAL	100

Beloit Transit Transit Technology Upgrades 2022 COST SUMMARY SHEET

Prices listed below must include all costs of the software project, including any Vendor discounts and all freight charges.

<p>Total first year cost for proposed solution to include all hardware, software, implementation, training, support, hosting, and any other related expenses. Vendor must attach a detailed breakdown of each cost component (line item detail) so City can project future replacement costs.</p>	<p>\$</p>
<p>Indicate your proposed annual costs for on-going maintenance and support. Years 2 through 5 shall be actual pricing for maintenance and support, with the City to decide if a maintenance agreement is desired at the time of award.</p>	<p>\$ / YEAR 2 (Actual) \$ / YEAR 3 (Actual) \$ / YEAR 4 (Actual) \$ / YEAR 5 (Actual) \$ / YEAR 6 (Projected) \$ / YEAR 7 (Projected) \$ / YEAR 8 (Projected) \$ / YEAR 9 (Projected) \$ / YEAR 10 (Projected)</p>
<p>Automatic Passenger Counter – state the initial cost and whether there are any ongoing annual maintenance and support costs. If there are ongoing maintenance and support costs, state those.</p>	<p>\$ / YEAR 2 \$ / YEAR 3 \$ / YEAR 4 \$ / YEAR 5 \$ / YEAR 6 \$ / YEAR 7 \$ / YEAR 8 \$ / YEAR 9 \$ / YEAR 10</p>

<p>Touchless Fare Boxes – state the initial cost and whether there are any ongoing annual maintenance and support costs. If there are ongoing maintenance and support costs, state those.</p>	<p>\$</p> <p>\$ / YEAR 2</p> <p>\$ / YEAR 3</p> <p>\$ / YEAR 4</p> <p>\$ / YEAR 5</p> <p>\$ / YEAR 6</p> <p>\$ / YEAR 7</p> <p>\$ / YEAR 8</p> <p>\$ / YEAR 9</p> <p>\$ / YEAR 10</p>
<p>Security Cameras – state the initial cost and whether there are any ongoing annual maintenance and support costs. If there are ongoing maintenance and support costs, state those.</p>	<p>\$</p> <p>\$ / YEAR 2</p> <p>\$ / YEAR 3</p> <p>\$ / YEAR 4</p> <p>\$ / YEAR 5</p> <p>\$ / YEAR 6</p> <p>\$ / YEAR 7</p> <p>\$ / YEAR 8</p> <p>\$ / YEAR 9</p> <p>\$ / YEAR 10</p>
<p>List any other costs the City may incur over the course of the proposed project. Feel free to add more rows if necessary.</p>	<p>\$</p>

Add additional information on an attached page if needed.

Alternate pricing for upgrading new factory busses to the scope of the RFP

Base Bid – Provide GPS location hardware, AVA, on board designation signs, and all other relevant equipment to new bus from factory AVA: ___ Salvaged, ___ New from bidder, ___ new from Gillig Destination signs: ___ Salvaged, ___ New from bidder, ___ new from Gillig AVL Hardware: ___ Salvaged, ___ New from bidder, ___ New from Gillig	\$	/ YEAR 2024
	\$	/ YEAR 2025
	\$	/ YEAR 2026
	\$	/ YEAR 2027
	\$	/ YEAR 2028
	\$	/ YEAR 2029
	\$	/ YEAR 2030
	\$	/ YEAR 2031
Automatic Passenger Counter – ___ Salvaged, ___ New from bidder, ___ New from Gillig	\$	/ YEAR 2024
	\$	/ YEAR 2025
	\$	/ YEAR 2026
	\$	/ YEAR 2027
	\$	/ YEAR 2028
	\$	/ YEAR 2029
	\$	/ YEAR 2030
	\$	/ YEAR 2031
Touchless Fare Boxes – ___ Salvaged, ___ New from bidder, ___ New from Gillig	\$	/ YEAR 2024
	\$	/ YEAR 2025
	\$	/ YEAR 2026
	\$	/ YEAR 2027
	\$	/ YEAR 2028
	\$	/ YEAR 2029
	\$	/ YEAR 2030
	\$	/ YEAR 2031
Security Cameras – ___ Salvaged, ___ New from bidder,	\$	/ YEAR 2024
	\$	/ YEAR 2025
	\$	/ YEAR 2026

<p>____ New from Gillig</p>	<p>\$ / YEAR 2027</p> <p>\$ / YEAR 2028</p> <p>\$ / YEAR 2029</p> <p>\$ / YEAR 2030</p> <p>\$ / YEAR 2031</p> <p>\$ / YEAR 2032</p>
<p>List any other costs the City may incur over the course of the proposed project. Feel free to add more rows if necessary.</p>	<p>\$</p>

ATTACHMENT A – REFERENCES

VENDOR NAME:

Provide a minimum of four (3) references, with at least three (2) municipal transit department customers of similar stature to the Beloit Transit. Provide company name, address, contact person, telephone number, and appropriate information on the product(s) and/or service(s) used for three (3) or more installations/services with requirements similar to those included in this solicitation document. If Vendor is proposing any arrangement involving a third party, the named references should also be involved in a similar arrangement. The City may make such investigation as is necessary to determine the ability of the Vendor to fulfill service requirements.

1. Company Name:	
Address:	
Telephone:	
Contact Person:	
E-mail address:	
Product(s) and/or Service(s) Used:	
How long have you been working with this company?	

2. Company Name:	
Address:	
Telephone:	
Contact Person:	
E-mail address:	
Product(s) and/or Service(s) Used:	
How long have you been working with this company?	

3. Company Name:	
Address:	
Telephone:	
Contact Person:	
E-mail address:	
Product(s) and/or Service(s) Used:	
How long have you been working with this company?	

ATTACHMENT B – DESIGNATION OF CONFIDENTIAL, TRADE SECRET & PROPRIETARY INFORMATION

Material submitted in response to the City of Beloit's (the "City") Request for Proposal includes at least one formula, pattern, compilation, program, device, method, technique or process that 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 and is the subject of reasonable efforts to maintain its secrecy. Such information qualifies as a trade secret, as provided in Wis. Stat. § 19.36(5). As such, the proposer asks that the trade secrets contained on certain pages of this proposal, as indicated below, be treated as confidential material and not be released to the public. I am providing the following information with the understanding that it is being submitted to the City under a pledge of confidentiality. I would not have submitted this information had the City not pledged to keep it confidential* and request that the following pages not be released:

Section Page Topic

***NOTE: Proposers are cautioned that the ENTIRE PROPOSAL MAY NOT FALL WITHIN THE CONFINES OF THE PLEDGE OF CONFIDENTIALITY. THE ABOVE DESIGNATION(S) OF CONFIDENTIALITY IN NO WAY GUARANTEES THAT DESIGNATED INFORMATION WILL BE KEPT CONFIDENTIAL. UNDER THE PROVISION OF THE PUBLIC RECORDS LAW, PROPOSER IS NOT ENTITLED TO NOTIFICATION PRIOR TO RELEASE OF INFORMATION, AND IS NOT ENTITLED TO GO TO COURT TO BLOCK DISCLOSURE OF ANY PORTION OF THE PROPOSAL.**

IF THE CITY AGREES WITH PROPOSER'S DESIGNATION OF TRADE SECRET OR CONFIDENTIALITY AND THE DESIGNATION IS CHALLENGED, THE UNDERSIGNED HEREBY AGREES TO PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF TRADE SECRET OR CONFIDENTIALITY.

Failure to include this designation in the proposal response may mean that all information provided as part of the proposal response will be open to examination and copying.

Signature (Authorized Representative)

Telephone Number

E-mail

Name (Please Print)

Company Name

Title

Date

NOTE: The City as custodian of these public records has the obligation, pursuant to the Public Records Law, to determine whether the above information can be kept confidential.

PROPRIETARY INFORMATION: A proposer responding to this proposal should not include any proprietary information or protected trade secret(s) as part of its proposal unless the proposer 1) designates the specific information that it maintains is proprietary or trade secret and the reason(s) for such designation in a separate document, and 2) identifies the specific information when it occurs within the proposal.

The City's preference is for the proposer to segregate all information designated as confidential into one section of the Request for Proposal and/or a separate document for easier removal to maintain its confidential status. The response to the proposal should indicate which portion of the requested information is confidential and where this information is located within the response, i.e. under separate cover, in confidential Section No. _____, etc. Data contained in the proposal and all documentation become property of the City.

ATTACHMENT C – INSURANCE/INDEMNIFICATION REQUIREMENTS

INDEMNIFICATION

- a. Consultant hereby agrees to indemnify, defend and hold harmless the City, 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 Consultant or of anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on City, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable except to the extent that liability results from the negligence of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers.
- b. Consultant shall reimburse the City, 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.
- c. In the event that Consultant employs other persons, firms, corporations or entities (sub-contractor) as part of the work covered by this Agreement, it shall be Consultant's responsibility to require and confirm that each sub-contractor enters into an Indemnity Agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this Indemnity Agreement.
- d. This indemnity provision shall survive the termination or expiration of this Agreement.

INSURANCE

- a. Consultant shall not commence work under this Agreement until it has obtained the insurance required herein. All coverages shall be with insurance carriers licensed and admitted to do business in the State of

Wisconsin. All coverages shall be with carriers acceptable to the City. A minimum AM Best Rating of A-VII is required.

- b. It is hereby understood and agreed that the insurance required by the City is primary coverage and that any insurance or self-insurance maintained by the City, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss.
- c. *Worker's Compensation and Employers Liability Minimum Requirements as required by Statute:* Consultant shall cover or insure under applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. Consultant shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$100,000 each accident, \$500,000 disease policy limit and \$100,000 disease each employee.
- d. *Liability Insurance:* Consultant shall procure and maintain during the life of this Agreement the following Commercial General Liability Insurance and Automobile Liability insurances:
 - i. PROFESSIONAL LIABILITY (Errors and Omissions)
 - (a) Minimum Limits
 - a. \$2,000,000 each claim/\$2,000,000 annual aggregate
 - b. Any deductible not to exceed \$25,000 each claim
 - (b) Must continue coverage for 3 years after final payment for service/job
 - ii. GENERAL LIABILITY COVERAGE
 - (a) Commercial General Liability
 - a. \$2,000,000 general aggregate
 - b. \$1,000,000 products - completed operations aggregate
 - c. \$1,000,000 personal injury and advertising injury
 - d. \$2,000,000 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, it 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

iii. 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

- e. *Additional Insured*: Consultant shall name the City, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers as Additional Insured on the General Liability Coverage. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether other available coverage is primary, contributing or excess.
- f. *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.
- g. *Cancellation Notice*: All insurances required by this Agreement shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Ten (10) days for Non-Renewal shall be sent to: City of Beloit; Attn: Risk Management; 100 State Street; Beloit, WI 53511.
- h. *Proof of Insurance Coverage*: Consultant shall provide to the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City. If so requested, certified copies of any or all policies shall also be furnished. The Additional Insured Policy endorsement must accompany the Certificate of Insurance. A copy of the Certificate of Insurance must be on file with Risk Management. If no Certificates of Insurance and/or policies are provided to the City upon execution of this Agreement, the Agreement shall be null and void.
- i. *Continuation of Coverage*: If any of the above coverage expires during

the term of this Agreement, the Consultant shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date.

ATTACHMENT D – Federally Required Clauses

Federal Contract Clauses

The following clauses are included in all procurements and all contracts where federal funds are involved. The applicability of each clause is defined under the title. Vendors are required to sign certifications where applicable.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Applicability: All contracts

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project.

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.

Applicability: All contracts

The Recipient acknowledges and agrees that:

(1) Civil Fraud. 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 the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C.

§ 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS

Applicability: All contracts where equipment, materials, or commodities may be transported by ocean vessels

The contractor agrees: a) to 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) to 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 City of Beloit; and c) to 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.

ENERGY CONSERVATION

Applicability: All contracts

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.

ACCESS TO RECORDS AND REPORTS

Applicability: All contracts

The following access to records requirements apply to this contract:

1. 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. The 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.

2. 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.
3. 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.
4. 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).
5. FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

Applicability: All Contracts

The 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 the City and the 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.

TERMINATION

Applicability: All contracts in excess of \$10,000

a. Termination for Convenience (All contracts)

The City may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to the City to be paid to the contractor. If the contractor has any property in its possession belonging to the City, the contractor will account for the same, and dispose of it in the manner the City directs.

b. Termination for Default [Breach or Cause] (All contracts)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or any beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (All contracts)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which the cure is permitted and other appropriate conditions.

If Contractor fails to remedy to City's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract with ten (10) days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

d. Waivers of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this Contract, such waiver by the City shall not limit the City's 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 City, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service)

If the 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 City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will 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 the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

g. Termination for Default (Transportation Services)

If the 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 the contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of default. The contractor will 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 the contractor has possession of goods belonging to the City, the contractor shall, upon direction of the City, protect and preserve the goods until surrendered to the City or its agent. The contractor and the City shall

agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

h. Termination for Default (Construction)

If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, the City 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. The contractor and its sureties shall be liable for any damage to the City resulting from the contractor's refusal or failure to complete the work within the specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City in completing the work.

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

- (1) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include: acts of God, acts of the City, acts of another contractor in the performance of a contract with the City, epidemics, quarantine restrictions, strikes, freight embargoes; and
- (2) the contractor, within ten (10) days from the beginning of any delay, notifies the City in writing of the causes of delay. If in the judgment of the City, the delay is excusable, the time for completing the work shall be extended. The judgment of the City shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City.

i. Termination for Convenience or Default (Architect and Engineering)

The City may terminate this contract in whole or in part, for the City's convenience or because of the failure of the contractor to fulfill the contract obligations. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall (1) immediately discontinue all services affected (unless the

notice directs otherwise), and (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for convenience of the City, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

j. Termination for Convenience or Default (Cost-Type Contracts)

The City may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the City or for the default of the Contractor. If the termination is for convenience of the City, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City, or property supplied to the Contractor by the City. If the termination is for default, the City may fix a fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City, the 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 City determines that the Contractor has an excusable reason for not performing, such as a strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the City, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**ATTACHMENT E: GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT)**

Applicability: Contracts and Subcontracts Over \$25,000

Definition: Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both contractors and subcontractors and contracts and subcontracts over \$25,000.

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 Part 29.995, or affiliates, as defined at 49 CFR Part 29.905m, are excluded or disqualified as defined at 49 CFR Parts 29.940 and 29.945.

The Contractor is required to comply with 49 CFR Part 29, Subpart C and must include the requirement to comply with 49 CFR Part 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 City of Beloit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, 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 Part 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.

PRIVACY ACT

Applicability: Any contract involving a system of records on behalf of the Federal Government under any contract

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:

- (1) 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.
- (2) 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 the FTA.

CIVIL RIGHTS REQUIREMENTS

Applicability: All Contracts

(1) Nondiscrimination

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

(2) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (US DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The contractor agrees to take affirmative action to ensure that applicants are

employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, 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, the contractor agrees to comply with any implementing requirements FTA may issue.

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

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

(3) Subcontracts

The contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by the FTA, modified only is necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Applicability: All contracts

- 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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City’s overall goal for DBE participation is 2.5%. A separate contract goal has not been established for this procurement.
- 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 DOT-assisted 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 City deems appropriate. Each subcontract the contractor signs with a

subcontractor must include the assurance in this paragraph (*see* 49 CFR Part 26.13(b)).

- C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of this work no later than 30 days after the contractor's receipt of payment for that work for the City. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
- E. The contractor must promptly notify the City 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 City.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability: All Contracts

The preceding provisions include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the USDOT, as set forth in FTA Circular 4220.1E, 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

DRUG AND ALCOHOL TESTING

Applicability: All operational service contracts

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Wisconsin, or the City of

Beloit to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before February 1st of each year and to submit the Management Information System (MIS) reports before February 15th of each year for the previous year to the City of Beloit. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to submit for review and approval to the City before February 1st of each year a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to submit to the City for approval the selection of the certified laboratory, the substance abuse professional, the Medical Review Officer, and the use of any consortium.

END OF DETAILED SPECIFICATIONS

BIDDER'S CERTIFICATION

I hereby certify that all statements herein are made in behalf of:

Name of Corporation, Partnership or Person submitting bid

a corporation organized and existing under the laws of the State of:

a partnership consisting of:_____

an individual trading as:_____

of the City of _____ State of _____

that I have examined and carefully prepared this proposal from the
plans and specifications and have checked the same in detail before

submitting this proposal; that I have full authority to make such statements

and submit this proposal in its (their) behalf, and that said statements are true and
correct

SIGNATURE:_____

TITLE:_____

Sworn and subscribed to before me

this _____ day of _____ 20 ____.

(Notary or other officer authorized to administer oaths)

SEAL:

My commission expires _____

Federal Certifications

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I,

_____, hereby certify (Name and
title of official)

On behalf of

that: (Name of Bidder/Company
Name)

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this

certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name

Type or print
name _____

Signature of authorized representative _____ Date
__/__/__

Signature of notary and SEAL

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT)

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C.6101 (Contracts over \$25,000)

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 (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) 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). Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

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.

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.

Contractor

Signature of Authorized Official

_____ Date ____/____/____

Name and Title of Contractor's Authorized
Official_____

BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

General Requirement (as stated in 49 CFR 661.5)

(a) Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

(b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

Certificate of **Compliance** with Buy America Requirements.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company _____

Name _____ Title _____

Signature _____ Date _____

Certificate of **Non-Compliance** with Buy America Steel or Manufactured Products Requirements The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company_____

Name_____ Title_____

Signature_____ Date_____

**ATTACHMENT E - CONTRACT TO BE USED WITH AWARDED
PROPOSAL**

City of Beloit Professional Service Contract with Federal Rules

City of Beloit
CONTRACT FOR PURCHASE OF SERVICES
Project Name: Transit Technology Upgrades 2022

This Agreement is dated this _____ day of _____, 2022 by and between the **City of Beloit**, a Wisconsin municipal corporation, referred to herein as the **City**; and _____, referred to herein as the **Contractor**. Together, the City and Contractor are referred to as the **Parties**.

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

State of organization:

Recitals

The City has issued request for proposals/quote, referred to as the RFP/RFQ, for consulting services in connection with the following project:

TRANSIT TECHNOLOGY UPGRADES

The RFP/RFQ contained a specific Scope of Work to be incorporated into the successful bidder's agreement.

The Contractor submitted a proposal in response to the RFP/RFQ, and was selected by the City to be awarded the agreement for the project.

The Contractor is willing to perform consulting services according to the Scope of Work stated in the RFP/RFQ and the Contractor's responsive proposal, and to accept the award of the agreement for the project.

Now, therefore, the City and the Contractor agree and contract as follows:

1. **SCOPE OF WORK.** The Contractor shall perform the following services according to the following schedule(s) or attachment(s): [List all attachments here by name, and attach and label them accordingly.]
RFP as published
Q&A document as published
Respondent's proposal submitted in response for the RFP

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 shall control and supersede any such conflicting term.

2. **TERM AND EFFECTIVE DATE.** This Agreement shall become effective upon execution by the City Manager, (or another City Official, if authorized) on behalf of the City, unless another effective date is specified in the attachment(s) incorporated in Section 1 of this Agreement; however, in no case shall work commence before execution by the City.

The term of this Agreement shall be **180 days**.

3. **ENTIRE AGREEMENT.** This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 1 (hereafter "Agreement" or "Contract") of this Agreement 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 1 of this Agreement includes a statement that expressly or implicitly disclaims the applicability of this Agreement, or a statement that such other document is the "entire agreement," such statement shall be deemed rejected and shall not apply to this Agreement.
4. **AMENDMENTS TO AGREEMENT.** This Agreement 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. This Agreement may be amended only by written instrument signed by both Parties. If in the reasonable judgment of the City the scope or nature of the services to be performed by Contractor change or deviate materially from the scope or nature of the services described above, the City may, at its discretion, suspend performance of its services until a written agreement superseding this Agreement and adjusting the scope, schedule, and terms and conditions has been executed. Where additional work is to be completed on a time and expense compensation, charges shall be in accordance with the fee schedule submitted with the Contractor's proposal.
5. **ASSIGNABILITY/SUBCONTRACTING.** Contractor shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor. All terms, conditions, covenants and agreements herein shall extend to and be obligatory upon any successors or assigns of Contractor upon the execution of any written consent by the City.
6. **DESIGNATED REPRESENTATIVE.**
 - A. Contractor designates _____ as Agreement Agent with primary responsibility for the performance of this Agreement. In case this Agreement Agent is replaced by another for any reason, the Contractor will designate another Agreement 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 17, Notices, of this Agreement.
 - B. In the event of the death, disability, removal or resignation of the person designated above as the Agreement Agent, the City may accept another person as the Agreement Agent or may terminate this Agreement under Section 41, at its option.
7. **COMMENCEMENT AND PROGRESS.**
 - A. Services under this Agreement shall commence upon written order from the City to the Contractor. This order will constitute authorization to proceed.

- B. The Contractor shall complete the services under this Agreement within the time for completion specified in 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 11 of this Agreement, and at such other times as the City may specify.
 - 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.
8. **STANDARD OF WORK.** Contractor will perform the work according to generally-accepted industry practices of the professions of the individual employees performing the work for Contractor.
9. **FEES AND PAYMENT.** Total fees payable to Contractor shall not exceed the amount of \$ for all services, materials, equipment, and authorized reimbursable expenses under this Agreement unless an amendment to this Agreement, signed by both Parties, approves additional fees in writing. Any such additional fees shall be defined in writing and authorized prior to execution of such work. Contractor shall invoice the City monthly, as work progresses. All invoices shall be payable net 30 days.
10. **EXTRA SERVICES.** The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 4. 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, as set forth in Section 1 of this Agreement, 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 9 of this Agreement, unless this Agreement is amended as provided in Section 4 of this Agreement.
11. **BASIS FOR PAYMENT.**
- A. **General.**

- (1) The City will pay the Contractor for the completed and accepted services rendered under this Agreement on the basis and at the contract price set forth in Section 9 of this Agreement. 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 Agreement. 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 invoices, on the form or format approved by the City and as may be further specified in Section 1 of this Agreement. The City will pay the Contractor in accordance with the schedule, if any, set forth in Section 1 of this Agreement. The final invoice, if applicable, shall be submitted to the City within three (3) months of completion of services under this Agreement.
- (3) Should this Agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under this Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this Agreement.
- (6) 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.
- (7) Compensation in excess of the total Agreement price will not be allowed unless authorized by an amendment under Section 4 of this Agreement.
- (8) 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 4 of this Agreement.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this Agreement. 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 1 of this Agreement, including any amendments under Section 4 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 17 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.

12. **OWNERSHIP OF WORK PRODUCT.** Any reports, specifications, drawings, or other documents prepared by the Contractor in the performance of its obligations under this Agreement shall become the property of the City. All such materials shall be returned to the City upon completion, termination, or cancellation of this Agreement and payment in full of all monies due the Contractor. The Contractor shall not use, willingly allow, or cause such materials to be used for any purpose other than the performance of all Contractor's obligations under this Agreement without the written consent of the City. The City agrees that the Contractor shall not be responsible for any re-use by the City, or by third parties that obtained the documents from or through the City, for purposes other than original intent of the documents provided by the Contractor.

13. **SAFETY.**

- A. Contractor shall comply with all Occupational Safety and Health Administration (OSHA) and State and Local safety and health standards and any other applicable rules and regulations.
- B. Contractor's work or field personnel shall not be responsible for determining or implementing the means, methods, techniques, sequences or procedures of construction. Contractor will not be responsible for evaluating, reporting or effecting job conditions concerning health, safety or welfare, unless specifically requested in writing. Contractor's work or failure to perform same shall not in any way excuse any contractor, subcontractor or supplier from performance of its work in accordance with contract documents.

14. **RECORD KEEPING.** Contractor shall keep all documents and records generated in the performance of the work for no less than seven (7) years after completion of the work, and shall make them available to the City at the City's request. Contractor acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

15. **COOPERATION BY CITY.** The City shall cooperate with the Contractor in the performance of the work, and shall respond timely to all reasonable requests for information and access.

16. **PARTIES ARE INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Agreement, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.

17. **NOTICES.** All notices required by this Agreement, and all other communications between the Parties, shall be addressed as follows:

To the City Name: **Scott Schneider**
 Address: **2400 Springbrook Court**
 City/ST/ZIP: **Beloit, WI 53511**
 Phone: **608-361-6447**
 Email: **schneiders@beloitwi.gov**

To the Contractor Name:
 Address:
 City/ST/ZIP:
 Phone:
 Email:

18. **GOVERNMENTAL IMMUNITIES AND NOTICE REQUIREMENT PRESERVED.** Nothing in this Agreement shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. § 893.80 or any other law.
19. **PERMITS AND LICENSES.** Contractor shall be responsible, at Contractor’s expense, for obtaining all permits and licenses required for the performance of the work unless expressly agreed by the City.
20. **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.
21. **NON-DISCRIMINATION.** The Contractor will not discriminate against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. In the event any portion of this Agreement is subcontracted by the Contractor, said subcontract shall include a provision prohibiting the subcontractor from discriminating against any qualified employee or qualified applicant for employment because of race, color, national origin, ancestry, religion, age, marital status, disability, sex, or sexual orientation. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and 49 CFR Part 26 and shall be interpreted so as to carry out the intent of said ordinance and law.
22. **CITY OF БЕЛОIT AFFIRMATIVE ACTION REQUIREMENT.** The Contractor (has adopted) (agrees to adopt) [STRIKE ONE] an affirmative action plan to increase in Contractor’s partners, associates and employees, the representation and number of under-represented groups which have been victims of employment discrimination in all of Contractor’s departments, job classifications and salary categories. Contractor agrees to include the same provision in its subcontracts and to require its subcontractors to include the same provision in their subcontracts. This provision is inserted herein in compliance with Section 1.09 of the Code of General Ordinances of the City of Beloit, and shall be interpreted so as to carry out the intent of that ordinance.
23. **INDEMNIFICATION.**
 - A. Contractor hereby agrees to indemnify, defend and hold harmless the City, 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, its elected and appointed officials, officers, employees, agents, representatives and volunteers. The obligation to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, and each of them, shall be applicable except to the extent that liability results from the negligence of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers.

- B. Contractor shall reimburse the City, 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.
- C. In the event that Contractor employs other persons, firms, corporations or entities (subcontractor) as part of the work covered by this Agreement, it shall be Contractor's responsibility to require and confirm that each subcontractor enters into an indemnity agreement in favor of the City, its elected and appointed officials, officers, employees, agents, representatives and volunteers, which is identical to this indemnity agreement.
- D. This indemnity provision shall survive the termination or expiration of this Agreement.

24. **INSURANCE.**

- A. Contractor shall not commence work under this Agreement until it has obtained the insurance required herein. All coverages shall be with insurance carriers licensed and admitted to do business in the State of Wisconsin. All coverages shall be with carriers acceptable to the City. A minimum AM Best Rating of A-VII is required.
- B. It is hereby understood and agreed that the insurance required by the City is primary coverage and that any insurance or self-insurance maintained by the City, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss.
- C. **Worker's Compensation and Employers Liability Minimum Requirements as required by Statute.** Contractor shall cover or insure under applicable labor laws relating to worker's compensation insurance all of their employees in accordance with the law in the State of Wisconsin. Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$100,000 each accident, \$500,000 disease policy limit and \$100,000 disease each employee.
- D. **Liability Insurance.** Contractor shall procure and maintain during the life of this Agreement the following Commercial General Liability Insurance and Automobile Liability insurances:
 - (1) **Professional Liability (Errors and Omissions)**
 - (a) Minimum Limits

- (i) \$2,000,000 each claim/\$2,000,000 annual aggregate
- (ii) Any deductible not to exceed \$25,000 each claim
- (b) Must continue coverage for 3 years after final payment for service/job

(2) **General Liability Coverage**

- (a) Commercial General Liability
 - (i) \$2,000,000 general aggregate
 - (ii) \$1,000,000 products - completed operations aggregate
 - (iii) \$1,000,000 personal injury and advertising injury
 - (iv) \$2,000,000 each occurrence limit
- (b) Claims made form of coverage is not acceptable.
- (c) Insurance must include:
 - (i) Premises and Operations Liability
 - (ii) Blanket Contractual Liability including coverage for the joint negligence of the City, its officers, council members, agents, employees, authorized volunteers and the named insured
 - (iii) Personal Injury
 - (iv) Explosion, collapse and underground coverage
 - (v) Products/Completed Operations
 - (vi) Independent Contractors

(3) **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

E. **Additional Insured.** Contractor shall name the City, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers as Additional Insured on the General Liability Coverage. This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether other available coverage is primary, contributing or excess.

F. **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.

G. **Cancellation Notice.** All insurances required by this Agreement shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Ten (10) days for Non-Renewal shall be sent to: City of Beloit; Attn: Risk Management; 100 State Street; Beloit, WI 53511."

- H. **Proof of Insurance Coverage.** Contractor shall provide to the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies acceptable to the City. If so requested, certified copies of any or all policies shall also be furnished. The Additional Insured Policy endorsement must accompany the Certificate of Insurance. A copy of the Certificate of Insurance must be on file with Risk Management. If no Certificates of Insurance and/or policies are provided to the City upon execution of this Agreement, this Agreement shall be null and void.
- I. **Continuation of Coverage.** If any of the above coverage expires during the term of this Agreement, the Contractor shall deliver renewal certificates and/or policies to the City at least ten (10) days prior to the expiration date.
25. **THIRD PARTY RIGHTS.** This Agreement is intended to be solely between the Parties hereto. No part of this Agreement 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.
26. **AUDIT AND RETAINING OF DOCUMENTS.** The Contractor agrees to provide all reports requested by the City, the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, including but not limited to: financial statements and reports, reports and accounting of services rendered, data, reports, statistics, sub-agreements, leases, third party contracts, arrangements, other third party agreements of any type, supporting materials related to those records, 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 Agreement. 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 Agreement shall be retained by the Contractor for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee. The Contractor agrees that closeout of this Agreement does not alter the record keeping and reporting requirements of this section.
27. **ACCESS TO WORK.** The Contractor shall facilitate the access of the City, Design Professional, U.S. Secretary of Transportation or the Secretary's duly authorized representatives, the Comptroller General of the United States and the Comptroller General's duly authorized representatives, Federal Transit Authority, and Others to review and inspect all materials and workmanship at any time during the duration of this proposed Agreement; provided, however, the City, Design Professional, U.S. Secretary of Transportation or the Secretary's duly authorized representatives, the Comptroller General of the United States and the Comptroller General's duly authorized representatives and Federal Transit Authority is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials, workmanship or professional services strictly in accordance with the instructions, Agreement requirements and specifications. The Contractor further agrees to comply with 49 U.S.C. § 5325(g) and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
28. **SUPERVISION OF WORK.** The Contractor agrees to allow the City to maintain competent and adequate supervision at the work site to ensure that the completed work conforms to the approved plans and specifications.
29. **CORPORATE AUTHORIZATION.** The individuals executing this Agreement on behalf of the Contractor warrant and represent that they are duly authorized to bind the Contractor to this Agreement. Contractor

warrants and represents that the execution of this Agreement is not prohibited by the Contractor's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Contractor shall provide proof upon request.

30. **ASSISTANCE OF COUNSEL, VOLUNTARY AGREEMENT.** The Contractor acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Agreement, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Agreement's terms, conditions and provisions, and their effects; and that it has executed this Agreement freely and not under conditions of duress.
31. **ADEQUACY OF CONSIDERATION.** The Parties acknowledge that the consideration expressed in this Agreement is adequate and sufficient to make the obligations contained in this Agreement binding upon the Parties.
32. **COSTS OF ENFORCEMENT.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Agreement, then the breaching party will pay the non-breaching party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
33. **SEVERABILITY.** If any term of this Agreement is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be so severed, and the remainder of this Agreement will remain in effect and enforceable.
34. **SURVIVAL AND PARTIES BOUND.** Unless specifically limited in this Agreement, any term, condition or provision of this Agreement will survive the execution of this Agreement or any stated time periods, to the extent necessary for their performance. This Agreement is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
35. **GOVERNING LAW AND JURISDICTION.** This Agreement will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Agreement, it shall be filed in the state Circuit Court for Rock County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
36. **INTEGRATION.** This Agreement constitutes the entire agreement of the Parties formed by the City's RFP and the Contractor's responsive proposal; however, if any ambiguity in this Agreement requires resolution, or this Agreement is silent on a material point, then reference may be made to the RFP and the Contractor's proposal, in that order of priority, to construe this Agreement. All other agreements and understandings of the Parties with respect to the subject matter expressed in this Agreement are unenforceable.
37. **COMPLIANCE WITH APPLICABLE LAWS.** The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.
38. **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.
39. **PUBLIC RECORDS LAW.** Contractor understands that the City is bound by the Wisconsin Public Records Law, Wis. Stat. § 19.21, *et seq.* Pursuant to Wis. Stat. § 19.36(3), the City may be obligated to produce, to a third party, the records of the Contractor that are “produced or collected” by the Contractor under this Agreement (“Records”). The Contractor is further directed to Wis. Stat. § 19.21, *et seq.*, for the statutory definition of Records subject to disclosure under this section, and the Contractor acknowledges that it has read and understands that definition. Irrespective of any other term of this Agreement, the Contractor is (1) obligated to retain Records for seven years from the date of the Record’s creation, and (2) produce such Records to the City if, in the City’s sole determination, the City is required to produce the Records to a third party in response to a public records request. Contractor’s failure to retain and produce Records as required by this section shall constitute a material breach of this Agreement, and Contractor must defend and hold the City harmless from liability due to such breach. The provisions of this section shall survive the term of this Agreement, or any extensions or renewals of it.
40. **CONFIDENTIALITY.** Contractor agrees not to use or disclose any information it receives from the City under this Agreement that the City has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the City. The City agrees not to disclose any information it receives from the Contractor, that the Contractor has previously identified as confidential and which the City determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the Wisconsin Open Records Law pursuant to Wis. Stat. § 19.21 *et seq.* The duty of the City and the Contractor to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it.
41. **DEFAULT/TERMINATION.**
- A. **Termination for Cause.** In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Contractor under this Agreement.
 - B. **Termination for Convenience.** Notwithstanding paragraph A above, either party may terminate this Agreement without cause by giving written notice of termination to the other party, with termination to occur no sooner than twenty (20) days after delivery of the notice. Upon termination, Contractor shall be paid for all work completed as of the date of termination.
42. **AGREEMENT NOT TO BE CONSTRUED AGAINST ANY PARTY.** This Agreement is the product of negotiation between the Parties hereto and no term, covenant or provision herein or the failure to include a term, covenant or provision shall be construed against any party hereto solely on the basis that one party or the

other drafted this Agreement or any term, covenant or condition contained herein.

43. **COUNTERPARTS, ELECTRONIC DELIVERY.** This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement 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 Agreement 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 Agreement, fully executed, shall be as valid as an original.

44. **DATE OF COMMENCEMENT.** The date of commencement is the date of this Agreement as indicated on the first page of this Agreement.

A. **Substantial/Final Completion.** Substantial completion of the work shall be achieved by _____. Unless otherwise specified in the Certificate of Substantial Completion, the Contractor shall achieve final completion by _____. The deadlines for substantial and final completion are subject to adjustments as provided for in the contract documents.

B. Time is of the essence for this Agreement and the contract documents.

C. Unless instructed by the City in writing, the Contractor shall not knowingly commence the work before the effective date of insurance to be provided by the Contractor or the City as required by the contract documents.

45. **DELAYS AND EXTENSIONS OF TIME.**

A. If the Contractor is delayed at any time in the commencement or progress of the work by any cause beyond the control of the Contractor, the Contractor shall be entitled to an equitable extension of the Agreement time. Examples of causes beyond the control of the Contractor include, but are not limited to the following: (1) acts or omissions of the City, the Design Professional, or Others; (2) changes in the work or the sequencing of the work ordered by the City, or arising from decisions of the City that impact the time of performance of the work; (3) encountering hazardous materials, or concealed or unknown conditions; (4) delay authorized by the City pending dispute resolution or suspension by the City; (5) transportation delays not reasonably foreseeable; (6) labor disputes not involving the Contractor; (7) general labor disputes impacting the project but not specifically related to the work site; (8) fire; (9) terrorism; (10) epidemics; (11) adverse governmental actions; (12) unavoidable accidents or circumstances; (12) adverse weather conditions not reasonably anticipated.

B. If delays to the work site are encountered for any reason, the Contractor shall provide prompt written notice to the City of the cause of such delays after the Contractor first recognizes the delay. The City and Contractor agree to take reasonable steps to mitigate the effect of such delays.

46. **NOTICE OF DELAY CLAIMS.** If the Contractor requests an equitable extension of the Agreement time or an equitable adjustment in the Agreement price as a result of a delay described in Section 45 of this Agreement, the Contractor shall give the City written notice of the claim.

47. **LIQUIDATED DAMAGES.** Intentionally omitted.
48. **PENALTIES.** If the Contractor fails to complete the work within the time specified in Section 7 of this Agreement, the Contractor shall pay the City, as penalties, the sum of \$_____ per day for each and every day's delay. The Contractor shall not be responsible for penalties if the delay is caused by civil disorder, wars, strike, fire, flood, epidemics, acts of God or by any other cause not within the control of the Contractor, and which by the exercise of reasonable diligence the Contractor is unable to prevent such delay, including whether or not the reason is included in the class of causes enumerated herein, and the time for performance shall be extended by the period of delay occasioned by any such cause.
49. **FEDERAL GRANT REQUIREMENTS.** The funding for this Contract is provided in whole or in part from grants awarded by one or more Departments or Agencies of the Federal Government. Pursuant to said grant(s), Contractor is required to comply with (and to incorporate into its agreements with any subcontractors, as applicable) the following provisions in the performance of this Contract:
- A. **Order of Precedence.** In the event of conflicts or discrepancies between these Federal grant funding provisions and any other contract document, the Federal grant provisions shall take precedence.
- B. **Davis-Bacon Act.**
- (1) **Applicability.** The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.
- (a) **Minimum Wages.**
- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and

fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

(ii) **Additional Classifications.**

(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023)

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023)
 - (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(a)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023)
- (b) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the

contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The U.S. Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and Basic Records.**

- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

(ii) **Certified Payroll Reports.**

- (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on

weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide the addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office Management and Budget under OMB Control Number 1235-0008)

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work

performed, as specified in the applicable wage determination incorporated into the contract; and

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (1)(c)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(iii) **Availability Of Records.** The contractor or subcontractor shall make the records required under subparagraph (1)(c)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) **Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the

classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal Employment Opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- (e) **Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

- (f) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in this section and such other clauses as HUD or its designee may, by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section.

- (g) **Contract Termination: Debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

- (h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

- (i) **Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

- (j) **Certification of Eligibility.**
 - (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to

24 CFR Part 24.

- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
 - (iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).
 - (k) **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.
- (2) **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.
- (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 the individual 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 subparagraph (2)(a) of this section, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) 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 subparagraph (2)(a) of this section, in the sum set by the U.S. Department of Labor at 29 CFR 5.5(b)(2) 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 subparagraph (2)(a) of this section. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the DOL adjusts this civil monetary penalty for inflation no later than January 15 each year.

- (c) **Withholding For Unpaid Wages and Liquidated Damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, 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 subparagraph 2(b) of this section.
 - (d) **Subcontracts.** The 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. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (3) **Health And Safety.** The provisions of this paragraph are applicable where the amount of the prime contract exceeds \$100,000.
- (a) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
 - (b) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
 - (c) The contractor shall include the provisions of this section in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

C. **Nondiscrimination; Equal Employment Opportunity.** The Contractor hereby agrees to comply with and ensures the compliance of all subcontractors with the following requirements:

- (1) **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex age, or disability or discriminate against or exclude someone from participation in a business opportunity or any federally assisted program or activity on such grounds.

In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Transit Authority (FTA) may issue.

- (2) **Affirmative Action.** The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this clause. The Contractor agrees to include this provision in its subcontracts and to require its subcontractors to include the same provision in their subcontracts.
- (3) **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying Contract.
 - (a) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, or sex. Such action shall include, but not be limited to, advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA and any other federal agency may issue.
 - (b) **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against

present and prospective employees for reason of age. In addition the Contractor agrees to comply with any implementing requirements FTA may issue and with implementing regulations of the U.S. Equal Opportunity Commission (U.S. EEOC), 29 C.F.R., Part 1625.

- (c) **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulation to implement the Equal Employment Provisions of the Americans with Disabilities Act, “ 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or other federal agency may issue.
- (d) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this Contract and the Regulations relative to non-discrimination on the grounds of race, color, creed, age, disability, sex or national origin.
- (e) **Information and Reports.** The Contractor shall provide all information and reports required by the Federal Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the USDOT/FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City or to the USDOT/FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (f) **Incorporation of Provisions.** The Contractor shall include the provisions of this entire section entitled “Nondiscrimination; Equal Employment Opportunity” in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City or the USDOT/FTA may direct as a means of enforcing non-compliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the United States.
- (g) **Penalties.** Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the withholding of payments to the

Contractor under the Contract until the CONTACTOR complies; or such other remedy as the City or USDOT/FTA deems appropriate in order to assure compliance with applicable civil rights standards as required by law, including but not limited to, cancellation, termination or suspension, in whole or in part of the Contract and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- (4) **Posting Requirements.** Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (5) **Advertising.** Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.

D. **Disadvantaged Business Enterprise.** The requirements of §1101(b) of SAFETEA – LU<23 U.S.C. § 101, note, 49 C.F.R. Part 26 and the City’s USDOT/FTA approved Disadvantaged Business Enterprise (D.B.E.) Program are incorporated in this Contract by reference.

- (1) **Policy.** It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 shall have the opportunity to participate in the performance of Contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. § 18.36(e) Contracting with Small and Minority Firms, Women’s Business Enterprise and Labor Surplus Area Firms apply to this Agreement.
- (2) **Obligation.** The Contractor and its subcontractors 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 C.F.R. Part 26 in the award and administration of any subcontracts entered into in its performance of this Contract.
- (3) **Penalty.** Failure by the CONTRACTOR or its subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate.

E. **Copeland “Anti-Kickback” Act.** The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 3145) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the

Copeland Act shall contain a clause (FAR Clause 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act. Text of FAR Clause 52.222-10 follows:

Compliance with Copeland Act Requirements (Feb 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Contract.

- F. **Payment, Reports, Records, Retention And Enforcement.** The Contractor acknowledges the requirements and regulations set forth in 28 CFR Parts 66.40 through 66.44 and 49 CFR Part 18 and agrees to cooperate with the City in order to allow the City to comply with said requirements. The Contractor shall retain all of its records relating to the project for a period of three years after the City makes final payment to the Contractor and all other pending matters are closed.
- G. **Prohibition Against the Use of Federal Funds for Lobbying.** The Contractor, in compliance with 49 CFT Parts 19 and 20, hereby assures and certifies that for any contracts over \$100,000:
- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person, to influence or attempt to influence an officer or employee of a federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, including the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement according to the laws, regulations, requirements and guidance of (a) the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended; (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and (c) other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature. Except that if permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through Contractor's proper official channels.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract or grant, the Contractor shall complete and submit Standard form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers and that all subcontractors shall certify and disclose accordingly. This assurance is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the assurance and certification is a prerequisite for making or entering into this transaction, as imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000

and not more than \$100,000 for each expenditure or failure.

- H. **Access To Contractor Records.** The Contractor shall provide the City, the Wisconsin Department of Transportation (WisDOT), and the Federal Transit Administration (FTA), the Comptroller General of the United States, WisDOT, as required by USDOT/FTA, or any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to the work performed under this Contract for the purposes of making audit, examination, excerpts or transcriptions. The Contractor agrees to maintain all said records for a period of three (3) years after final payment is made and all other pending matters are closed.

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

- I. **Suspension and Debarment.** In accordance with Executive Orders 12549 and 12689 concerning suspension and debarment, 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29, which prohibits FTA Contractors and Subcontractors from knowingly contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. Contractor certifies that it has not been debarred or suspended and is not on the "List of Parties Excluded from Federal Procurement and Nonprocurement programs pursuant to U.S. DOT regulations, 2 CFR Part 1200" and agrees that it is prohibited from awarding any subcontract to persons (individuals or organizations) listed on the System of Award Management website which is available at <http://www.sam.gov/>. The Contractor shall submit the certification prescribed in 49 C.F.R. Part 29, Appendix A.

The Contractor is required to pass this requirement on to subcontractors seeking subcontracts over \$25,000 and, accordingly, shall require subcontractors at every tier to include the certification prescribed in 49 C.F.R. Part 29, Appendix B in any proposal submitted in connection with such lower tier contract transactions.

Furthermore, the Contractor agrees, to provide and to require subcontractors at every tier to agree to provide, the Procuring Agency with immediate written notice if it learns that its submitted certification which was not erroneous when submitted, has become erroneous by reasons of changed circumstances. Written notice shall be sent to Wayne Block, Transit Finance Manager, 1245 East Washington Avenue, Suite 201, Madison, WI 53703-3052

- J. **Drug-Free Workplace.** Contractor hereby certifies that it will or will continue to provide a drug-free workplace as required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701), and implemented at Title 28 CFR Part 83.
- K. **Patent Rights.** The Contractor acknowledges the existence of requirements and regulations of the awarding Federal agency relating to patent rights with respect to any discovery or invention which arises or is developed in the course or under this Contract, including, but not limited to those regulations and requirements set forth in 48 C.F.R. Part 27 and 37 C.F.R. Part 401. Any discovery or invention that arises during the course of this Contract shall be immediately (within two months of discovery) reported to the City's project management team. The awarding Federal

agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and 37 CFR Part 401.

- L. **Copyright.** The Contractor acknowledges the existence of requirements and regulations of the awarding Federal agency relating to copyrights and right in data, including, but not limited to those set forth in 28 CFR Part 66.34 which states: "The Federal awarding agency reserves royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support."

- M. **Buy America.** The Recipient and selected Contractor shall comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, software or other such devices, which are used solely for the purpose of processing or storing data, and small purchases (currently less than \$150,000) made with capital, operating or planning funds. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data. Separate requirements for rolling stock are set out at 5323(j)(2)(c) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 65 percent domestic content.

A Recipient and selected Contractor shall submit to the Procuring Agency the appropriate Buy America certification with its response as described more fully below, except those subject to a general waiver. A proposal that is not accompanied by a completed Buy America certification will be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

- N. **Cargo Preference.** The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least fifty (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 this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. The Contractor further agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (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 and Compliance, Maritime Administration, Washington, DC 20590 and to the Procuring Agency (through the Contractor in the case of a subcontractor's bill-of-lading.)

- O. **Fly America.** The Contractor shall comply with 49 U.S.C. 40118, which provide that Federal funds may not be used in the costs of international air transportation of any persons involved in or property acquired for this Contract unless that air transportation is provided by U.S.-flag air carriers to the extent service by these carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and with U.S. General Services Administration (U.S. GSA) regulations pertaining to the use of United States

flag air carriers, at 41 C.F.R. 301-10.131 et seq.

- P. **Seismic Safety.** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
- Q. **Environmental Protections.** The Contractor agrees to comply with and shall assure subcontractors compliance with any applicable standards, orders, and/or requirements of the National Environmental Policy Act of 1969, as amended 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; the applicable provisions of 23 U.S. §§ 139 and 326; and subsequent Federal environmental protection regulations that may be promulgated.
- (1) **Air Quality.** The Contractor agrees to comply and shall assure subcontractors' compliance with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. In Addition:
- (a) The Contractor agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. All equipment provided under this Contract shall be designed and equipped to limit air pollution in accordance with EPA regulations.
- (b) The Contractor agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the work: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Highway Vehicles and Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

- (c) The Contractor agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. §7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loan," 42 U.S.C. § 7606 note.
 - (d) The Contractor shall include these requirements in each subcontract exceeding \$100,000; issued in relation to this Contract.
 - (e) The Contractor shall report each violation to the Procuring Agency and understands and agrees that the Procuring Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) **Clean Water.** The Contractor agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:
- (a) The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
 - (b) The Contractor agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
 - (c) The Contractor agrees to report each violation to the Procuring Agency and understands and agrees that the Procuring Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
 - (d) The Contractor shall include these requirements in each subcontract exceeding \$100,000, issued pursuant to this Contract.
- (3) **Energy Conservation.** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Wisconsin Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§ 6321 et seq.) and 49 C.F.R. Part 18; and U.S. Department of Transportation regulations relating to energy conservation.
- (4) **Recycled Products.** The Contractor agrees that it will comply with 42 U.S.C. 6962 et seq., and 40 C.F.R. Part 247, and Executive Order 12873, and U.S. Department of Transportation regulations relating to recycled products. This requirement applies to all contracts designated by the EPA, when the City or Contractor procures \$10,000 or more

of such items in the fiscal year, or when the cost of such items purchased during the previous fiscal year were \$10,000, using federal funds. Violations shall be reported to USDOT/FTA and to the United States Environmental Protection Agency Assistant Administration for Enforcement.

- R. **Distracted Driving, including Text Messaging While Driving.** In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT order 3902.10, "Text Messaging While Driving," December 30, 2009, the Contractor and all subcontractors are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when using Contractor owned, leased or rented vehicles or privately owned vehicles when used for employment purposes.
- S. **Seat Belt Use.** In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 24 U.S.C. Section 402 note, FTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in any third party subcontracts, involving the projects.
- T. **Sensitive Security Information.** Contractor agrees to protect and take measures to ensure that its subcontractors at each tier protect "sensitive security information" made available during the administration of this Contract or any subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. 15, and with 49 U.S.C. Section 114[®] and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.
- U. **Privacy Act.** 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. 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 the FTA.
- V. **Trafficking in Persons.** The Contractor agrees that neither it nor its employees, agents, authorized volunteers or any other person acting under the authority of the Contractor, including subcontractors, shall engage in any of the following: (i) severe forms of trafficking in person, as defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7102, during the term of this Agreement, (ii) procure a commercial sex act, as defined in section 103 of the TVPA, as amended, 22 U.S.C. §7102, during the term of this Contract, or (iii) engage in the use of labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt, bondage or slavery during the term of this Agreement. The Contractor further agrees that it will inform the City and Federal Transit Authority (FTA) immediately of any information the Contractor receives from any source alleging a violation of the foregoing prohibitions listed in the paragraph. The Contractor further

agrees to include this provision in any subcontracts it may procure regarding this Agreement.

- W. **Federal Tax Liability and Recent Felony Convictions.** The Contractor agrees and acknowledges that it does not have any unpaid Federal tax liability that has been assessed and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability and that the Contractor has not been convicted of any criminal violation of Federal law within the preceding 24 months. The Contractor further agrees that it will ensure compliance of the provisions of this section with any subcontracts it enters into in the furtherance of this Agreement.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties hereto have set their hands.

Date: _____

Date: _____

CITY OF BELOIT

CONTRACTOR

By: _____
Elizabeth A. Krueger, Interim City Manager

(Print Name of Contracting Entity)

ATTEST:

By: _____
Marcy J. Granger, City Clerk-Treasurer

By: _____
(Signature)

APPROVED AS TO FORM:

(Print Name and Title of Person Signing)

By: _____
Gwanny J. Tjoa, Assistant City Attorney
220729 1423 (cln)