#### AGENDA COMMON COUNCIL MEETING TUESDAY, MAY 14, 2019 7:00 PM

#### COUNCIL CHAMBERS, BERLIN CITY HALL, 2ND FLOOR MEETING IS OPEN TO THE PUBLIC & CITY HALL IS HANDICAPPED ACCESSIBLE

- 1. Call to order/Roll Call
- 2. General Public Comments. Registration card required (located at podium in Council Chamber).

<u>CONSENT AGENDA</u>: The Consent Agenda contains items which staff considers to be routine and have already been discussed and recommended by a committee, board or commission at a previous meeting. Staff recommends that Council act on all of these items on a single roll call vote. If any member of Council wishes to have any item removed from the Consent Agenda and discussed, the Council member may request that item be removed from the Consent Agenda prior to the adoption.

- 3. Waive the reading of ordinances and resolutions. <u>RECOMMENDATION</u>: Waive the reading of all ordinances and resolutions adopted at this meeting.
- 4. Written reports from the City Clerk, Treasurer, and Building Inspector.

  <u>RECOMMENDATION</u>: Receive and place on file the written reports from the City Clerk, Treasurer, and Building Inspector.
- 5. Minutes from the April 9 & 16, 2019 Common Council Meetings. RECOMMENDATION: Approve the minutes.
- 6. Shared-Ride Taxi Service Area Proposed Changes. <u>RECOMMENDATION</u>: Accept the Committee of the Whole recommendation to schedule a public hearing for June 11, 2019 on the proposed shared-ride taxi service area changes.
- 7. Revised Agreement with DOT on Ripon Road Project. <u>RECOMMENDATION</u>: Accept the Committee of the Whole recommendation to approve the Revised State-Municipal Project Agreement between the City of Berlin and the Wisconsin Department of Transportation for the Ripon Road Project and authorize the appropriate signatures.
- 8. Bid Solicitation for Demolition of Old Safeguard Property (114 Pierce/119 Commercial St.) <u>RECOMMENDATION</u>: Accept the Committee of the Whole recommendation to authorize staff to solicit bids thru the RFP process for demolition of the old Safeguard property at 114 Pierce/119 Commercial Street.
- 9. Wireless Telecommunications Facilities in the Right-of-Way Ordinance.

  <u>RECOMMENDATION:</u> Accept the Committee of the Whole recommendation to approve and adopt Ordinance #03-19 the Wireless Telecommunications Facilities in the

- Right-of-Way Ordinance.
- 10. Disallowance of Garczynski Claim. <u>RECOMMENDATION</u>: Accept the Committee of the Whole recommendation to disallow the Garcynski claim and approve Resolution #19-06 Disallowing the Notice of Claim Submitted by Patrick & Bridget Garczynski Dated April 22, 2019.
- 11. Amendment to Comprehensive Plan. <u>RECOMMENDATION</u>: Accept the Plan Commission recommendation to approve Ordinance #04-19 to Adopt the Amended Comprehensive Plan of the City of Berlin, WI.
- 12. Bills List. RECOMMENDATION: Approve the list of bills for payment.

#### END OF CONSENT AGENDA

- 13. 2018 Audit Presentation. <u>RECOMMENDATION</u>: Listen to auditor presentation and motion to accept and place the 2018 City of Berlin Audit on file.
- 14. ABC Group Street Closure Request. <u>RECOMMENDATION</u>: Approve the Parade Permit and street closures request from ABC Group for July 3, 2019 parade starting at Clay Lamberton School and ending at Riverside Park N. Shelter house area. This approval should be contingent upon either: 1) proper liability insurance being provided or 2) ABC Group becomes incorporated and insurance requirement is waived.
- 15. 2019 Independence Day Celebration Fireworks Request. <u>RECOMMENDATION:</u> Approve the request and schedule the 2019 Independence Day Celebration fireworks to be held on July 3 in conjunction with ABC Group event at Riverside Park.
- 16. Hunter Street Speed Limit Petition. <u>RECOMMENDATION</u>: Discuss and action as appropriate.
- 17. EMS Week Proclamation. <u>RECOMMENDATION:</u> Reading of the Mayoral Proclamation designating May 19-25, 2019 as Emergency Medical Services Week.
- 18. Request for Designated Parking at American House, 123 S. Pearl Street.

  <u>RECOMMENDATION:</u> Review and adopt Resolution #19-08 Designating Two Parking Spaces in Front of the American House Berlin LLC Facility on South Pearl Street as a Passenger Loading Zone.
- 19. Rezone Request, Hertzberg Properties LLC E. Huron Street. <u>RECOMMENDATION:</u>
  Accept the Plan Commission recommendation to approve the rezone of parcels 20601178-0100 and 206-01178-0200 owned by Hertzberg Properties LLC from R-2
  (Residential) to B-1 (Business) along with approval of Ordinance #04-09 contingent upon any outstanding debts to the City of Berlin being paid in full.

- 20. DNR Resolution for Wisconsin Assessment Money (WAM)-Contractor Services Award Resolution. <u>RECOMMENDATION:</u> Approve and adopt Resolution #19-07 Regarding the WI DNR Wisconsin Assessment Money (WAM) Contractor Service Award.
- 21. 2019 Federal and State Taxi Grant Contracts. <u>RECOMMENDATION</u>: Approve and authorize the Mayor to sign the 2019 85.20 Urban Mass Transit Assistance Agreement (State) and Section 5311 Federal Grant Agreement between the City of Berlin and the WI Department of Transportation for Calendar Year 2019, including the Federal Certifications and Assurances.
- 22. 5311 Capital Assistance Taxi Grant Contract. <u>RECOMMENDATION</u>: Approve and authorize the Mayor to sign the 2019 Section 5311 Grant Agreement for \$29,600 for a rear-loading van taxi.
- 23. Farmers & Artist Market Farmers Appreciation Special Event Street Closure.

  <u>RECOMMENDATION:</u> Approve street closure on Church Street from Park to E. Huron Street for Farmer Appreciation on August 13, 2019.
- 24. Farmers & Artist Market Hometown Heros Special Event Street Closures.

  <u>RECOMMENDATION:</u> Approve street closure on Church Street from Park to E. Huron Street for Hometown Heros on September 10, 2019 from 3-9 p.m.
- 25. License Applications- Bartender Licenses for Timothy Ryan Dunn, Colleen Amanda Colburn, Bryce Donald Petit, Audrey Genivieve Johnson, Anthony David Copus, and Denise Renee Duty-Rumold (approved by the PD). <u>RECOMMENDATION</u>: Grant or deny the licenses.
- 26. Old Business (To be used to request items of old business be put on a future agenda for further discussion or action; or used to make a motion for reconsideration of an item from the current meeting or immediately previous meeting; or to make a motion to take items off the table which were laid on the table only during the current meeting.)
- 27. New Business (To be used to request items of new business be put on a future agenda)
- 28. Public Appearances.
- 29. Adjourn.

Note: In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer, with the exception of the Consent Agenda. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

		CITY OF B	OF BERLIN - OFFICE	OFFICE OF THE TREASURER	ER		
	HONORABI	E MAYOR AND	HONORABLE MAYOR AND COMMON COUNCIL OF THE CITY OF BERLIN, WISCONSIN	OF THE CITY OF BER	ILIN, WISCONSIN:		
I herewith present my report as City Treasurer for the month ending	Treasurer for the month	ending	4/30/2019				
FUNDS	BEG BALANCE	ADJ/ VOIDS	RECEIPTS	DISBURSEMENTS	BALANCE	INVESTMENTS	TOTAL W/ INVESTMENTS
GENERAL CITY TAX COLLECTION ACCOUNT WATER INVESTMENTS	\$ 1,242,109.82 \$ 511.90 \$ 567,988.56		\$ 330,710.95	\$ 502,473.10	\$ 1,070,347.67 \$ 511.90 \$ 532,204.18	\$ 2,600,000.00	\$ 3,670,347.67
SEWER INVESTIMENTS SEWER BOND & INT BOND & INT RESERVE	69		±			\$ 2,227,384.57	
EQUIP REPLACMENT FUND CAPITAL PROJECT BORROWING EMS ACCOUNT	\$ 87,500.59 \$ - \$ 72,706.68		\$ 11.51	9 35.00	\$ 87,512.10 \$ - \$ -	\$ 1,255,000.00	\$ 1,342,512.10
TOTAL OF ALL FUNDS	\$ 1,970,817.55		5	765,5	1,	\$ 10,452,145.06	12,
FUNDS	BANK STATEMENT BALANCE		ADJUSTMENT	OUTSTANDING CHECKS		AVAILABLE BANK BALANCE	
GENERAL CITY TAX COLLECTION ACCOUNT WATER & SEWER SEWER BOND & INT	\$ 1,113,413.02 \$ 811.22 \$ 535,258.15			43,065 299 3,053		\$ 1,070,347.67 \$ 511.90 \$ 532,204.18	
EQUIP REPLACMT FUND CAPITAL PROJECT BORROWING EMS ACCOUNT	\$ 87,512,10 \$ - \$ 101,286.68			, , , ,	77 765	\$ 87,512.10 \$ 101,286.68	
TOTAL OF ALL FUNDS	\$ 1,838,281.17			\$ 46,418.64		\$ 1,791,862.53	
					RESPECTFULLY SUBMITTED	SMITTED,	
					aller y	Mer	

	CITY OF BERLIN					<b>BUILDING REPORT April 2019</b>	RT April 2019			
							-			
	TYPE OF PERMIT		HINOM		<del> </del>	YEAR TO DATE			LAST YEAR TO DATE	JATE
	5	No.	Estimated Value	Permit Cost	No.	Estimated Value	-	No.	Estimated Value	Permit Cost
	Single Family Residence			\$1,022.40	Ψ-	\$203,000.00	\$1,022.40	0	0	0
	Multi-Family Residence				0	\$0.00	\$0.00	0	0	0
	Residential Garade				0	\$0.00	\$0.00	0	0	0
	Residential Garage Alteration				0	\$0.00	\$0.00	J	0	0
	Residential Alteration	4	\$50,164.00	\$280.00	9	\$67,164.00	\$380.00	1 ~~	7 89800	460
	Commercial				0	\$0.00		)	0	0
	Commercial Alteration		\$29,000.00	\$203.00	2	\$31,000.00	\$278.00	)	0	0
	Industrial				0	\$0.00	\$0.00		0	0
	Industrial Alteration				0	00.0\$			0	0
	Sians		\$200.00	\$62.50	2	\$200.00	\$270.50	٠٧	2 12000	202
	Miscellaneous	8	\$4,400.00	\$150.00	3	\$4,400.00	\$150.00	, ,	2 1600	100
	Demolition				0	00.0\$	00.0\$		0	0
	Hospital				0	\$0.00	\$0.00		0	0
	Church				0	\$0.00	\$0.00		0 0	0
	School				0	00.0\$	\$0.00		0	0
	Driveways		\$3,700.00	\$50.00	_	\$3,700.00	350.00	-	0 0	O
	Trailer Homes				0	00.0\$	00.00	-	0	
	Total Building Permits	7	\$290,464.00	\$1,767.90	15	\$309,464.00	3 \$2,150.90		11 \$103,400.00	\$762.00
								-		
	Commercial Plan Approval				٥	\$0.00				
	Plumbing Permits		2 \$19,800.00	\$135.00	e.	6 \$31,996.00				11100
_	Electrical Permits	_	4 \$5,700.00	\$200.00	U)	9 \$9,400.00	\$400.00		8 88400	
	Heating Permits		1 \$7,500.00	\$50.00	7	4 \$37,189.00	0 \$283.00		19 117387	1270
	11111111	L								
	Total Permit Fees	18	8 \$323,464.00	\$2,152.90	34	4 \$388,049.00	\$3,148.90		45 \$347,237.00	\$2,904.00

#### ORDINANCE #03-19

# AN ORDINANCE FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

The Common Council of the City of Berlin do ordain as follows:

Chapter 58, Article VI. Section 58-274 of the Code of Ordinances is hereby created as follows:

ARTICLE VI. – WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Sec. 58-274. – Purpose; intent.

The common council has determined that in the exercise of its police powers, the city has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the city with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the city obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The city recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the city. The city also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

Sec. 58-275. – Definitions.

As used in this section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Administrator. Administrator means the Superintendent of Streets or his or her designee.

Application. Application means a formal request, including all required and requested documentation and information, submitted by an Applicant to the city for a wireless permit.

Applicant. Applicant means a person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.

Base Station. Base Station means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. This definition does not include towers.

Eligible Facilities Request. Eligible Facilities Request means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

FCC. FCC means the Federal Communications Commission.

Right-of-way. Right-of-way means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the city exercises any rights of management and control or in which the city has an interest.

Small Wireless Facility. Small Wireless Facility, consistent with 47 C.F.R. § 1.6002(1), means a facility that meets each of the following conditions:

(a) The structure on which antenna facilities are mounted:

(1) is 50 feet or less in height, or

(2) is no more than 10 percent taller than other adjacent structures, or

(3) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;

(b) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;

(c) The facility does not require antenna structure registration;

(d) The facility is not located on Tribal lands; and

(e) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

Support Structure. Support Structure means any structure capable of supporting wireless telecommunications equipment.

Tower. Tower means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

Underground areas. Underground areas mean those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages more than 35,000 volts.

Utility Pole. Utility Pole means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

Wireless Infrastructure Provider. Wireless Infrastructure Provider means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.

Wireless Permit or Permit. Wireless Permit or Permit means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

Wireless Regulations. Wireless Regulations means those regulations adopted pursuant to Section 58-278(b)(1) to implement the provisions of this Chapter.

Wireless Service Provider. Wireless Service Provider means an entity that provides wireless services to end users.

Wireless Telecommunications Equipment. Wireless Telecommunications Equipment means equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

Wireless Telecommunications Facility or Facility. Wireless Telecommunications Facility or Facility means a facility at a fixed location in the right-of-way consisting of a base station, antennas and other accessory equipment, and a tower and underground wiring, if any, associated with the base station.

Definitions in this section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

Sec. 58-276. - Scope.

- (a) Applicability. Unless exempted by Section 58-276(b), below, every person who wishes to place a wireless telecommunications facility in the right-of-way or modify an existing wireless telecommunications facility in the right-of-way must obtain a wireless permit under this Chapter.
- (b) Exempt facilities. The provisions of this Chapter (other than Sections 58-283-287) shall not be applied to applications for the following:
  - (1) Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.
  - (2) Installation of a mobile cell facility (commonly referred to as "cell on wheels" or "cell on truck") for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
  - (3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the city. See Section 58-286 of this Chapter.
  - (4) Placement or modification of a wireless telecommunications facility by city staff or any person performing work under contract with the city.
  - (5) Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

Sec. 58-2772- Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this Chapter, it is the intent of the city to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situation, and legal status of each applicant or request for use of the right-of-way.

#### Sec. 58-278. – Administration.

- (a) Administrator. The Administrator is responsible for administering this Chapter.
- (b) Powers. As part of the administration of this Chapter, the Administrator may:
  - (1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.3
  - (2) Interpret the provisions of the Chapter and the wireless regulations.
  - (3) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.
  - (4) Collect any fee required by this Chapter.
  - (5) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.
  - (6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.
  - (7) Issue notices of incompleteness or requests for information in connection with any wireless permit application.
  - (8) Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.
  - (9) Coordinate and consult with other city staff, committees, and governing bodies to ensure timely action on all other required permits under Section 58-279(b)(8) of this Chapter.
  - (10) Subject to appeal as provided in Section 28-281(d) of this Chapter, determine whether to grant, grant subject to conditions, or deny an application.
  - (11) Take such other steps as may be required to timely act upon wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

Sec. 58-279. – Application.

(a) Format. Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application, as well as any amendments or

supplements to the application or responses to requests for information regarding an application, to the Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

(b) Content. In order to be considered complete, an application must contain:

(1) All information required pursuant to the wireless regulations.

(2) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

(3) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.

(4) A statement of which shot clock or shot clocks apply to the application

and the reasons the chosen shot clocks apply.

(5) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360 degree photo simulations must be provided for each facility.

(6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the city for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

(7) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current

FCC regulations.

(8) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits,



- building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
- (9) A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.
- (10) Payment of all required fees.
- (11) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the city from complying with any deadline for action on an application.
- (12) If the application is an eligible facilities request, the application must contain information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the city. Before and after 360 degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.
- (c) Waivers. Requests for waivers from any requirement of this Section 58-279 shall be made in writing to the Administrator. The Administrator may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the city will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.
- (d) Fees. Applicant must provide an application fee pursuant to the fee schedule or file in the city clerk treasurer's office, and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically, in conjunction with the annual reviews of the city's entire fee schedule, and raised or lowered based on the costs the city expects to incur.
- (e) Public records. Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the city shall endeavor to treat the

information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The city shall not be required to incur any costs to protect the application from disclosure.

#### Sec. 58-280. – General standards.

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law

or regulation.

(b) Regulations. The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) Standards.

(1) Wireless telecommunications facilities shall be installed and modified in a manner that:

a. Minimizes risks to public safety;

b. Ensures that placement of facilities on existing structures is within the tolerance of those structures;

c. Avoids placement of aboveground facilities in underground areas, installation of new support structures or equipment cabinets in the public right-of-way, or placement in residential areas when commercial areas are reasonably available;

d. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;

e. Ensures that installations are subject to periodic review to minimize the intrusion on the right-of-way;

f. Ensures that the city bears no risk or liability as a result of the installations; and

g. Ensures that applicant's use does not inconvenience the public, interfere with the primary uses of the right-of-way, or hinder the ability of the city or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or

- (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.
- (3) In no event may ground mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.
- (d) Standard permit conditions. All wireless permits under this Chapter are issued subject to the following minimum conditions:
  - (1) Compliance. The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
  - (2) Term. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to Section 58-282(b) of this Chapter.
  - (3) Contact information. The permit holder shall at all times maintain with the city accurate contact information for the permit holder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
  - (4) Emergencies. The city shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
  - (5) Indemnities. The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the city, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties") 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 caused in whole or in part, or claimed to be caused in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.
  - (6) Adverse impacts on adjacent properties. The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to

adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.

(7) General maintenance. The wireless communications facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.

(8) Graffiti removal. All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from

the city.

(9) Relocation. At the request of the city pursuant to Section 58-283 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

(10) Abandonment. The permit holder shall promptly notify the city whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 58:284 of this Chapter.

(11) Restoration. A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance

with Section 58-285 of this Chapter.

(12) Record retention. The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the city cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.

(13) Radio frequency emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.

(14) Certificate of insurance. A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

Sec. 58-281. – Application processing and appeal.

(a) Rejection for incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

(b) Processing timeline. Wireless permit applications (including applications for other permits under Section 58-279(b)(8) necessary to place or modify

- the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.
- (c) Written decision. In the event that an application is denied (or approved with conditions beyond the standard permit conditions set forth in Section 58-280(d)), the Administrator shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
- (d) Appeal to city council. Any person adversely affected by the decision of the Administrator may appeal that decision to the City Council, which may decide the issues de novo, and whose written decision will be the final decision of the city. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.
- (e) Deadline to appeal.
  - (1) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Administrator.
  - (2) All other appeals not governed by Section 58-281(e)(1), above, must be filed within ten business days of the written decision of the Administrator, unless the Administrator extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.
- (f) Decision deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

#### Sec. 58-282. - Expiration and revocation.

- (a) Expiration. A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. All other wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of the wireless permit, the permit holder must either:
  - (1) Remove the wireless telecommunications facility; or,
  - (2) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal
  - application is acted on by the city and any appeals from the city's decision are exhausted.
- (b) Revocation for breach. A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the wireless telecommunications facility must be removed within 30 days of receipt of written notice from the city. All costs incurred by the city in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.

(c) Failure to obtain permit. Unless exempted from permitting by Section 58-276(b) of this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the city. All costs incurred by the city in connection with the notice, removal, and right of way restoration shall be paid by entities who own or control any part of the wireless telecommunications facility.

Sec. 58-283. – Relocation.

Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the city requests such removal and relocation. The city may make such a request to prevent the facility from interfering with a present or future city use of the right of way; a public improvement undertaken by the city; an economic development project in which the city has an interest or investment; when the public health, safety, or welfare require it; or when necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-ofway that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

Sec. 58-284. – Abandonment.

(a) Cessation of use. In the event that a permitted facility within the rightof way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the city and do one of the following:

(1) Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this Chapter have been

lawfully assumed by another permit holder.

(2) Submit to the Administrator a proposal and instruments for dedication of the facilities to the city. If a permit holder proceeds under this Section 58-284(a)(2), the city may, at its option:

a. Accept the dedication for all or a portion of the facilities;

- b. Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 58-285; or
- c. Require the permit holder to post a bond or provide payment sufficient to reimburse the city for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 58-285.
- (3) Remove its facilities from the right-of-way within one year and perform the required restoration under Section 58-285, unless the Administrator waives this requirement or provides a later deadline.

- (b) Abandoned facilities. Facilities of a permit holder who fails to comply with Section 58-284(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the city may, at its option:
  - (1) abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
  - (2) take possession of the facilities; and/or
  - (3) require removal of the facilities by the permit holder or the permit holder's successor in interest.

Sec. 58-285. – Restoration.

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 58-283, the permit holder must restore the right-of-way to its prior condition in accordance with city specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Section 58-285, the city at its option may do such work. In that event, the permit holder shall pay to the city, within 30 days of billing therefor, the cost of restoring the right-of-way.

Sec. 58-286. – Placement on city-owned or -controlled structures

The city may negotiate agreements for placement of wireless telecommunications facilities on city-owned or controlled structures in the right-of-way. The agreement shall specify the compensation to the city for use of the structures. The person or entity seeking the agreement shall reimburse the city for all costs the city incurs in connection with its review of and action upon the request for an agreement.

Sec. 58-287. Severability.

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held to be illegal or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or invalid portion shall be severable and shall not affect or impair any remaining portion of this Chapter, which shall remain in full force and effect.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances

Passed, approved and adopted	this day of, 20
ROLL CALL VOTE:	CITY OF BERLIN
AYES NAYS ABSENT	BY: Richard D. Schramer, Mayor
APPROVED AS TO FORM:	ATTEST:
Matthew G. Chier City Attorney	

#### **RESOLUTION # 19-06**

#### A RESOLUTION DISALLOWING THE NOTICE OF CLAIM SUBMITTED BY PATRICK & BRIDGET GARCZYNSKI DATED APRIL 22, 2019

WHEREAS, Patrick and Bridget Garczynski, 385 Webster Street, Berlin, WI 54923, filed a Written Notice of Claim, dated April 22, 2019 and delivered on April 22, 2019; and

WHEREAS, the City of Berlin intends to disallow such claim for damages pursuant to Section 893.80 of the Wisconsin Statutes; and

WHEREAS, no action may be brought against the City of Berlin in regard to this claim after six months from the date of service of this Notice upon Garczynski pursuant to Section 893.80 of the Wisconsin Statutes;

NOW THEREFORE, BE IT RESOLVED that the Common Council disallows the Notice of Claim by Patrick and Bridget Garczynski dated April 22, 2019, pursuant to Section 893.80 of the Wisconsin Statutes.

Passed, approved and adopted this 14th day of May, 2019.

ROLL CALL VOTE:	CITY OF BERLIN
AYES NAYS ABSENT	BY
	BY
APPROVED AS TO FORM:	ATTEST:
Matthew G. Chier City Attorney	

DATE: May 6, 2019

TO: Mayor & Common Council

FROM: Lindsey Kemnitz

RE: Future Land Use Map Amendment

#### BACKGROUND:

In January the PC had the public hearing to amend the future land use map for the rezone request for parcel 206-01178-0200 (425 E. Huron St) and 206-01178-0100 (435 E. Huron St). The Plan Commission recommended amending the future land use map for the two sections outlined in red on the north side of E. Huron Street. The parcels included in the red outline are 206-01178-0200, 206-01178-0100, 206-01180-0000, 206-01182-0400, 206-01182-0500, 206-01182-0501, and 206-01182-0200.

RECOMMENDATION: Amend the future land use map as presented below.



#### City of Berlin **Future Land Use** 2018 County Line Berlin Municipal Boundary Current Land Use Water Agricultural / Vacant Commercial Industrial Mixed Use Public-Govt-Parks Residential Future Land Use WFuture Commercial Future Conservancy Area Future Industrial | Future Public-Govt-Parks Future Residential

#### **ORDINANCE #04-19**

# ORDINANCE TO ADOPT THE AMENDED COMPREHENSIVE PLAN OF THE CITY OF BERLIN, WISCONSIN

The Common Council of the City of Berlin do ordain as follows:

Section 1. Pursuant to section 62.23(2) and (3) of the Wisconsin Statutes, the City of Berlin, is authorized to prepare and adopt a comprehensive plan as defined in section 66.1001(1)(a) and 66.1001 (2) of the Wisconsin Statues.

Section 2. The Common Council of the City of Berlin, Wisconsin, has adopted written procedures designed to foster public participation in every stage of the preparation of a comprehensive plan as required by section 66.1001(4)(a) of the Wisconsin Statues.

Section 3. The Plan Commission of the City of Berlin, by a majority vote of the entire commission recorded in its official minutes, has adopted a resolution recommending to the Common Council the adoption of the document entitled "City of Berlin Comprehensive Plan, and Revised November 29, 2011 through April 30, 2019, Public Hearing January 21, 2019, City Council Approved May 14, 2019", pursuant to section 66.1001(4)(c) of the Wisconsin Statues.

Section 4. The City Plan Commission has held at least one public hearing on the subject matter of this ordinance on January 21, 2019, in compliance with the requirements of section 66.1001(4)(d) of the Wisconsin Statues.

Section 5. The Common Council of the City of Berlin, Wisconsin, does, by enactment of this ordinance, formally adopt the document entitles, "City of Berlin Comprehensive Plan, and Revised November 29, 2011 through April 30, 2019, Public Hearing January 21, 2019, City Council Approved May 14, 2019" pursuant to section 66.1001(4)(c) of the Wisconsin Statutes.

Section 6. This ordinance shall be codified and numbered in the discretion of the City of the City codifier, subject to final approval by the Common Council.

This ordinance shall take effect the day after publication.

ROLL CALL VOTE: CIT	TY OF BERLIN
AYES	
	·
NAYS	hard D. Schramer, Mayor
	TEST:
APPROVED AS TO FORM:	ie Olson, Clerk

Matthew G. Chier City Attorney

# \*Check Summary Register©

#### APRIL 30 2019

Name	Check Date	Check Amt
11100 Cash in Bank m FNB	M 4/1/2019	\$471,25 2019 - APRIL - WEIGHTS AND MEA
Paid Chk# 062703 APPLETON FINANCE DEPART	ER 4/1/2019	\$287.00 PLOCKELMAN PUBLICATION
Tula entities est	4/1/2019	\$861.20 2019 - MARCH - PHONE SERVICE B
	4/1/2019	\$139.98 2019 - APRIL INTERNET SERVICE
Paid Chk# 062706 CHARTER COMMUNICATION Paid Chk# 062707 COMPLETE OFFICE OF WI	4/1/2019	\$20.00 SPECIAL ORDER STAMP - FINAL BI
Paid Chk# 062708 EMERGENCY MEDICAL PROD		\$2,164.54 MEDICAL SUPPLIES FOR BERLIN EM
Paid Chk# 062709 EMSAR, INC	4/1/2019	\$250.79 HOSE ASSEMBLY FOR BEMS
Paid Chk# 062710 GREEN LAKE COUNTY CLERI	K 4/1/2019	\$1,721.50 2019 PET LICENSES
Paid Chk# 062711 ITU ABSORBTECH, INC.	4/1/2019	\$90.97 2019 - MARCH - UNIFORM SERVICE
Paid Chk# 062712 KRUEGER, LAURA	4/1/2019	\$195.00 REIMBURSEMENT FOR WPS 3 DAYS
Paid Chk# 062713 OSHKOSH OFFICE SYSTEMS	4/1/2019	\$73.48 2019 - MARCH - COPIES FOR MACH
Paid Chk# 062714 PACKERLAND PORTABLES	4/1/2019	\$180.00 2019 - MARCH - 2 PORTABLES FOR
Paid Chk# 062715 SILVA, JACKIE	4/1/2019	\$218.56 2019 - APRIL - RETIREE HEALTH
Paid Chk# 062716 SONDALLE FORD LINCOLN N		\$1,680.06 REPAIR AMBULANCE #79 \$142.48 2019 - APRIL - EMPLOYER PAID L
Paid Chk# 062717 SUN LIFE FINANCIAL	4/1/2019	\$142.48 2019 - APRIL - EMPLOTEIX FAID L \$114.43 LIQUID BACTERIA FOR THE SENIOR
Paid Chk# 062718 SUPERIOR CHEMICAL CORP		\$28,246.50 DEFRIBRILLATOR
Paid Chk# 062719 ZOLL MEDICAL CORP	4/1/2019	\$28,246.50 DEPRIBRICENTOR \$478.75 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062720 BMO HARRIS BANK	4/4/2019	\$336.50 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062721 CITIZENS FIRST CREDIT UNI	ON 4/4/2019	\$702.50 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062722 COMMUNITY FIRST CREDIT	UNI 4/4/2019	\$1,533.57 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062723 FARMERS & MERCHANTS BA		\$1,200.00 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062724 FORTIFI BANK	4/4/2019 4/4/2019	\$100.00 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062725 HORICON BANK	4/4/2019	\$75.00 2019 - PAYROLL 7 - EMPLOYEE DE
Paid Chk# 062726 NORTH SHORE BANK, FSB	4/4/2019	\$87.50 2019 - PAYROLL 7 - EMPLOYEE H.
Paid Chk# 062727 VERVE	4/4/2019	\$1,104.00 2019 - APRIL - SUPPORT OBLIGAT
Paid Chk# 062728 WI SCTF Paid Chk# 062729 AMAZON CAPITAL SERVICES		\$60.38 HP HIGH YIELD ORIGINAL INK CAR
	PFR 4/4/2019	\$640.08 2019 - SPRING ELECTION - PUBLI
		\$134,92 2019 - APRIL - TV/INTERNET SER
	DUC 4/4/2019	\$46,00 MEDICAL SUPPLIES FOR BEMS
Paid Chk# 062732 EMERGENCY MEDICAL PRO Paid Chk# 062733 FINISHLINE STUDIOS	4/4/2019	\$35.00 2019 - APRIL - MONTHLY WEB HOS
Paid Chk# 002733 FAMOREME STOSSION Paid Chk# 062734 FOX RIVER INDUSTRIES	4/4/2019	\$0.00 2019 - MARCH SENIOR VAN USE
Paid Chk# 062735 GREEN LAKE CO REG OF DI	EED 4/4/2019	\$30.00 SATISFACTION OF LIEN 206018110
Paid Chk# 062736 INTERSTATE BATTERY	4/4/2019	\$347.85 3 BATTERIES FOR BERLIN PUBLIC
Paid Chk# 062737 KUNKEL ENGINEERING GRO	OUP 4/4/2019	\$12,585.00 PREPARATION OF CITY OF BERLIN
Paid Chk# 062738 LANDMARK SERVICES COO	PER 4/4/2019	\$5,747.96 NO LEAD AND FIELDMASTER FUEL
Paid Chk# 062739 MGD INDUSTRIAL CORP	4/4/2019	\$325.63 DPW SHOP SUPPLIES - HARDWARE
Paid Chk# 062740 NEUMAN, KAREN	4/4/2019	\$693.18 REIMBURSEMENT FOR MEDICAL BILL
Paid Chk# 062741 NORTHEAST ASPHALT ~ FD	L 4/4/2019	\$846.36 11.21 COLD MIX FOR DPW
Paid Chk# 062742 PACKER CITY INT'L TRUCKS	s, IN 4/4/2019	\$23.69 PARTS FOR DPW \$1,113.15 BASEBALL FIELD SUPPLIES FOR BE
Paid Chk# 062743 PIONEER MANUFACTURING		\$2,697.92 MAINTENANCE AND REPAIRS ON 95
Paid Chk# 062744 RED POWER DIESEL SERVI		\$786.03 2019 - MAY - EMPLOYER PAID LIF
Paid Chk# 062745 SECURIAN FINANCIAL GRO		\$7,632.95 REPELLENTS AND CHEMICALS FOR B
Paid Chk# 062746 SUPERIOR CHEMICAL COR		\$3,327.50 UNION NEGOTIATIONS
Paid Chk# 062747 vonBRIESEN & ROPER, s.c.	4/4/2019	\$32.15 FOAM UNIT AND FOAM PAIL ADAPTE
Paid Chk# 062748 WI DEPT OF NAT RESOURCE		\$60.00 500 LETTERHEAD FOR BPD
Paid Chk# 062749 BERLIN JOURNAL NEWSPA		\$309.83 DUTY BELT (LAM)
Paid Chk# 062750 GALLS	4/5/2019	\$100.00 CCH 420 4 PATROL TRAINING
Paid Chk# 062751 ROUTE 961 TRAINING AND		\$170.00 VENIPUNCTURE FOR BLOOD DRAWS P
Paid Chk# 062752 THEDACARE LABORATORIU		\$4.60 BATTERY FOR KEY FOB/SUBURBAN
Paid Chk# 062753 VICKI MURPHY, PETTY CAS		\$131.00 TESTING BOOKLETS FOR POLICE OF
Paid Chk# 062754 WI CHIEFS OF POLICE ASS	MICE 4/10/2019	\$24,219,83 2019 - APRIL - TRASH AND RECYC
Paid Chk# 062755 ADVANCED DISPOSAL SER	JTILI 4/10/2019	\$316.49 SCANNER FOR CLERK'S OFFICE
Paid Chk# 062756 BERLIN WATER & SEWER L	4/10/2019	\$349.72 PROPANE DELIVERY FOR DPW
Paid Chk# 062757 COLE OIL & PROPANE Paid Chk# 062758 DIVISION OF UNEMPLOYME		\$804.00 BENEFIT CHARGES 03/01/2019-03/
	<del></del>	\$13,243.79 PAYMENT NO. 4 - 5TH WARD SECTI
Paid Chk# 062759 DON E. PARKER EXCAVATI		

# \*Check Summary Register©

**CITY OF BERLIN** 

APRIL 30 2019

超过20世间和20年4月20日	Name	Check Date	Check Ar	
Paid Chk# 06276	0 EMC INSURANCE COMPANIES	4/10/2019	\$11,535.4	6 2019 - APRIL - LIABILITY INSUR
Paid Chk# 06276	1 EMMONS BUSINESS INTERIORS	S 4/10/2019		O OFFICE CHAIR
Paid Chk# 06276		4/10/2019		SATISFACTION OF LIEN FOR PARCE
Paid Chk# 06276		4/10/2019		2019 - MARCH - VAN USE
Paid Chk# 06276				2019 - FEBRUARY - BUILDING INS
	5 PACKER CITY INT'L TRUCKS, IN		\$116.97	7 TUBE ASSY, TRANSFER PUMP FOR D
Paid Chk# 06276			\$1,842.26	5 2019 - JANUARY - SNOW HAULING
Paid Chk# 06276			\$14,777.12	2 2019 - MARCH - SHARED RIDE TAX
	8 SEAMAN, MIDGE, PETTY CASH	4/10/2019		1 2019 - JANUARY - APRIL POSTAGE
Paid Chk# 06276		4/10/2019		9 2019 - MARCH - EMS BILLING COL
Paid Chk# 06277		4/10/2019		) 2019 - APRIL - EAP CONTRACT
Paid Chk# 062771 Paid Chk# 062771		4/10/2019		2019 - APRIL - SPRING ELECTION
	Z VIVIAL B WAUSHARA ARGUS	4/10/2019		5 2019 - APRIL - CENTURYLINK PHO
	5 AHC - STAFF DEVELOPMENT	4/10/2019		2019 - SPRING SENIOR SCENE
Paid Chk# 06277	3 AL SCHMUDE ELECTRIC LLC	4/15/2019		BLS CARDS AND HEARTSAVER ECARD
	7 AMAZON CAPITAL SERVICES, IN	4/15/2019		REPLACE 2 SIREN CONTROLLER
Paid Chk# 062778				INK CARTRIDGE FOR BEMS
Paid Chk# 062779				ASBESTOS INSPECTION FOR FORMER
	CENTURYLINK	4/15/2019		NAME FOR JOEL BRUESSEL
Paid Chk# 062781		4/15/2019 4/15/2019		2019 - MARCH - LONG DISTANCE S
Paid Chk# 062782		4/15/2019		2019 - MAY - RADAR SERVICE
Paid Chk# 062783		4/15/2019		3/8 HOSE ASSEMBLY FOR BEMS
Paid Chk# 062784		4/15/2019		RENTAL OF COMMUNITY ROOM -LIND REMIMBURSEMENT OF LIFE INSURAN
Paid Chk# 062785	·	4/15/2019		2019 POLICE NEGOTIATIONS
Paid Chk# 062786				2019 - MARCH - SEWER & WATER S
Paid Chk# 062787	BMO HARRIS BANK	4/17/2019		2019 - PAYROLL 8 - EMPLOYEE H.
Paid Chk# 062788	CITIZENS FIRST CREDIT UNION			2019 - PAYROLL 8 - EMPLOYEE H.
	COMMUNITY FIRST CREDIT UNI			2019 - PAYROLL 8 - EMPLOYEE H.
Paid Chk# 062790	FARMERS & MERCHANTS BANK	4/17/2019		2019 - PAYROLL 8 - EMPLOYEE H.
Paid Chk# 062791	FORTIFI BANK	4/17/2019		2019 - PAYROLL 8 - EMPLOYEE H.
Paid Chk# 062792	HORICON BANK	4/17/2019		2019 - PAYROLL 8 - EMPLOYEE H.
Paid Chk# 062793	NORTH SHORE BANK, FSB	4/17/2019		2019 - PAYROLL 8 - EMPLOYEE DE
Paid Chk# 062794		4/17/2019		2019 - PAYROLL 8 - EMPLOYEE H.
	WI COUNCIL 32 PER CAP TAX T	4/17/2019	\$458.10	2019 - APRIL - BPD UNION DUES
Paid Chk# 062796		4/17/2019	\$1,104.00	2019 - APRIL - PAYROLL 8 SUPPO
Paid Chk# 062797		4/18/2019	\$1,021.03	20 UNITS FOR BERLIN PUBLIC LIB
Paid Chk# 062798	······································	4/18/2019		Ad IN BILLBOARD/FS CHILDREN SE
Paid Chk# 062799	BERLIN OIL PRODUCTS	4/18/2019	\$42.00	22 PAPERS
Paid Chk# 062800		4/18/2019		PAINT EAST WALL AT BERLIN PUBL
Paid Chk# 062801	CINTAS CORPORATION	4/18/2019		2019 - MARCH - UNIFORM SERVICE
Paid Chk# 062802		4/18/2019		2019 - MARCH - LIBRARY CLEANIN
Paid Chk# 062803		4/18/2019		DUAL TECHNOLOGY MOTION DETECTO
Paid Chk# 062804 Paid Chk# 062805	OSHKOSH OFFICE SYSTEMS	4/18/2019		2019 - MARCH - PHOTO COPIES
Paid Chk# 062806	SCHOLASTIC BOOK CLUBS UNIQUE MANAGEMENT SERVIC	4/18/2019		MATERIALS FOR BERLIN PUBLIC LI
Paid Chk# 062807	WINNEFOX LIBRARY SERVICES	4/18/2019		PLACEMENTS FOR MARCH
Paid Chk# 062808	WINNEFOX COOPERATIVE TEC			2019 - JANUARY - UNIQUE MANAGE
Paid Chk# 062809	WINNEFOX LIBRARY SYSTEM	4/18/2019 4/18/2019		MATERIALS FOR MEMBERS (BOOKS,
Paid Chk# 062810		4/23/2019		JACK ZOLKOWSKI DOG ACT SUMMER
Paid Chk# 062811	AL SCHMUDE ELECTRIC LLC	4/23/2019		OXYGEN CYLINDERS FOR BERLIN EM
Paid Chk# 062812	BE-111 1-11-111 1-11-11	4/23/2019		LOCATE & REPAIR SHORT CIRCUIT
Paid Chk# 062813	BERLIN ROTARY CLUB	4/23/2019		PUBLISH ORD# 19-05 QUARTERLY DUES
Paid Chk# 062814		4/23/2019		2019 - APRIL - PHONE SERVICE -
Paid Chk# 062815		4/23/2019		2019 - MAY - HEALTH INSURANCE
Paid Chk# 062816		4/23/2019		REIMRUSEMENT FOR HEARTCODE ACL
Paid Chk# 062817	EMERGENCY MEDICAL PRODUC			INFANT CPR TRAINING MANEQUIN T
Paid Chk# 062818		4/23/2019		2019 - FORD EXPLORER POLICE VE
•			702, 101.00	TOND EM LONEIT FOLIOE VE

#### CITY OF BERLIN

### \*Check Summary Register©

#### **APRIL 30 2019**

	Name	Check Date	Check Amt	
Paid Chk# 062819 Paid Chk# 062820 Paid Chk# 062821 Paid Chk# 062822 Paid Chk# 062823 Paid Chk# 062824 Paid Chk# 062825 Paid Chk# 062825 Paid Chk# 062827 Paid Chk# 062827 Paid Chk# 062828 Paid Chk# 062828	IMAGETREND, INC J. F. AHERN COMPANY MGD INDUSTRIAL CORP SCHRADER, JOHN	4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019 4/23/2019	\$258.00 \$900.00 \$907.75 \$339.89 \$445.84 \$733.82	2002 FORD E450 AMBULANCE REPAI 2019 - MAY - EMPLOYER LIFE INS PRE EMPLOYMENT DRUG SCREEN - B PFC MATTERS MARCH 1 - MARCH 25 TRADE DISCOUNT ROUTINE INSPECTION ELEVATOR 50
Paid Chk# 062830	OTIS ELEVATOR COMPANY	4/24/2019 Total Checks	\$664.15 \$230,973.84	SERVICE CONTRACT 05/01/2019-04

# Utilities soughly

# \*Check Summary Register©

**CITY OF BERLIN** 

#### APRIL 30 2019

and the first of the common program are a	Name	Check Date	Check Am	
11161 UTILITY C	DAYLINGGERLERMEN WARTHERIN ASH LENB	Viller Hillians.		ICA BERBERA KEBELA BERBERA KEBANTAN B
	BERLIN CITY TREASURER	4/5/2019	#204 E2	INIV OR THE PURTER REPERCE III
Paid Chk# 014641		4/5/2019	\$175,32	INK CR TDG, DUSTER PERFECT, HA
Paid Chk# 014642		4/5/2019	· ·	
Paid Chk# 014643		4/5/2019		NEW SLUDGE PUMPS
	MID-AMERICAN RESEARCH CHE			CAPRON STREET & RIVER DRIVE IM
Paid Chk# 014645		4/5/2019		PRO-GUARD PLUS
Paid Chk# 014646		4/5/2019		B2191, 1/2DR 1/2" HD 5 PT PENT
	UNITED STATES POSTAL SERVI			MARCH 2019 SERVICE CHARGES
Paid Chk# 014648		4/5/2019		APRIL MONTHLY BILLING
	WI DEPT OF NATURAL RESOUR			PICK UP SAMPLES FOR BADGER LAB
Paid Chk# 014650				BRIAN MALNORY OPERATOR CERTIFI
	ADVANCED DISPOSAL SERVICE		· · · · · · · · · · · · · · · · · · ·	FLUORIDE
	BERLIN CITY TREASURER			WASTE WATER TRASH AND RECYCLIN
	BERLIN JOURNAL NEWSPAPER	4/12/2019		MARCH 2019 UTILITY GAS & DIESE
	CCP INDUSTRIES INC.			UPS TO BADGER LABS
	COMPASS MINERALS	4/12/2019		ECONOMY TWO TONE VEST
	DIVISION OF UNEMPLOYMENT	4/12/2019		COARSE SOLAR SALT
	MUSTARD ACRES LLC			COLE GOHLKE UNEMPLOYMENT
	NORTH CENTRAL LABORATORI	4/12/2019		PFP REFUND
	UNITED STATES POSTAL SERVI			REPLACEMENT BULBS FOR MS-637 U
Paid Chk# 014660				POST CARD STAMPS
Paid Chk# 014661	USA BLUEBOOK	4/12/2019		3/8'OD X 1/4'ID BLACK HDPE DIS
	WI ENVIRONMENTAL IMPROVE FARMERS & MERCHANTS BANK	4/12/2019		LOAN PAYMENT
Paid Chk# 014663				CD #704872
Paid Chk# 014664	BERLIN JOURNAL NEWSPAPER CCP INDUSTRIES INC.			UPS TO BADGER LABS
Paid Chk# 014665		4/18/2019		SAFETY VEST, WICKING SHIRT, GL
Paid Chk# 014666	CenturyLink	4/18/2019		WASTE WATER APRIL 2019 BILLING
Paid Chk# 014667	JON LUNDT ELECTRIC, INC	4/18/2019		56 INCH CEILING FAN
Paid Chk# 014668	MARTELLE WATER TREATMENT			LIQUID ALUIMUM SULFATE
Paid Chk# 014669	RIDGE STONE PRODUCTS, INC	4/18/2019		ROAD GRAVEL, CLEAR LIMESTONE
	SABEL MECHANICAL LLC	4/18/2019		REMOVED OLD CORD FROM MUFFIN M
Paid Chk# 014670	SUPERIOR CHEMICAL CORP	4/18/2019		AQUA SEAL DRAIN SEAL, BRILLIAN
Paid Chk# 014671 Paid Chk# 014672	USA BLUEBOOK	4/18/2019		HARDNESS BUFFER SOLUTION, EDTA
		4/26/2019		BOD, SUSPENDED SOLIDS, TOTAL P
Paid Chk# 014673	· · · · · · · · · · · · · · · · · · ·	4/26/2019		APRIL 2019 PAYROLL
Paid Chk# 014674		4/26/2019		POLYCLEAR
		4/26/2019		10X24 SS REP CLMP
	LINCOLN CONTR SUPPLY INC	4/26/2019		VALVE FLAPPER, DIAPHRAGM
Paid Chk# 014677		4/26/2019		BUFFERED DIL, WATR FOR FECALS
		4/26/2019		2-6FT HOSE(COMPACTOR) SERVICE
	WI DEPT OF NATURAL RESOUR			CHAD HAHN RENEWAL
Paid Chk# 014680	WISCONSIN FASTENER SUPPLY	4/26/2019	\$134.52	ORANGE MUSCLE SPRAY, ULTRA SHI
	Т	otal Checks	\$222,504,02	

\$222,504.02

#### CITY OF BERLIN PAYROLL FOR APRIL - 2018 **Net Payroll** UTILITY **GENERAL CITY** PAYROLL TITLE PAYDATE Payroll # 53,091.53 4/5/2019 General City 3,925.13 7.01 Firemen Qtrly 4/10/2019 10,946.63 4/5/2019 7 Utility 2,025.00 4/8/2019 7.02 Election workers 5,802.62 7.03 Police OT 4/15/2019 58,181.06 General City 4/19/2019 11,133.82 Utility 4/19/2019 8 193.92 Mittelstaedt Uniform 4/19/2019 8.01

TOTAL MONTHLY PAYROLL

123,219.26

22,080.45

DATE: May 14, 2019

TO: Common Council

FROM: Jodie Olson

**RE: 2018 Audit** 

BACKGROUND: Kevin Behnke, our lead auditor from Hawkins Ash, will present the 2018 audit results to the committee. Kevin will give you a brief presentation of the audit highlights and answer any questions you may have. The audit process went well, and we have again received an unqualified, clean opinion on our books, which is the highest opinion that can be achieved in an audit. Overall, the city finances are stable, general fund balance is in a good position, and all departments did a good job holding down expenses.

TID advances decreased by \$150k to \$1.328M due to the TID#10 payback. As of 12/31/18, there were three TIDs with advances owed to the general fund: TID# 10-NBP (\$1.19M), TID #9-North Riverblock (\$114K), and TID #01E (\$27K). The only TID at this point that is drawing money from the General Fund for advances is TID#01E, which draws approximately \$4-6k annually. This should continue thru 2023, for further draws totaling around \$25k. TID#9 & 10 are paying back advances at this point.

Attached is an audit summary prepared by the auditors. If you would like to review the entire detailed audit, please feel free to contact me. If you have specific or detailed questions, please feel free to contact me prior to the meeting. Depending on your questions, I may need to do some research to get you the answer.

<u>RECOMMENDATION:</u> Listen to presentation by Hawkins Ash on 2018 audit and accept and place 2018 audit on file.

#### CITY OF BERLIN, WISCONSIN

#### SUMMARY FINANCIAL REPORT WITH INDEPENDENT AUDITORS' REPORT

**DECEMBER 31, 2018** 

# CITY OF BERLIN, WISCONSIN SUMMARY FINANCIAL REPORT TABLE OF CONTENTS DECEMBER 31, 2018

<u>Page</u>	
2	Independent Auditors' Report
3	Combined Balance Sheet
4 5	General Fund Revenue Expenditures
6	Statement of Revenue, Expenses and Changes in Net Position - Sewer and Water Utility
7	Statement of Revenue, Expenses and Changes in Fund Balance Other Funds
8	Other Financial Information



#### INDEPENDENT AUDITORS' REPORT

To the City Council City of Berlin, Wisconsin

The accompanying summary financial statements of City of Berlin, Wisconsin as of and for the years ended December 31, 2018 and 2017, as listed in the table of contents are derived from the audited basic financial statements of the governmental activities, the business-type activities each major fund, and the aggregate remaining fund information of City of Berlin, Wisconsin as of and for the years ended December 31, 2018 and 2017, and the related notes, which collectively comprise the City's basic financial statements. We expressed unmodified audit opinions on those audited financial statements in our reports dated April 30, 2019 and April 4, 2018.

The summary financial statements do not contain all the disclosures required by the accounting principles generally accepted in the United States of America. Reading the summary financial statements, therefore, is not a substitute for reading the audited financial statements of City of Berlin, Wisconsin.

# Management's Responsibility for the Summary Financial Statements

Management is responsible for the preparation of the summary financial statements on the same basis of accounting as the fund financial statements of the audited financial statements.

#### Auditors' Responsibility

Our responsibility is to express an opinion about whether the summary financial statements are consistent, in all material respects, with the audited financial statements based on our procedures, which were conducted in accordance with auditing standards generally accepted in the United States of America. The procedures consisted principally of comparing the summary financial statements with the related information in the audited financial statements from which the summary financial statements have been derived, and evaluating whether the summary financial statements are prepared in accordance with the basis described above.

#### Opinion

In our opinion, the summary financial statements of City of Berlin, Wisconsin as of and for the years ended December 31, 2018 and 2017 referred to above are consistent, in all material respects, with the audited financial statements from which they have been derived, on the basis described above.

HAWKINS ASH CPAS, LLP

Hawkin Ash CPAs. LLP

Manitowoc, Wisconsin

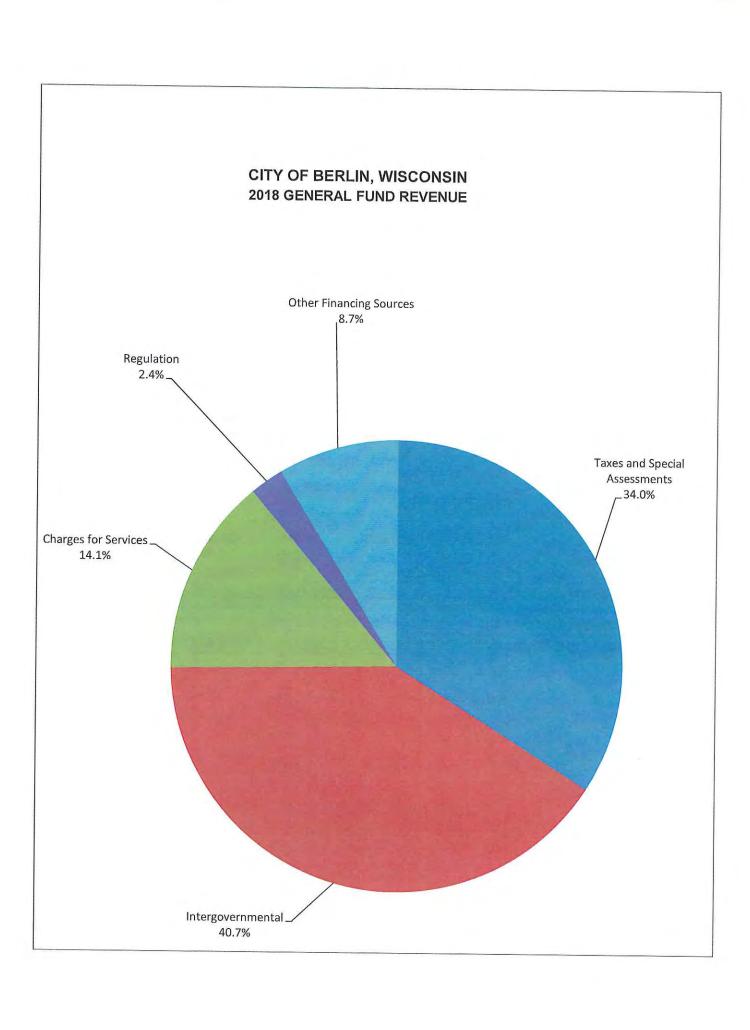
April 30, 2019

CITY OF BERLIN, WISCONSIN COMBINED BALANCE SHEET DECEMBER 31, 2018

	DECEM	BER 31,
	2018	2017
ASSETS		
Cash and cash equivalents	\$ 4,244,703	\$ 5,716,073
Investments	10,429,003	8,849,215
Receivables Taxes		
Accounts and other	4,221,044	4,314,251
Special assessments	789,005	1,092,941
Loan	174,398	138,355
Due from other funds	2,172,649	2,249,682
Due from other governments	186,151	96,853
Inventories	81,567	89,544
Restricted Assets	32,976	35,071
Cash and investments	1,440,040	1 750 000
Accrued interest	10,757	1,759,226 7,821
Advances to other funds	1,356,467	1,507,113
Wisconsin Retirement System net pension	68,689	1,507,115
Capital assets, less accumulated depreciation	10,884,092	10,955,776
TOTAL ASSETS	36,091,541	36,811,921
B	,	,- \
DEFERRED OUTFLOWS OF RESOURCES		
Wisconsin Retirement System pension	202,507	<u>174,097</u>
TOTAL AGOSTO AND DESCRIPTION	····	
TOTAL ASSETS AND DEFERRED OUTFLOWS		
OF RESOURCES	36,294,048	36,986,018
LIABILITIES		
Accounts payable	100.070	007.444
Accrued liabilities	190,979	237,111
Payroll	128,170	70 470
Other	120,170	70,473 83,526
Due to other funds	186,151	96,853
Due to other governments	4,120,914	4,052,366
Unearned revenue - other	2,184,578	2,276,782
Advances from other funds	1,356,467	1,507,113
Payable from restricted assets	,,	1,007,110
Accrued revenue bond interest	3,177	4,139
Current portion of revenue bonds	, <u>-</u>	234,568
Current portion of long-term debt	201,992	-
Noncurrent portion of long-term debt	717,621	1,012,422
TOTAL LIABILITIES	9,090,049	9,575,353
DEFERRED INFLOWS OF RESOURCES		
Unavailable revenue - tax roll		
Unavailable revenue - special assessments	2,361,856	2,379,597
Wisconsin Retirement System pension	78,195	78,711
TOTAL DEFERRED INFLOWS OF RESOURCES	209,732	82,201
TO THE STATE OF THE SOUNDES	2,649,783	2,540,509
EQUITY		
Net position	18,449,972	17,765,294
General fund	3,700,270	4,355,084
Other funds	2,403,974	2,749,778
TOTAL EQUITY	24,554,216	24,870,156
TOTAL LIABILITIES DECEMBED INC. ON OF		
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES AND EQUITY	<b>A A C C C C C C C C C C</b>	
	\$ 36,294,048	36,986,018

# CITY OF BERLIN, WISCONSIN GENERAL FUND REVENUE YEAR ENDED DECEMBER 31, 2018

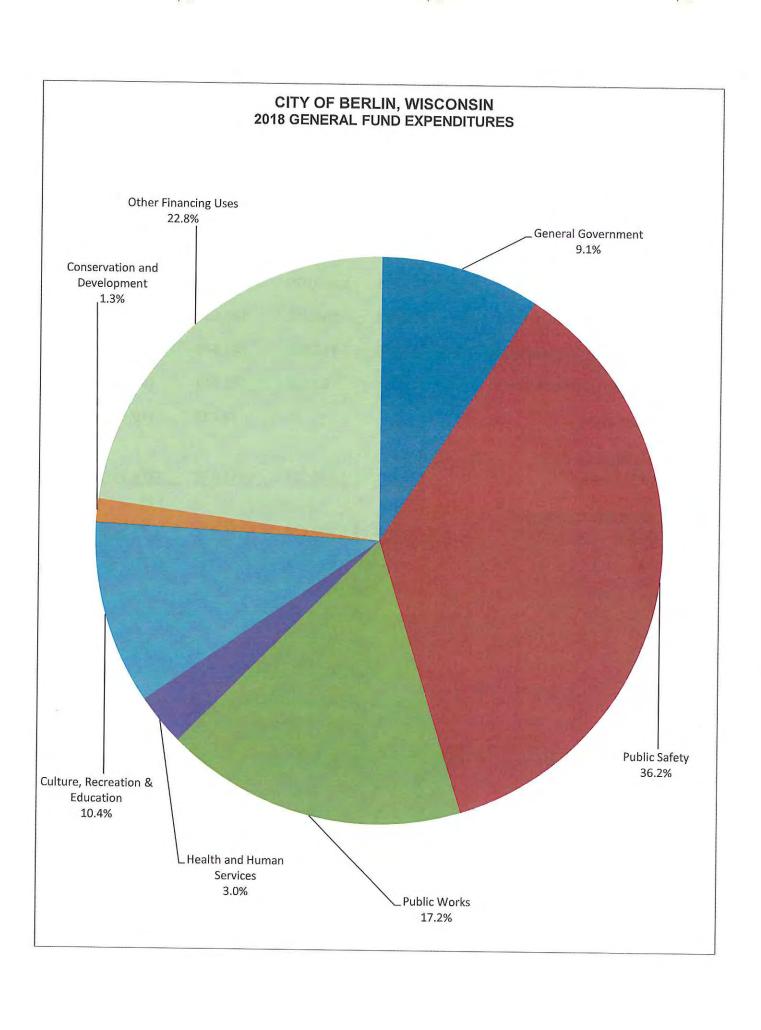
	20	18	2017	CHANGE FR		
	BUDGET	ACTUAL	ACTUAL	PRIOR YEA	AR	
REVENUE			* 0 000 000	e 54.700	20/	
Taxes	\$ 2,120,700	\$ 2,118,781	\$ 2,066,992	\$ 51,789	3%	
Special assessments	-	1,523	3,489	(1,966)	-56%	
Intergovernmental					404	
Federal, state and local government	2,526,999	2,537,962	2,513,196	24,766	1%	
Regulation						
Licenses and permits	108,442	84,290	93,262	(8,972)	-10%	
Fines, forfeits, and penalties	45,050	66,132	43,754	22,378	51%	
Charges for services  Public charges for services	974,700	616,143	654,094	(37,951)	-6%	
Intergovernmental charges for services	195,525	265,168	188,923	76,245	40%	
mo.go.onm.one.go.	·	•				
Miscellaneous	91,800	362,190	807,535	(445,345)	-55%	
Other Financing Sources						
Operating transfers in	190,000	179,979	196,642	(16,663)	-8%	
Sale of capital assets		275	5,900	(5,625)	-95%	
Issuance of long-term debt	-	-	1,040,689	(1,040,689)	N/A	
Premium on long-term debt			37,056	(37,056)	N/A	
TOTAL REVENUE AND						
OTHER FINANCING SOURCES	\$ 6,253,216	<u>\$ 6,232,443</u>	<u>\$ 7,651,532</u>	<u>\$ (1,419,089</u> )	-19%	



#### CITY OF BERLIN, WISCONSIN

GENERAL FUND EXPENDITURES YEAR ENDED DECEMBER 31, 2018

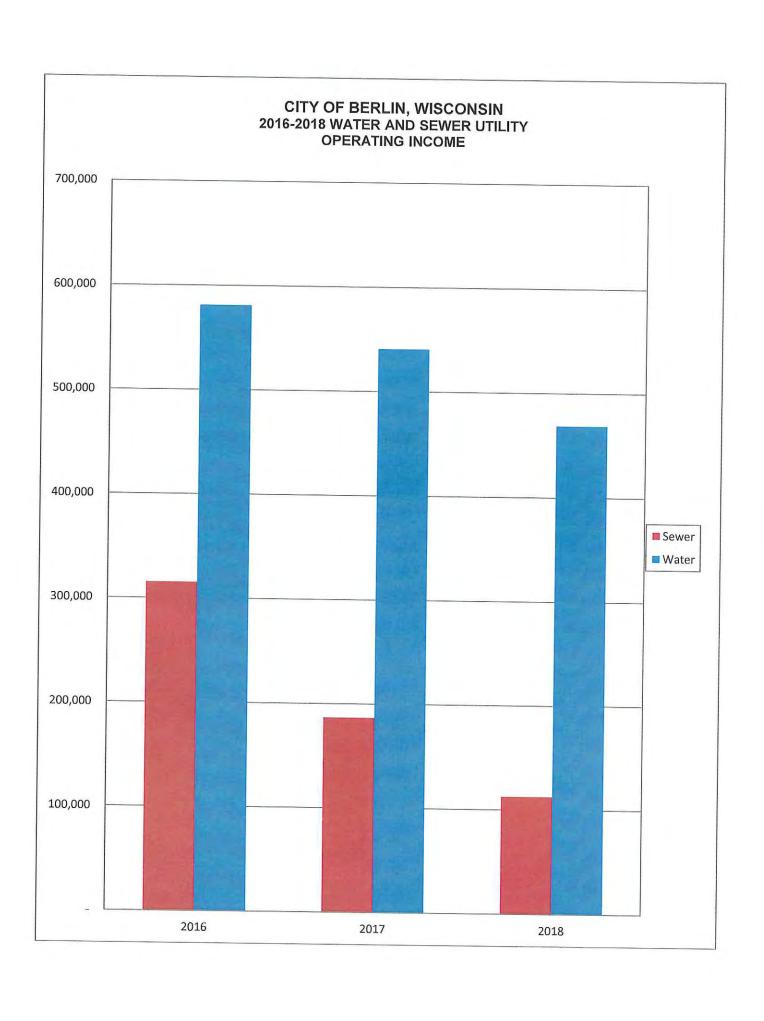
	2018		2017	CHANGE FROM	
	BUDGET	ACTUAL	ACTUAL	PRIOR YEAR	
EXPENDITURES General Government	\$ 667,448	\$ 625,195	\$ 639,982	\$ (14,787)	-2%
Public Safety	2,604,944	2,490,330	2,494,507	(4,177)	0%
Public Works	1,242,415	1,185,036	1,139,685	<b>4</b> 5, <b>3</b> 51	4%
Health and Human Services	223,112	204,212	198,530	5,682	3%
Culture, Recreation and Education	799,945	719,242	701,579	17,663	3%
Conservation and Development	100,634	92,522	123,340	(30,818)	-25%
Debt Service - Other	-	-	19,432	(19,432)	N/A
Other financing uses Operating transfer out	794,321	1,570,721	1,841,682	(270,961)	-15%
TOTAL EXPENDITURES AND OTHER FINANCING USES	<u>\$ 6,432,819</u>	\$ 6,887,258	<u>\$ 7,158,737</u>	<u>\$ (271,479</u> )	-4%



#### CITY OF BERLIN, WISCONSIN

## STATEMENT OF REVENUE, EXPENSES AND CHANGES IN NET POSITION SEWER AND WATER UTILITY

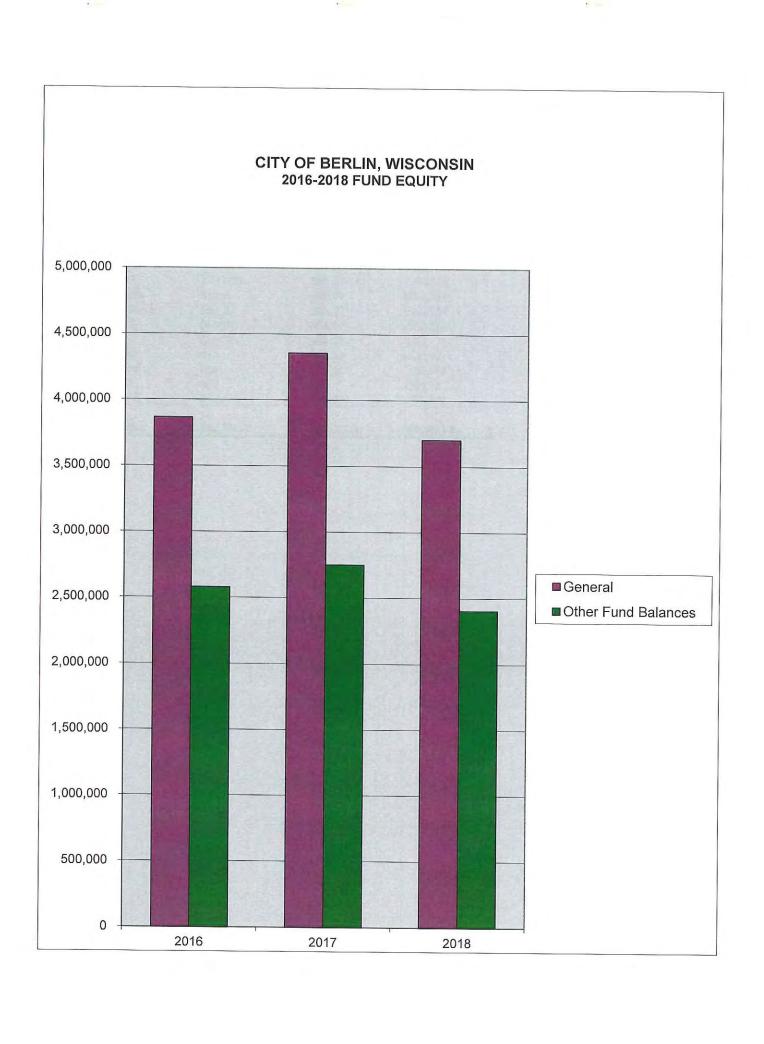
ROM EAR
AR
1%
29%
4%
1%
0%
12%
-13%
56%
342%
-27%
-230%
0%
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0%
4%
N/A
4%
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## CITY OF BERLIN, WISCONSIN

## STATEMENT OF REVENUE, EXPENSES AND CHANGES IN FUND BALANCE - OTHER FUNDS

		BALANCE						BALANCE
	J	ANUARY 1, 2018		REVENUE	FΣ	(PENDITURES	DE	CEMBER 31, 2018
		2010		1111111				
CDBG Housing Grant	\$	105,082	\$	57,701	\$	72,400	\$	90,383
Revolving Loan		210,604		100,273		917		309,960
Debt Service		1,269,288		588,794		1,714,460		143,622
Senior Special Account		60,995		69,782		85,098		45,679
Cemetery Expendable Trust		512,700		4,673		6,462		510,911
Library Expendable Trust		941,561		(12,733)		13,975		914,853
Capital Projects		518,687		1,110,785		659,571		969,901
TID #9 - North River Block		(123,279)		11,820		2,812		(114,271)
TID #10 - North Industrial Park		(1,332,813)		171,483		25,405		(1,186,735)
TID #01E - RAJ		(23,017)		11,800		16,240		(27,457)
TID #02E - David White Property		400		17,494		17,460		434
TID #14 - East Side Apartment Complex		(27,391)		64,839		459		36,989
TID #15 - Downtown		114,554		22,729		460		136,823
Library Endowment Principal		57,630		864		864		57,630
Internal Service		464,777	_	500,441		449,966		515,252
TOTAL	\$	2,749,778	\$	2,720,745	\$	3,066,549	\$	2,403,974



#### CITY OF BERLIN, WISCONSIN

OTHER FINANCIAL INFORMATION DECEMBER 31, 2018

**Independent Auditors' Report** - An unmodified "clean" auditors' opinion was issued on the City's financial statements. Our opinion states that we found your statements present fairly, in all material respects, the financial activity of the City.

Cash and Investments - The City's cash and investments decreased \$232,301 during 2018.

**Fixed Assets** - The City spent \$657,491 on general fixed assets and \$617,936 on sewer and water fixed assets during 2018.

**Long-Term Debt** - At year end, \$4,145,177 was outstanding of general obligation debt which is below the City's state statute debt limit of \$13,560,950. There was also \$752,912 of sewer and water debt and \$787,372 of employee benefits outstanding as of December 31, 2018.

Auditors' Reports on Compliance and Internal Control Over Financial Reporting - These reports conclude that the City's internal controls appear adequate for a City of your size.

**Communications With Those Charged With Governance** - This report discusses the scope and limitations of a financial audit and communicates any problems we had during the audit process. No significant problems were identified.

•	•	•

### CITY OF BERLIN PERMIT APPLICATION

Special Events on Streets, Highways, and Municipal Parking Lots
(Provisions of SEC. 18-331 thru SEC.18-337 Municipal Code Apply)
If you need additional space for any answers, attach additional sheets as necessary

18-333 Event On Stree	t/Highway18-3	33 Parade18-333 Eve	ent on Municipal Parking Lot
Applicant's Name: ABG	Grovp	Date of Applic	cation: 5/7/19
Applicant's Telephone Numbe	r: 361 0864	Applicant's DOB/Organize	ed: 4/2014
Applicant's Address;	1110 Cty Rd 1	/	
Purpose of Application Reques	/ 1		
If applicant is an organization, of authorizing official(s) (for copartnerships, all partners; for tr	orporations, all officers	itle(s) or position(s), address(s and directors; for LLC's, all	es), and telephone number(s) I members and managers; for
Harry Kwidzins	Name, Title, and Addre	0D 361 0864	Telephone Number
Dan Hoppa	VP /300	290 6452	
Debbie Dowen	5/300		
Michalle Werch	Tres /BOP		
Sue Trampt	BOD.	290-4/39	
Details of Event: (For extended		this form and include drawing	gs of proposed event or route).
What: Independence	Day Parade	~ 40	1/ .
When: July 3 2019 Where: Marqueffe St we	Start Time	and Duration: 530 VIII	app. 12 hr
Estimated number of units (if I	parade) or persons atte	ading (if other event): $/2$	:-16
Does applicant claim exemption charitable, or service organizat	n from liability insura ion per Sec. 18-333(b)	nce as a government agency, (2) and or (4).	religious, fraternal, veterans, Yes No
If yes, explain:	submit any supporting dos	umentation for this claim of exemp	tion)
Applicant or Applicant's Agen	SCATT CALL SERVICE CONTRACTOR	Harold Kucks	1
Name of Person Signing (pleas		ld Kwidzinst	
Title of Person Signing (if app		m 11-61	
For Office Use Only Include		:/ <del>`!\3 +2\\'=.(=\$\*-</del>	
/		·(governmental procession)	Yes
Neighboring Consent F	Form (or)]	Not Applicable	✓ Indemnification Form
Liability Insurance	e (or)	_Applicant is exempt and app	proved by City Attorney
Reviewed by:C	City Attorney	Chief of Police	Street Superintenden
Common Council approval:	Yes	NoNA (Rec	curring)
Recommendation: Conditions	for Approval or Reason	ons for Denial:	Ent.



Specifically this Agreement applies to:

City of Berlin

P.O. Box 272 108 North Capron Street Berlin, WI 54923 920-361-5400 Phone 920-361-5454 Fax

## Indemnification, Defense, and Hold Harmless Agreement

The undersigned, as an applicant for a permit from the City of Berlin, hereby agrees to indemnify, defend, and hold harmless the City of Berlin and its employees and agents against all claims, liabilities, loss, damages, or expenses against or incurred by the City of Berlin on account of any injury to or death of any person, or any damage to property, caused by or resulting from the activities for which the permit was granted.

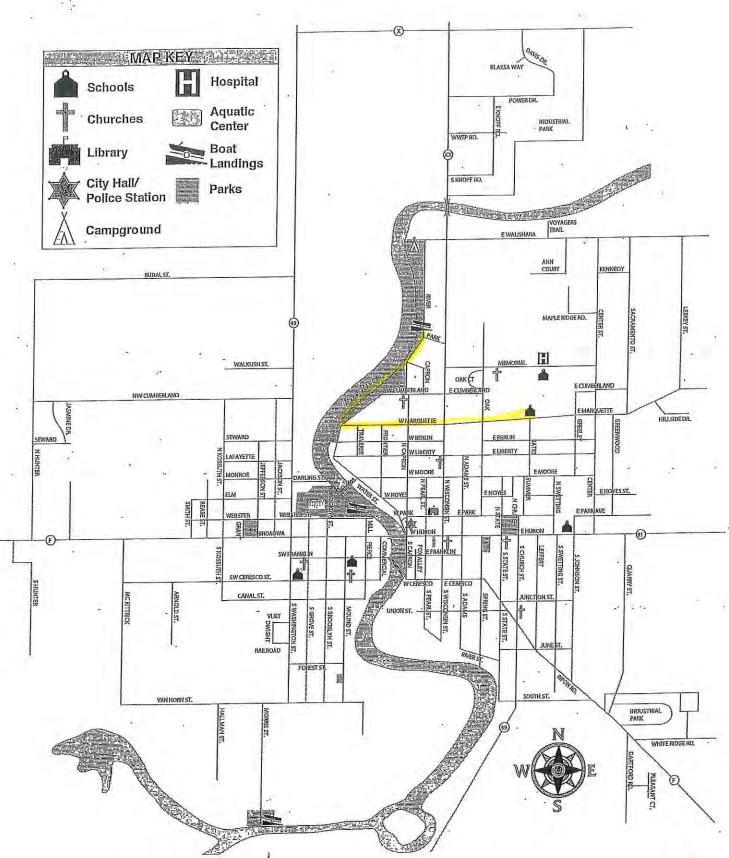
Independence Day Parade
(Description of Event)

On: July 3 2019
(Date(s) of Event)

By: ABC Group
(Name of Applicant)

On Behalf Of: ABC Group Hande Kin, dayski Pres/Boi)

If signing on behalf of an organization, you must have authority from the organization to sign an agreement like this. By signing this agreement, you are warranting to the City of Berlin that you have such authority.



Assemble at Clay Lamberton
Roote: Moura vette St. west to water St North to North Shetter

DATE: May 8, 2019

TO: Common Council

FROM: Jodie Olson

RE: 2019 Fireworks

<u>BACKGROUND</u>: The ABC Group contacted the City to express their interest in having the 2019 fireworks in conjunction with a community event on July 3, 2019.

<u>RECOMMENDATION:</u> Schedule the annual Independence Day Fireworks display on Wednesday, July 3, 2019, to coincide with the ABC Group event at Riverside Park.

## PETITION

PETITION

for

STREET SIGNAGE CHAN(

Berlin, Wisconsin

Pred no time

110 (***********************************			
Pari illiming projektel Laura Gillian (disco d Pagaragilar, C-, 4)	operate and in regularis respectful names coloud — or the intersection districts in Taxon southware lights	ic cotains of Pill Cooks to the or ones of Industrial MINISH onesterna its Court alloca	น ที่ เหมื่น มีเมริเลก
cacegoria sionales Clarente distribit	percentagnesi riiggineks i Increpassi sakiriggines idado Incressis genjagorikassi	jegirijik odkja dina Osejusiaca	
A RELIGIOR TO LES COCHES	recultinisch reinesstyrisch 1994 franktorräusingfyligisch 1995 franktorräusingfyligisch 1905 franktorräusingsbalden	agin (1994), to called impropositional grad or others agreed Cond Colley agree (1994) and adjusted assessment	ing at the bearings gaster from the second
	engerente di erren dan di erren Lancontrolar de la langua de la de de la de La dela la dela dela dela dela dela dela		Stil Pris.

. , NAME	<u>ADDRESS</u>	DATE
Michael Grenier	284 N. Honter	3/24/18
Karri Grenier	284 N. Hunter St.	3/24/19
Mark Brewer	N9463 32nd Dr	3/21/19_
Chris Mellane	294 n. Hunter Lt.	3-24-19
Bill Weekstrik	218 N. Hunter	3/25/19
Bydan Pham Thu Steery	Soo Nocumbustand St	3/24/19
Thyair Pricas	788 UN Cumberland	3/24/19
Conni & Steelvileusko	N9417 32 nd Drive	3/24/19
Rich Strelpluh	Nay 32 Dr Berty	3/24/19
Den Keller	N9407 321 Pr. Derliy	3/24/19
James Straw	N9441 32 DR	3/27-19
Beverly Steger	N944732Nd DR	3-27-19
Indy lesson	274 N. Hunke	3-27-19

-274 N. Hunter 3/27/19 920-229-1806 (Please note: a minimum of 5 affected citizens is required for petition) Signature of Circulator\_\_

### ALL TRAFFIC SOLUTIONS

## **Speed Summary Report**



Generated by Jessica Schroeder from Berlin Police Department on Apr 14, 2019 at 10:34:25 PM

Time of Day: 0:00 to 23:59 Dates: 4/7/2019 to 4/13/2019

## **Overall Summary**

Total Days of Data: 7 Speed Limit: 35

Average Speed: 25.07

50th Percentile Speed: 25.19

85th Percentile Speed: 30.89

Pace Speed Range: 22.0-32.0

Site: N Hunter St, SB

Minimum Speed: 5.0 Maximum Speed: 53.0

Display Status: Speed Display Average Volume per Day: 1174.6

Total Volume: 8222,0

## ALL TRAFFIC SOLUTIONS

## **Speed Summary Report**



Generated by Jessica Schroeder from Berlin Police Department on Apr 25, 2019 at 5:41:55

Time of Day: 0:00 to 23:59 Dates: 4/16/2019 to 4/22/2019 Site: N Hunter N of Cumberland, NB

## **Overall Summary**

Total Days of Data: 6
Speed Limit: \$35
Average Speed: 30.83

50th Percentile Speed: 31.46 85th Percentile Speed: 35.99 Pace Speed Range: 27.0-37.0 Minimum Speed: 5.0 Maximum Speed: 59.0

Display Status: Speed Display Average Volume per Day: 1543.3

Total Volume: 9260.0



#### CITY OF BERLIN PROCLAMATION

# DESIGNATE MAY 19-25, 2019 AS EMERGENCY MEDICAL SERVICES (EMS) WEEK

WHEREAS, emergency medical services is a vital public service; and

WHEREAS, the members of emergency medical services teams are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; and

WHEREAS, the emergency medical services system consists of emergency physicians, emergency nurses, emergency medical technicians, paramedics, firefighters, educators, administrators and others; and

WHEREAS, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills; and

WHEREAS, it is appropriate to recognize the value and the accomplishments of emergency medical services providers by designating Emergency Medical Services Week; now

THEREFORE, I Richard Schramer, Mayor of the City of Berlin, and the City of Berlin Common Council, in recognition of this event do hereby proclaim the week of May 19-25, 2019, as "EMERGENCY MEDICAL SERVICES WEEK".

PASSED BY THE COMMON COUNCIL THIS 14<sup>th</sup> DAY OF MAY 2019.

	Attest:
Richard D. Schramer, Mayor	Jodie K. Olson, City Clerk

#### RESOLUTION #19-08

# A RESOLUTION DESIGNATING TWO PARKING SPACES IN FRONT OF THE AMERICAN HOUSE BERLIN LLC FACILITY ON SOUTH PEARL STREET AS A PASSENGER LOADING ZONE

WHEREAS, at the request of American House Berlin LLC ("American House"), an assisted living facility located on South Pearl Street in the City of Berlin, the Common Council has agreed to designate two parking spaces in front of the American House facility as a passenger loading zone to accommodate both emergency and non-emergency pickup of passengers, based on American House's prior agreement to reimburse the City for all costs of initial sign placement and pavement painting.

NOW THEREFORE, BE IT RESOLVED, that the two parking spaces located on South Pearl Street, as depicted in the attached aerial photograph, shall be designated by the Superintendent of Streets as a passenger loading zone to accommodate both emergency and non-emergency pickup of passengers, pursuant to the authority designated to the Common Council by Sec. 70-481 of the Code of Ordinances of the City of Berlin. Such designation shall be conditioned upon American House's prior agreement to reimburse the City for all costs of initial sign placement and pavement painting. The Superintendent of Streets shall install all necessary signs and pavement painting in his discretion and as otherwise in compliance with any state traffic sign standards and requirements.

	€°
Passed, approved and ado	pted this day of, 2019.
ROLL CALL VOTE:	CITY OF BERLIN
AYES	BY: Richard D. Schramer, Mayor
NAYS ABSENT	
APPROVED AS TO FORM:	ATTEST:  Jodie Olson  Administrator, Clerk/Treasurer
Matthew G. Chier City Attorney	

#### Rezone Request

DATE: 5-6-19

TO: Mayor & Common Council

From: Lindsey Kemnitz

RE: Rezone request for 206-01178-0100 (435 E. Huron St.) and 206-01178-0200 (425 E. Huron St.)

Dan Hertzberg requested for a rezone the above parcels from R-2 to B-1. Currently Majik Sweep is operating on one of the parcels with a variance. Plan Commission recommended approving the rezone request for the listed parcels. Currently the property has outstanding personal property taxes and City staff recommends approving the rezone contingent on the outstanding personal property taxes being paid in full.

**RECOMMENDATION:** Accept the Plan Commission's recommendation to approve the rezone request for 206-01178-0100 (435 E. Huron St.) and 206-01178-0200 (425 E. Huron St) contingent on the outstanding personal property taxes being paid in full.

#### **ORDINANCE # 05-19**

# AN ORDINANCE REZONING A PARCEL OF LAND FROM R-2 (RESIDENTIAL) to B-1 (BUSINESS) CITY OF BERLIN

WHEREAS, a Petition has been duly filed with the City of Berlin requesting that the real estate described below be rezoned from R-2 (Residential) to B-1 (Business); and

WHEREAS, the Plan Commission met and has considered the petition on May 30, 2019; and

WHEREAS, the Plan Commission also held a public hearing on May 30, 2019, and has complied with Section 82-66 of the Municipal Code of the City of Berlin; and has recommended to the City of Berlin Common Council that the said real estate be rezoned; and

**NOW, THEREFORE** the Common Council of the City of Berlin do ordain that the following described real estate owned by Hertzberg Properties LLC with a description as follows:

Parcel numbers 206-01178-0100 (435 E. Huron Street) and 206-01178-0200 (425 E. Huron Street) City of Berlin, Green Lake County, to be rezoned from R-2 (Residential) to B-1 (Business), and the Zoning Map and Municipal Code of the City of Berlin shall be modified to reflect the zoning change.

This ordinance shall take effect the day after publication.

_ AYES		RICHARD D. SCHRAMER, MAYOR
_ NAYS		
ABSENT	ATTEST:	JODIE OLSON, CITY CLERK

DATE: May 6, 2019

TO: Mayor and Common Council

FROM: Lindsey Kemnitz

RE: Safeguard Site

BACKGROUND:

At the COTW meeting I provided the Council the breakdown for the WAM and SAG application. For the City to submit the WAM application, the DNR needs the resolution approved. We are applying for \$22,945 for WAM, \$126,000 for SAG. The City would need to fund about \$9,000 of the \$157,945 project cost.

#### **RESOLUTION #19-07**

# A RESOLUTION REGARDING THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES WISCONSIN ASSESSMENT MONEY (WAM) - CONTRACTOR SERVICES AWARD

WHEREAS, the City of Berlin authorizes the submittal of an award application for the 114 Pierce and 119 Commercial Street properties for Wisconsin Assessment Money (WAM) Contractor Services; and

WHEREAS, the City of Berlin recognizes that the environmental assessment of Brownfields is an important part of protecting Wisconsin's resources; and

WHEREAS, the City of Berlin will allow employees from the Department of Natural Resources access to inspect the award site or facility and award records;

NOW THEREFORE BE IT RESOLVED that the City of Berlin Common Council requests services and assistance available from the Wisconsin Department of Natural Resources under the WAM Contractor Services Award program and will comply with state and federal rules for the program; and

BE IT FURTHER RESOLVED that the City of Berlin Common Council hereby authorizes Community Development Director, Lindsey Kemnitz, to act on behalf of the City of Berlin to submit an application to the State of Wisconsin for contractor services under the WAM program, sign documents, and take necessary action to comply with approved award activities.

Passed, approved and ado	pted this 14th da	y of May, 2019
AYES		RICHARD D. SCHRAMER, MAYOR
NAYS		Rolling D. Bellieling, 1,222 etc
ABSENT	ATTEST:	JODIE OLSON, CITY CLERK
APPROVED AS TO FOR	RM:	30DIE 025011, 011 1 024 = 1
MATTHEW G. CHIER		

DATE:

May 8, 2019

TO:

Common Council

FROM:

Jodie Olson

RE:

Approval of State & Federal Taxi Grant Documents

**Background:** Attached are the 2019 State and Federal Taxi Grant documents for signing. The state taxi grant amount noted in the agreement is \$53,861 and the federal taxi funding is \$103,032. It is estimated that the City's portion for the local match for taxi service will be \$49,170. The State and Federal agreements, along with the accompanying Federal Certifications and Assurances, need to be signed in order to receive the grant reimbursement from the State for the grant funding.

<u>Recommendation</u>: Approve and authorize the Mayor to sign the 2019 85.20 Urban Mass Transit Assistance Agreement (State) and Section 5311 Federal Grant Agreement between the City of Berlin and the WI Department of Transportation for Calendar Year 2019, including the Federal Certifications and Assurances.



## **Grant Agreement**

Information and Signature Page

#### Parties to the Agreement:

This Grant Agreement is made by and between the State of Wisconsin Department of Transportation ("the Department") and the City of Berlin ("the Recipient") that operates a public mass transit system ("Transit System").

## Citation: Federal, State Statute, State Admin Code:

The Department agrees to provide financial assistance with program monies made available in accordance with the terms and conditions of this Grant Agreement and the provisions of the Recipient's 2019 Public Transit Assistance Program application for funding assistance, which is made part of this Grant Agreement by reference.

#### **Period of Performance:**

January 1, 2019, through December 31, 2019

#### **Award Maximum:**

Contact: (608) 266-0189

As specified on Attachment A to this agreement, the Department agrees to pay Recipient an amount not to exceed **\$53,861**.

## This Grant Agreement shall become effective upon its complete execution by the Recipient and the Department.

RECIPIENT (Please attach additional signatures on a separate sheet, if required by local regulations)	STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION Division of Transportation Investment Management 4822 Madison Yards Way, 6 <sup>th</sup> Floor South P.O. Box 7913 Madison, WI 53707-7913
Signature:	Signature:
Name:	Name: <u>lan Ritz</u>
Title:	Title: Transit Section Chief
Date:	Date:



## **Grant Agreement**

Outline

Section I: RESPONSIBILITIES OF THE DEPARTMENT

A general statement of the Department's responsibilities to the Recipient.

Section II: **RESPONSIBILITIES OF THE RECIPIENT** 

> Statements concerning the Recipient's various responsibilities under this Grant Agreement, including (but not limited to) record-keeping requirements, procurement instructions, and reporting requirements to

the Department.

Section III: ACCOUNTING, RECORDS, AND AUDIT

Statements concerning the Recipients various responsibilities under this Grant Agreement, including (but not limited to) financial accounting and record-keeping requirements, record maintenance and reporting requirements, and audit procedures.

Section IV: **TERMINATION OF AGREEMENT** 

> Statements concerning various ways this Grant Agreement may be terminated.

Section V: **ADDITIONAL DOCUMENTS** 

A list of documents that are part of this Grant Agreement, including: Incorporated Documents, which are part of this Grant Agreement by reference (but are not physically included in this Grant Agreement); and Attached Documents, which are included with and part of this Grant Agreement.

The Recipient must review each additional document and initial that the Recipient has reviewed and understands the content and responsibilities included in the additional documents.



## **Grant Agreement**

Main Provisions

## Section I: RESPONSIBILITIES OF THE DEPARTMENT

A. The Department agrees to remit payment to the Recipient in accordance with appropriate statutes, administrative rules, program grant application, and program materials.

## Section II: RESPONSIBILITIES OF THE RECIPIENT

- A. The Recipient is responsible for submitting all program reports, invoices, or other required documents as outlined in the program application in the manner and form as prescribed by the Department. The Department may withhold any and all payments to the Recipient if program reports, invoices, and other required documents are not filed in the manner and form as prescribed by the Department.
- B. The Recipient agrees to pay the total operating deficit of the Transit System as its bills become due. If the Recipient contracts for mass transit service with a privately-owned company, the Recipient shall pay the privately-owned company in accordance with actual monthly operating expenses.
- C. The Recipient shall require the Transit System to provide reduced-fare programs for elderly and handicapped persons during nonpeak hours, and shall ensure compliance with that requirement. Such reduced fares may not exceed one-half of the full adult cash fare applicable during peak hours of operation. This requirement is not applicable if the Transit System is a shared-ride taxi system.
- D. The Recipient agrees to carry out the project as outlined in its approved application. If the Recipient determines that changes to approved projects are necessary, written approval from the Department must be received before the Recipient may proceed.
- E. The Recipient shall require the Transit System to determine "total passenger trips" taken during the calendar year in accordance with the procedures set forth in Ch. Trans 3, Wis. Admin. Code, and with the provisions of the Transit Management Plan contained in the Recipient's 2019 application for operating assistance which is made part of this Contract by reference, and shall ensure compliance with that requirement.



- F. The Recipient may not assume expenditures outside the Period of Performance of this Grant Agreement unless the Recipient has sought prior written approval from the Department and has received that approval from the Department.
- G. The Recipient may not use program monies to purchase service from or make subgrants to any third party without a contract, agreement, or purchase-of-service order, and must follow Department procedures and approval process. Third-party contracts, agreements, or purchase-of-service orders shall be available for inspection by the Department, its officials, employees or designees upon request.
- H. If applicable, the Recipient will make payments to third-party contractors within 30 days of Recipient's receipt of invoice.
- I. All materials, equipment, and supplies acquired through this Grant Agreement by the Recipient must comply fully with all safety requirements as set forth in law or rule by the State of Wisconsin, and with all applicable OSHA Standards.
- J. The Recipient shall, if other local public bodies contribute assistance to the operation of the Transit System, allocate the state aids received under this Contract among the contributors in proportion to their contributions as shown in Attachment A.

## Section III: ACCOUNTING, RECORDS, AND AUDITS

- A. The Recipient shall have a single, organization-wide financial and compliance audit performed by a qualified independent auditor, if required to do so under federal law and regulations. This audit shall be performed in accordance with federal Office of Management and Budget (OMB) Super Circular 2 CFR Part 200 and state single audit guidelines issued by the Wisconsin Department of Administration. Upon notice of any findings from this audit that involve the use of program funds, the Recipient shall inform the Department.
- B. The Recipient shall submit a year-end statement of expenses and revenues to the Department by the requested date.
- C. All costs charged to this Grant Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers indicating the purpose of the



charges. The Recipient, any Recipients, contractors, subcontractors, and their affiliates shall maintain all documents and evidence pertaining to revenues, expenses, and cost allocations related to this Grant Agreement. The Recipient shall be responsible for insuring the compliance of all Recipients, contractors, subcontractors, and affiliates with this provision.

- D. The accounts and records as required above shall be retained until the Department completes its final audit and shall be available upon request by the Department or its designee for inspection and audit purposes.
- E. The Recipient shall permit the Department or their designee access to inspect all vehicles, facilities, and equipment acquired or used as part of the project; all transportation services rendered by the Recipient by the use of such vehicles, facilities, and equipment; and all relevant project data, documents, and records.

## Section IV: TERMINATION OF AGREEMENT

- A. The Department may terminate this Grant Agreement at any time that the Secretary of the Department of Transportation determines that the Recipient, lessee, or any third-party contractor has failed to perform in the manner called for in the Grant Agreement, or has failed to fulfill contract obligations. Failure of the Recipient or any third-party contractor to comply with the terms and conditions of this Grant Agreement shall be considered cause for termination.
- B. The Recipient may terminate this Grant Agreement upon receipt of a written, formal request by the Department at least 30 calendar days prior to the proposed termination date.
- C. In the event that this Grant Agreement is terminated, the Department shall be liable only for payment of Attachment A of this Grant agreement for services rendered before the effective date of termination, not to exceed 60% of the total operating costs.



## Section V: ADDITIONAL DOCUMENTS

Initial next to each item to indicate that you understand both the content and your responsibilities according to each document.

2. Attachment A: Schedule of Payments

Attached Documents The following documents have been <i>included</i> with this Grant Agreement and are made part of this Grant Agreement – review each document and initial that you understand both the content and your responsibilities under each:
 1. Program-Specific Requirements



## **Program-Specific Requirements**

Wis. Stats. 85.20 – Tier B Systems

## Section I: PROJECT REQUIREMENTS

A. The Department agrees to pay the lesser of:

1. The Grant Agreement maximum, as identified on the Information and Signature page.

2. The nonfederal share of the Recipient's audited operating deficit.

3. Five times the amount of the Recipient's local contribution as defined under sec. 85.20(4m)(b), Wis. Stats. This provision does not apply if the Transit System is a shared-ride taxi system.

The Recipient's combined state and federal operating assistance shall not exceed 65% of audited operating expenses. The Department shall determine the Transit System's operating expenses and operating deficit. Such determinations by the Department shall be made in accordance with generally accepted accounting principles and practices. The allowable federal share of the operating deficit will also be determined by the Department. The Department may reduce state payments if requested reimbursements are expected to result in assistance exceeding 65% of operating expenses.

This Grant Agreement will be amended to reduce state payments if sufficient funds are not made available under sec. 20.395, Wis. Stats.

- B. The Recipient shall file quarterly reimbursement and performance measures reports within 30 days of the close of the reporting period. Other special reports may also be required by the Department. The Recipient assures that all reports will be submitted in a manner and form prescribed by the Department.
- C. Payments from The Department to the Recipient shall be made in accordance with Attachment A, subject to the maximum payment listed on the Information and Signature page of this Grant Agreement.
- D. During the audit process, an adjustment of payments will be made based upon the yearend financial statement submitted by the Recipient. The year-end financial statement shall reflect the operating revenues and expenses incurred by the Transit System for the



Period of Performance after the books for that year have been closed. If, based on the year-end financial statement, payments made by the Department are less than the contracted amount of eligible operating expenses of the Transit System, and less than the nonfederal share of the operating deficit of the Transit System, the Department will pay the Recipient the amount withheld per Attachment A, or a sum sufficient to bring the Department's total payments, when combined with the federal share, to 60% of eligible operating expenses, or a sum sufficient to bring the Department's total payments up to the nonfederal share of the operating deficit, whichever sum is less.

- E. If the Department's audit establishes that payment to the Recipient under the terms of this Grant Agreement has exceeded the allowable maximum as started on the Information and Signature Page, the Recipient shall refund to the Department upon demand a sum sufficient to reduce the payment to comply with the maximum allowed on the Information and Signature Page of this Grant Agreement.
- F. The Department may withhold any and all payments due and owing the Recipient if the Recipient has not filed any report required as noted above, until such time as the report is filed in the manner and form prescribed.
- G. The Recipient shall send to the Department all contracts between the Recipient and any third party vendor receiving funds under this agreement. The Department shall review such contracts and determine their conformance with the provisions of this agreement.
- H. If the Recipient contracts for transportation service with a third party, the Recipient shall pay the third party in accordance with actual monthly operating deficit. The Recipient may reduce payments to the third party by an amount equal to any overpayments made to the third party under this Grant Agreement.
- I. The Recipient agrees that the Transit System will be managed and operated in accordance with the provisions of the Transit Management Plan contained in the Recipient's 2019 application for operating assistance and that the full application is made part of this Grant Agreement by reference. Modifications to the 2019 Transit Management Plan may be proposed by either the Recipient or the Department.
- J. A request by the Recipient to modify the 2019 Transit Management Plan must be submitted in writing to the Department in a manner prescribed by the Department, and



must be received by the Department at least 14 calendar days prior to the planned implementation date of the proposed change.

- K. If the Department determines that a proposed modification is a "substantive change" to the 2019 Transit Management Plan, and the Department approves such a "substantive change," the Department shall prepare an amendment to this Grant Agreement and forward it to the Recipient for execution. The Recipient shall not implement a proposed "substantive change" to the 2019 Transit Management Plan until an appropriate amendment to this Grant Agreement has been executed.
- L. If the Department determines that a proposed modification to the 2019 Transit Management Plan is a "non-substantive change," the Department shall authorize the Recipient to implement the change, and a formal amendment to this Grant Agreement shall not be required.
- M. A request by the Department to modify the 2019 Transit Management Plan must be submitted in writing to the Recipient at least 28 calendar days prior to the planned implementation date of the proposed change. Within 21 calendar days of receipt of such a request, the Recipient shall respond to the Department's request. If the Recipient agrees to the Department's request, then this Grant Agreement will be modified accordingly and the change implemented.

#### N. WisDOT Contact:

Title:

Program Manager for Public Transit

Address:

Attn: Kevin Lange, 5311 Program Manager

4822 Madison Yards Way, 6th Floor South

P.O. Box 7913

Madison, WI 53707-7913

Contact:

(608) 266-2365 | kevin.lange@dot.wi.gov



## **Attachment A: Schedule of Payments**

Wis. Stats. 85.20 – Urban Mass Transit Assistance

#### A. Award Details:

<b>Total Budgeted Expenses</b>	\$284,028
Total Anticipated Revenues	- \$77,965
Total Anticipated Net Deficit	= \$206,063
5311 Grant Allotment	\$103,032
85.20 State Assistance	\$53,861
*Estimated Local Match	\$49,170

<sup>\*</sup>Local Share estimated, actual expenses and revenues will determine the local contribution.

#### **B.** Schedule of Payments:

Period	Scheduled A	Amount	Estimated Payment Date
1st Payment (Quarter 1)	\$	13,465	June 5, 2019
2 <sup>nd</sup> Payment (Quarters 2-4)	\$	40,396	August 30, 2019
Total	\$	53,861	



Federal Transit Administration §5311 Formula Grants for Rural Areas - Operating 2019 Program Grant Agreement City of Berlin DUNS: 8519626

## **Grant Agreement**

Information and Signature Page

#### Parties to the Agreement:

This Grant Agreement is made by and between the State of Wisconsin Department of Transportation ("the Department") and the City of Berlin ("the Recipient").

### Citation: Federal, State Statute, State Admin Code:

The Department agrees to provide financial assistance with program monies made available in accordance with the terms and conditions of this Grant Agreement and the provisions of the Recipient's 2019 Public Transit Assistance Program application for funding assistance, which is made part of this Grant Agreement by reference.

#### **Period of Performance:**

January 1, 2019, through December 31, 2019

#### Award Maximum:

As specified on Attachment A to this agreement, the Department agrees to pay Recipient an amount not to exceed \$103,032.

This Grant Agreement shall become effective upon its complete execution by the Recipient and the Department.

RECIPIENT	STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION Division of Transportation Investment Management 4802 Sheboygan Avenue, Room 951 P.O. Box 7913 Madison, WI 53707-7913	
Signature:	Signature:	
Name:	Name: lan Ritz	
Title:	Title: Transit Section Chief	
Date:	Date:	
Contact:	Contact: (608) 266-0189	



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
2019 Program Grant Agreement
City of Berlin

DUNS: 8519626

## **Grant Agreement**

Outline

Section I: RESPONSIBILITIES OF THE DEPARTMENT

A general statement of the Department's responsibilities to the Recipient.

Section II: RESPONSIBILITIES OF THE RECIPIENT

Statements concerning the Recipient's various responsibilities under this Grant Agreement, including (but not limited to) record-keeping requirements, procurement instructions, and reporting requirements to

the Department.

Section III: ACCOUNTING, RECORDS, AND AUDIT

Statements concerning the Recipients various responsibilities under this Grant Agreement, including (but not limited to) financial accounting and record-keeping requirements, record maintenance and reporting requirements, and audit procedures.

Section IV: TERMINATION OF AGREEMENT

Statements concerning various ways this Grant Agreement may be terminated.

Section V: ADDITIONAL DOCUMENTS

A list of documents that are part of this Grant Agreement, including: Incorporated Documents, which are part of this Grant Agreement by reference (but are not physically included in this Grant Agreement); and Attached Documents, which are included with and part of this Grant Agreement.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
2019 Program Grant Agreement
City of Berlin
DUNS: 8519626

## **Grant Agreement**

Main Provisions

#### Section I: RESPONSIBILITIES OF THE DEPARTMENT

A. The Department agrees to remit payment to the Recipient in accordance with appropriate statutes, administrative rules, program grant application, and program materials.

## Section II: RESPONSIBILITIES OF THE RECIPIENT

- A. The Recipient is responsible for submitting all program reports, invoices, or other required documents as outlined in the program application in the manner and form as prescribed by the Department. The Department may withhold any and all payments to the Recipient if program reports, invoices, and other required documents are not filed in the manner and form as prescribed by the Department.
- B. All assets procured with program funds shall comply with Department rules regarding satisfactory continuing control as prescribed in Department grant application and program materials. Vehicles purchased with state funding or a combination of federal and/or state funding will be an asset of record with the Department and shall comply with Department policies.
- C. The Recipient agrees to carry out the project as outlined in its approved application. If the Recipient determines that changes to approved projects are necessary, written approval from the Department must be received before the Recipient may proceed.
- D. The Recipient may not assume expenditures outside the Period of Performance of this Grant Agreement unless the Recipient has sought prior written approval from the Department and has received that approval from the Department.
- E. The Recipient may not use program monies to purchase service from or make subgrants to any third party without a contract, agreement, or purchase-of-service order, and must follow Department procedures and approval process. Third-party contracts, agreements, or purchase-of-service orders shall be available for inspection by the Department, its officials, employees or designees upon request.



Federal Transit Administration §5311 Formula Grants for Rural Areas - Operating 2019 Program Grant Agreement City of Berlin

DUNS: 8519626

- F. All materials, equipment, and supplies acquired through this Grant Agreement by the Recipient must comply fully with all safety requirements as set forth in law or rule by the State of Wisconsin, and with all applicable OSHA Standards.
- G. Before purchasing services or capital items from a third party with funds from this grant, the Recipient will contact the Department in order to determine the best way to proceed with a state and federally compliant procurement. An overview of these procedures is available on the Department's web site at: http://www.dot.wisconsin.gov/localgov/transit/procurement.htm.
  - 1. The Recipient must obtain Departmental approval for pre-solicitation and postsolicitation procurement activities.
  - 2. The Recipient must notify the Department in writing of its intention to purchase the service or item. Such notification should include the funding source (i.e., grant number) by which the Recipient intends to fund the purchase, as well as assurances that the proposed procurement will follow all relevant federal and state purchasing rules and procedures.
  - 3. As requested by the Department, the Recipient will provide to the Department written documentation of the solicitation process. Upon review, the Department will issue written approval to the Recipient to make the award.

## Section III: ACCOUNTING, RECORDS, AND AUDITS

- A. The Recipient shall have a single, organization-wide financial and compliance audit performed by a qualified independent auditor, if required to do so under federal law and regulations. This audit shall be performed in accordance with federal Office of Management and Budget (OMB) Super Circular 2 CFR Part 200 and state single audit guidelines issued by the Wisconsin Department of Administration. Upon notice of any findings from this audit that involve the use of program funds, the Recipient shall inform the Department.
- B. The Recipient shall submit a year-end statement of expenses and revenues to the Department by the requested date.
- C. All costs charged to this Grant Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers indicating the purpose of the



Federal Transit Administration §5311 Formula Grants for Rural Areas - Operating 2019 Program Grant Agreement City of Berlin

DUNS: 8519626

charges. The Recipient, any Recipients, contractors, subcontractors, and their affiliates shall maintain all documents and evidence pertaining to revenues, expenses, and cost allocations related to this Grant Agreement. The Recipient shall be responsible for insuring the compliance of all Recipients, contractors, subcontractors, and affiliates with this provision.

- D. The accounts and records as required above shall be retained until the Department completes its final audit and shall be available upon request by the Department or its designee for inspection and audit purposes.
- E. The Recipient shall permit the Department or their designee access to inspect all vehicles, facilities, and equipment acquired or used as part of the project; all transportation services rendered by the Recipient by the use of such vehicles, facilities, and equipment; and all relevant project data, documents, and records.

#### Section IV: TERMINATION OF AGREEMENT

- A. The Department may terminate this Grant Agreement at any time that the Secretary of the Department of Transportation determines that the Recipient, lessee, or any thirdparty contractor has failed to perform in the manner called for in the Grant Agreement, or has failed to fulfill contract obligations. Failure of the Recipient or any third-party contractor to comply with the terms and conditions of this Grant Agreement shall be considered cause for termination.
- B. The Recipient may terminate this Grant Agreement upon receipt of a written, formal request by the Department at least 30 calendar days prior to the proposed termination date.
- C. In the event that this Grant Agreement is terminated, the Department shall be liable only for payment of Attachment A of this Grant agreement for services rendered before the effective date of termination.



Federal Transit Administration §5311 Formula Grants for Rural Areas - Operating 2019 Program Grant Agreement City of Berlin DUNS: 8519626

Section V: ADDITIONAL DOCUMENTS

The Recipient shall review and understand the content and responsibilities of all the documents listed in Section V of this Grant Agreement.

#### A. Incorporated Documents

The following documents are *incorporated by reference* and made part of this Grant Agreement:

- 1. Recipient's current year approved application and application guidelines
- 2. Federal Transit Administration Master Agreement, FTA MA(25), October 1, 2018 (federal programs only)
- 3. Certifications and Assurances, as applicable to the Recipient's selected project (federal programs only)

#### B. Attached Documents

The following documents have been *included* with this Grant Agreement and are made part of this Grant Agreement:

- 1. Program-Specific Requirements
- 2. Attachment A: Funding Allocation
- 3. Attachment B: Federal Clauses



## **Program-Specific Requirements**

Section 5311 grant program

### Section I: PROGRAM REQUIREMENTS

- A. The Recipient is responsible for adhering to the federal laws and regulations prescribed in the <u>Federal Transit Administration Master Agreement</u>, FTA MA(25), October 1, 2018.
- B. The Recipient agrees to comply with all federal statutes relating to Civil Rights and nondiscrimination, as applicable. The Recipient is required to create, maintain and comply with a Title VI Plan that has been approved by WisDOT.
- C. The Recipient agrees to comply with all federal and state statutes relating to Equal Employment Opportunity, as applicable.
- D. The Recipient agrees to comply with and participate in Compliance Site Reviews conducted by the State of Wisconsin or authorized contractor.
- E. The Recipient must include the following notification language of federal participation in all its requests for proposals, solicitations, contracts, press releases, brochures, web site(s), or other publications, etc., funded under this grant, based on the source of funding:

"This project is funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5311 Formula Grants for Rural Areas (CFDA 20.509)".



### Section II: PROJECT REQUIREMENTS

- A. The Recipient shall file quarterly reimbursement and performance measures reports within 30 days of the close of the reporting period. Other special reports may also be required by the Department. The Recipient assures that all reports will be submitted in a manner and form prescribed by the Department.
- B. Payments under the terms of this Grant Agreement in based on 49 USC §5311, as amended, and in the Wisconsin Administrative Code, Chapter TRANS 6, which specify that operating assistance grants may not exceed fifty percent (50%) of the operating deficit.
- C. The Department agrees to pay the Recipient the award maximum as stated on page 1 of this agreement, the federal share of sixty-five (65%) of the transit system's audited operating expenses, fifty percent (50%) of the audited operating deficit, or the federal share of the audited project deficit, whichever sum is least. Payments to the Recipient may be reduced by the Department to prevent exceeding the 65% maximum. Operating expenses are determined in accordance with Wisconsin Administrative Code, Chapter TRANS 6, and the cost principles published in 2 CFR 200. Although 2 CFR 200 does not generally recognize advertising as an allowable cost, the nature of transit service requires its promotion to be successful and effective. Consequently, advertising is specifically allowed as an operating expense for the Recipient and contractors under this Grant Agreement.
- D. Payment by the Department to the Recipient shall be made upon submittal of quarterly reimbursement and operations reports by the Recipient to the Department.
- E. If the Department's audit establishes that payment to the Recipient under the terms of this Grant Agreement has exceeded the allowable maximum, the Recipient shall refund to the Department upon demand a sum sufficient to reduce the payment to comply with the maximum allowed in this Grant Agreement.
- F. The Department may withhold any and all payments due and owing the Recipient if the Recipient has not filed any report required as noted above, until such time as the report is filed in the manner and form prescribed.



- G. The Recipient shall send to the Department all contracts between the Recipient and any third party vendor receiving funds under this agreement. The Department shall review such contracts and determine their conformance with the provisions of this agreement.
- H. If the Recipient contracts for transportation service with a third party, the Recipient shall pay the third party in accordance with actual monthly operating deficit. The Recipient may reduce payments to the third party by an amount equal to any overpayments made to the third party under this Grant Agreement.
- I. The Recipient agrees that the Transit System will be managed and operated in accordance with the provisions of the Transit Management Plan contained in the Recipient's 2019 application for operating assistance and that the full application is made part of this Grant Agreement by reference. Modifications to the 2019 Transit Management Plan may be proposed by either the Recipient or the Department.
- J. A request by the Recipient to modify the 2019 Transit Management Plan must be submitted in writing to the Department in a manner prescribed by the Department, and must be received by the Department at least 14 calendar days prior to the planned implementation date of the proposed change.
- K. If the Department determines that a proposed modification is a "substantive change" to the 2019 Transit Management Plan, and if the Department approves such a "substantive change," the Department shall prepare an amendment to this Grant Agreement and forward it to the Recipient for execution. The Recipient shall not implement a proposed "substantive change" to the 2019 Transit Management Plan until an appropriate amendment to this Grant Agreement has been executed.
- L. If the Department determines that a proposed modification to the 2019 Transit Management Plan is a "non-substantive change," the Department shall authorize the Recipient to implement the change, and a formal amendment to this Grant Agreement shall not be required.
- M. A request by the Department to modify the 2019 Transit Management Plan must be submitted in writing to the Recipient at least 28 calendar days prior to the planned implementation date of the proposed change. Within 21 calendar days of receipt of



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such a request, the Recipient shall respond to the Department's request. If the Recipient agrees to the Department's request, then this Grant Agreement will be modified accordingly and the change implemented.

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

### O. WisDOT Contact:

Title:

Program Manager for Public Transit

Address:

Attn: Kevin Lange

4822 Madison Yards Way, 6th Floor South

P.O. Box 7913

Madison, WI 53707-7913

Contact:

(608) 266-2365 |

kevin.lange@dot.wi.gov



## **Attachment A: Funding Allocation**

Section 5311 Grant Program

### A. Award Details:

Total Budgeted Expenses	\$ 284,028
Total Anticipated Revenues	\$ 77,965
Total Anticipated Net Deficit	\$ 206,063
5311 Grant Maximum	\$ 103,032
85.20 State Assistance	\$ 53,861
<b>Estimated Local Match</b>	\$ 49,171

<sup>\*</sup>Local Share estimated, actual expenses and revenues will determine the local contribution.

### **B. Funding Source:**

This project is funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5311 Formula Grants for Rural Areas (CFDA 20.509).

- i. Federal Award Agency: USDOT Federal Transit Administration
- ii. Pass through entity: WisDOT, Division of Transportation Investment

  Management
- iii. Federal Award Identification Number (FAIN): 1245-2019-3
- iv. Federal Award Date: September 4, 2019
- v. The full amount of the obligated share will be committed upon receipt of this signed grant agreement.



### **Attachment B: Federal Clauses**

Section 5311 Grant Program

### **CHARTER BUS REQUIREMENTS**

49 U.S.C. 5323(d) 49 CFR Part 604

#### Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

<u>Flow Down Requirements</u>: The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

<u>Model Clause/Language</u>: The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

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

### SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F) 49 CFR Part 605

<u>Applicability to Contracts</u>: The School Bus requirements apply to the following type of contract: Operational Service Contracts.

<u>Flow Down Requirements</u>: The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

<u>Model Clause/Language</u>: The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.



### **ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq. 49 CFR Part 18

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirements</u>: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

<u>Model Clause/Language</u>: No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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

### **CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

<u>Flow Down Requirements</u>: The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

<u>Model Clause/Language</u>: While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et <a href="mailto:seq">seq</a>. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **LOBBYING**

31 U.S.C. 1352 49 CFR Part 19 49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$100,000.

Flow Down Requirement: The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.



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Mandatory Clause/Language: Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq. ]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

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

### APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) 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 an agency, a Member of Congress, an 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.
- (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, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), 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 such expenditure or failure.]

The Contractor, \_\_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

### ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

<u>Model Clause/Language</u>: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

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



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- 3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4. 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.
- 5. 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.
- 6. 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).
- 7. FTA does not require the inclusion of these requirements in subcontracts.

### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristic s	Operation al Service Contract	Turnkey	Construction	Architectur al Engineerin g	Acquisitio n of Rolling Stock	Profession al Services
I State Grantees  a. Contracts below SAT (\$100,000)  b. Contracts	None  None unless¹ non- competitiv	Those imposed on state pass thru to Contract or	None Yes, if non- competitive award or if funded thru² 5307/5309/53	None None unless non- competitive award	None None unless non- competitiv e award	None None unless non- competitiv e award
above \$100,000/Capit al Projects	e award					



II Non State Grantees  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capit al Projects	Yes³ Yes³	imposed	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

#### FEDERAL CHANGES

#### 49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language: No specific language is mandated. The following language has been developed by FTA.

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

### **CLEAN AIR**

42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.



- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

**Background and Application** 

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

#### Clause Language

### Contract Work Hours and Safety Standards

- (1) **Overtime requirements** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty 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 forty hours in such workweek.
- (2) **Violation; liability** for **unpaid wages; liquidated damages** In the event of any violation of the clause set forth in paragraph (1) 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 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 paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the 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 contractor, or any other federally-assisted contract subject to the Contract Work Hours and 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 paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of 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 paragraphs (1) through (4) of this section.

### NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

# PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

<u>Model Clause/Language</u>: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.



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- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### <u>TERMINATION</u>

#### 49 U.S.C.Part 18 FTA Circular 4220.1F

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

<u>Flow Down Requirement</u>: The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

<u>Model Clause/Language</u>: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. Termination for Convenience (General Provision) The (Recipient) 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. Termination for Default [Breach or Cause] (General Provision) 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 (Recipient) 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.



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If it is later determined by the (Recipient) 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 are beyond the control of the Contractor, the (Recipient), 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 (General Provision) The (Recipient) 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 cure is permitted and other appropriate conditions.

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

- d. Waiver of Remedies for any Breach in the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'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 (Recipient), 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 Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient.
- 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).



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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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete 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 Recipient resulting from the Contractor's refusal or failure to complete the work within 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 Recipient 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 Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) 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 Recipient.
- i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) 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 the convenience of the Recipient, 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 Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

- If, after termination for failure to fulfill contract obligations, it is determined that 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 Recipient.
- j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, 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 (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the 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 (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

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

### GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 CFR part 180 2 CFR part 1200 2 CFR § 200.213 2 CFR part 200 Appendix II (I) **Executive Order 12549 Executive Order 12689** 

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, 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) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;



- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in ay federally assisted Award.

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 AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Date:	
Signature:	
Company Name:	
Title:	

### **PRIVACY ACT**

5 U.S.C. 552

<u>Applicability to Contracts</u>: When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

<u>Model Clause/Language</u>: The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - 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 FTA.

### CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shorten the lengthy text.

### Civil Rights - The following requirements apply to the underlying contract:

The following requirements apply to the underlying contract:

- (1) <u>Nondiscrimination</u> 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) <u>Equal Employment Opportunity</u> 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 (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, 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.



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- (b) <u>Age</u> 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) <u>Disabilities</u> 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) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### BREACHES AND DISPUTE RESOLUTION

#### 49 CFR Part 18 FTA Circular 4220.1F

<u>Applicability to Contracts</u>: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

<u>Model Clauses/Language</u>: FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and



remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

<u>Applicability to Contracts</u>: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language: Since no mandatory language is specified, FTA had developed the following language. Transit Employee Protective Provisions. (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

- (a) General Transit Employee Protective Requirements To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.
- § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities
- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.
- § 5311 in Nonurbanized Areas



- If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

#### 49 CFR Part 26

Background and Applicability: The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

#### Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### Disadvantaged Business Enterprises

- 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 agency's overall goal for DBE participation is \_1.1\_ %. A separate contract goal [of \_\_\_ % DBE participation has] [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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. {If a separate contract goal has been established, use the following} Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith



efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following [concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]:

- 1. The names and addresses of DBE firms that will participate in this contract;
- 2. A description of the work each DBE will perform;
- 3. The dollar amount of the participation of each DBE firm participating;
- 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- 6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above [as a matter of responsiveness] [with initial proposals] [prior to contract award] (see 49 CFR 26.53(3)).

**(If no separate contract goal has been established, use the following)** 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 that work no later than 10 calendar days after the contractor's receipt of payment for that work from the {insert agency name}. In addition, is required to return any retainage payments to those subcontractors within 10 calendar days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- e. The contractor must promptly notify {insert agency name} and WisDOT, 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 {insert agency name and WisDOT.

# INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in <u>FTA Circular 4220.1F</u> are hereby



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incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

### DRUG AND ALCOHOL TESTING

49 U.S.C. §5331 49 CFR Part 655

Applicability to Contracts: The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases.

Flow Down Requirements: Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with FTA regulation 49 CFR 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol testing Programs".

### Explanation of Model Clause/Language

Federal regulations 49 CFR 655 includes the following elements. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with 49 CFR Part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

### **Explanation of Model Contract Clauses**

#### Drug and Alcohol Testing

#### The contractor agrees to:

- (a) Establish and implement a drug and alcohol testing program that complies with Federal Transit Administration (FTA) regulation, 49 CFR Part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" and US DOT regulation, 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Program".
- (b) Participate in the Drug and Alcohol Testing Consortium administered by WisDOT's approved Third Party Administrator that complies with 49 CFR Part 655.
- (c) Provide documentation and reports necessary to establish its compliance with Part 655, as amended, and permit any authorized representative of the United States Department of Transportation or its operating administrations and/or the State of Wisconsin, Department of Transportation or its authorized agents, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 as amended and review the testing process.



#### ADA ACCESS 49 USC 531 (d)

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$3,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

Access Requirements for Persons with Disabilities

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

#### VETERANS EMPLOYMENT

FTA Circular 4220.1F Chapter IV

Applicability to Contracts: The Veterans Employment provisions apply to all construction contracts.

<u>Veterans Employment</u>. Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

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# **Federal Certifications and Assurances**

for

**WisDOT Grant Agreement** 



Calendar Year 2019

Prepared by the Wisconsin Department of Transportation Bureau of Transit, Local Roads, Railroads and Harbors

May 1, 2019

NOTE: This booklet contains Certifications and Assurances that must be submitted for Federal funds.

### Background Information

The following Certifications and Assurances have been compiled for Federal Transit Administration (FTA) assistance programs applicable to WisDOT grant applications and awards.

A complete list of Fiscal Year 2019 Annual Certification and Assurances for FTA grants is available at

https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/fta-fiscal-year-2019-certifications-and

The Applicant/Recipient understands and agrees that not every provision of these certifications and assurances will apply to every Applicant/Recipient or every Project or Award for which FTA provides Federal funding. The type of project and the selection of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurance reflect applicable requirements of FTA's enabling legislation currently in effect.

The Certifications and Assurances have been prepared in light of:

- The Fixing American's Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, and other authorizing legislation to be enacted, and
- The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Public Law No. 112-141, July 6, 2012, as amended by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law. No. 114-41, July 31, 2015.
- Previous enabling legislation that remains in effect, and
- Appropriations Acts or Continuing Resolutions funding the U.S. Department of Transportation during Federal Fiscal Year 2019.

The Applicant/Recipient understands and agrees that these Certifications and Assurances are *pre-award* requirements, generally imposed by Federal law or regulation, and do not include all Federal regulations that may apply to the Applicant/Recipient or its project. The FTA Master Agreement, which is updated annually and located on FTA's website, contains the current list of most requirements:

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

Each Applicant/Recipient is ultimately responsible for compliance with the Certifications and Assurances selected on its behalf that apply to its Project or Award, itself, any Subrecipient, or any other Third-Party Participant in its Project, except as FTA determines otherwise in writing.

#### Instructions:

Step #1: Re	ead each C	ertification :	and Assurance.
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Step #2: Initial each Certification and Assurance, indicating you have read and understand each one.

**Step #3**: Sign and date the certification statement.

Step #4: Submit the initialed and signed Certifications and Assurances signature (page 3) and signed and completed Labor Protection Warranty (page 4).

**Step #5**: Keep a copy of the Certifications and Assurances signature page and booklet for your records.

### 2019 FTA Certifications and Assurances

CATEGORY	SUBJECT	Applicant/Recipient Must Initial Each
	Labor Warranty .	
A-1	Note: Subrecipients are required to post the Special Section 5333(b) Labor Warranty language on an employee bulletin board.	
A-2	Certifications and Assurances Required of Every Applicant	
B-1	Nondiscriminatory Assurances	
B-2	Intergovernmental Review Assurance	
C-1	Procurement	
C-2	Suspension and Debarment, Tax Liability and Felony Convictions	
C-3	Lobbying	
C-4	Private Sector Protections	
C-5	Transit Asset Management Plan	
C-6	Rolling Stock Buy America Reviews and Bus Testing	
C-7	Alcohol and Controlled Substances Testing	
C-8	Public Transportation Agency Safety Plan	
C-9	Demand Responsive Service	
C-10	Acquisition of Capital Assets by Lease	
C-11	Construction Hiring Preferences	
D-1	Disadvantaged Business Enterprise Assurance	
D-2	Public Transportation Emergency Relief Program	

### Chief Elected or Administrative Official Statement

The undersigned chief elected or administrative official hereby certifies that the Applicant/Recipient has read and understands the Certifications and Assurances initialed in the table above and further assures that, as a condition to receiving Federal financial assistance from the Wisconsin Department of Transportation, the Applicant/Recipient will comply with the requirements as specified in the attached Certifications and Assurances.

The person whose signature appears below is authorized to sign this assurance on behalf of the grant Applicant/Recipient. While an attorney's signature is not required, the Wisconsin Department of Transportation encourages your counsel to participate in the review and signature of this document.

Grant Program:	
Grant Applicant/Recipient:	
Signature of Chief Elected or Administrative Official	
Printed Name:	
Date:	

#### A-1

# LABOR PROTECTION – ASSURANCE OF COMPLIANCE WITH SPECIAL SECTION 5333(b), FORMERLY SECTION 13(c), WARRANTY

Note: Signature required for 5311 Subrecipients only.

The Applicant/Recipient must comply with the labor protection provisions of 49 U.S.C. § 5333(b), formerly § 13(c). The requirements of 49 U.S.C. § 5333(b) can be met by assuring compliance with a special Warranty arrangement developed exclusively for application to the Section 5311 program. The Warranty binds the recipient to certain specified terms and conditions of the National (model) § 5333(b) Agreement executed July 23, 1975, which are incorporated into the Warranty by reference. The Special Section 5333(b) Warranty is contained in this document, as well as the applicable provisions of the National (model) § 5333(b) Agreement.

The Applicant/Recipient HEREBY AGREES THAT as a condition to receiving Federal financial assistance from the Wisconsin Department of Transportation, as authorized under § 5311 of the Federal Transit Act, it will comply with the terms and conditions of the Special Section 5333(b) Warranty and assume all legal and financial responsibility relative to compliance with the terms and conditions of the Warranty.

Name of Applicant/Recipient:	
Date:	
Ву:	(signature of chief elected or administrative official)

Instructions: Identify a list of all existing providers of "public transportation" operating in the transportation service area of the recipient and all labor organizations representing the employees of such providers. The term "public transportation" means any transportation by bus, rail, or other conveyance, which provides either general or special service to the general public on a regular and continuing basis. "Public transportation" does <u>not</u> include the following: (1) school bus, sightseeing, or charter service; (2) exclusive ride taxi service; and (3) service to individuals or groups which excludes use by the general public.

Provider	Labor Union (if applicable) or specify N/A
-	

### Special Section 5333(b) Labor Warranty

Subrecipients are required to post the Special Section 5333(b)
Labor Warranty in the contractor's workplace in a location where
affected employees may view the Warranty.

An Applicant/Recipient that receives an allocation of funds under 49 U.S.C. § 5311 shall make the following language part of the contract of assistance with its Third-Party Contractors.

### Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of a surface public transportation provider in the transportation service are of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees.

The term "Project," as used herein shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided.

The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

The term "service area," as used herein, includes the geographic area, over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project.

The term "Union," as used herein, shall refer to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant.

The term "employee," as used herein, shall include individual who may or may not be represented by a Union.

The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant.

The term "Grantee," as used herein, shall refer to the Applicant/Recipient for assistance; a Grantee which receives assistance is also a Recipient.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

- (2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/or the preservation or continuation of the collective bargaining rights of such employees.
- (3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deemed best, in accordance with the applicable collective bargaining agreement.
- (4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however that this provision

shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacement or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected y the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within he purview of this paragraph (5) shall occur until after either: (1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached; 2) the decision of the arbitrator has been rendered pursuant to this subparagraph (b); or 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph(b), any involved party may immediately submit that issue to arbitration under paragraph (15) of this arrangement. In any such arbitration, the arbitrator shall rely upon standards and criteria utilized by the surface Transportation Board (and its predecessor agency, in the Interstate Commerce Commission) to address the 'preconsummation" issue in cases involving employee protections pursuant to 40 U.S.C § 11326 (or its predecessor, § 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such arbitration, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement.

If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such arbitration, the time period within which the parties are to respond to the list of potential arbitrators submitted by the American Arbitration Association Service shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, the award of the arbitrator shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days for mailing if post hearing briefs are required by either party. The intended change shall not be instituted during the pendency of any arbitration proceedings under this subparagraph (c).

(5)(d) If any intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final arbitration decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final arbitration decision rendered pursuant to the subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final arbitration decision shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final arbitration decision pursuant to subparagraph (b).

(6)(a) Whenever an employee, retained in service, recalled to service or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the

Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displaced allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments were provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid fur during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments were provided for.

If the displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for.

If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a 'dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall firs be paid each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follows:

Employee's length of service prior to adverse effect	Period of Protection
1 day to 6 years	Equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12<sup>th</sup>) of the total compensation received by the employee in the last twelve (120 months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights y other employees brought about as a result of the Project, and the employee's seniority rights, or through the Recipient, in accordance with subparagraph(e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a

dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

- (7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer; notification shall be in accordance with the terms of the then-existing collective bargaining agreement if the employee is represented by a union. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.
- (7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.
- (7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.
- (7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.
- (7)(i) A dismissed employee receiving dismissal allowance shall actively seek and not refuse other reasonable comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final arbitration decision rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.
- (8) In determining length of service of a displaced or dismissed employee for purpose of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employment were continuing to perform services in his/her former position.
- (9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, as some future time, the employee could have bid, been transferred or promoted.
- (10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under an disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions as so long as such benefits continue to be accorded to the other employees of the bargaining unit, in active service or furloughed as the case may be.
- (11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee's representatives.
- (11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of

employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

- (11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.
- (11)(d) Except as otherwise provided in subparagraph (b), changes in places of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.
- (12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and his thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employees option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as t be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home as such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against the loss under such contract, and in addition, shall relieve the employee from any further obligation thereunder

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

- (12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change is residence.
- (12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient.

In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

- (12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.
- (12)(e) "Change of residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.
- (13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and less than 10 years	12 months' pay
10 years and less than 15 years	12 months' pay
15 years and over	12 months' pay
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In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payment(s) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

Length of service shall be computed as provided in § 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instance where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

- (13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.
- (14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provide however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date the employee's displacement or dismissal.
- (15)(a) In the event that employee(s) are represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c), the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be referred by any such part y to any final and binding disputes settlement procedure acceptable to the parties.
  - In the event they cannot agree upon such procedure, the dispute, claim or grievance may be submitted at the written request of the Recipient or the Union to final and binding arbitration. Should the parties be unable to agree upon the selection of a neutral arbitrator within ten (10) days, any party may request the American Arbitration Association to furnish, from among arbitrators who are then available to serve, five (5) arbitrators from which a neutral arbitrator shall be selected The parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (f) of this arrangement, the arbitration shall commence within fifteen (15) days after selection or appointment of the neutral arbitrator, and the decision shall be rendered within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision shall be final and binding. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.
- (15)(b) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient, and all other expense shall be paid by the party incurring them.
- (15)(c) In the event that employee(s) are not represented by a Union, any dispute claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement which cannot be settled by the Recipient and the employee(s) within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding dispute settlement procedure acceptable to the parties or in the event the parties cannot agree upon such a procedure, the dispute or controversy may be referred to the Secretary of Labor for a final binding determination.
- (15)(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the obligation of the employee or the representative of the employee to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (see *Hodgson's Affidavit* in Civil Action No. 825-71).
- (16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by this arrangement may file a written claim of its violation, through the Union, or directly if the employee is outside the bargaining unit with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's

position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claim.

The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant or his/her representative on the basis for denying or modifying such claim, giving reasons therefore. If the Recipient fails to honor such claim, the Union or non-bargaining unit employee may invoke the following procedures for further joint investigation of the claim by giving notice in writing. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as it may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any Third-Party such additional factual materials as may be relevant. In the event the Recipient rejects the claim, the claim may be processed to arbitration as hereinabove provided by paragraph (15).

- (17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights of any Union or of any represented employee derived from any other agreement or provision of Federal, state, or local law.
- (18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, included those in the employment of any entity bound by this arrangement pursuant to paragraph (21) herein, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining arrangements related thereto.

In the event such employee requests such training or retraining to fill such a vacant position, the Recipient shall provide for such training or retraining at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the personnel policies or practices for such position, plus any displacement allowance to which the employee may otherwise be entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee was qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

- (a) Employees in the craft of class of the vacancy shall be given priority over employees without seniority or such craft or class;
- (b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;
- (c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.
- (19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received Federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C. § 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising thereunder.
- (20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal government and the Applicant/Recipient for Federal funds and between the Applicant/Recipient and any recipient of Federal funds; provided, however, that this arrangement shall not merge into the contract of assistance, but all be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.
- (21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and not provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangement made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly- or privately- owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

- (22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part of portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable Federal, state or Federal law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/or any applicable collective bargaining agreements.
- (23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall benefits be worsened as a result of the Project.
- (24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under the Federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives, if any, of the employees involved for purpose of adequate replacement under § 5333 (b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.
- (25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the data when he employee was so affected.

#### A-2

# CERTIFICATIONS and ASSURANCES REQUIRED of EVERY APPLICANT

The Applicant/Recipient assures that:

It has sufficient authority to undertake the following activities on its behalf, in compliance with applicable State, Local, or Indian tribal laws, regulations, and requirements and its by-laws or internal rules:

- Execute and file its application for Federal assistance,
- Execute and file its Certifications, Assurances, Charter Service Agreement, and School Bus Agreement, as applicable, binding its compliance,
- Execute the Grant Agreement, Cooperative Agreement, Loan, Loan Guarantee, or Line of Credit, Master Credit Agreement, or State Infrastructure Bank (SIB) Cooperative Agreement for which the Applicant is seeking FTA funds,
- ✓ Comply with applicable Federal laws, regulations, and requirements, and
- ✓ Follow applicable Federal guidance.

The Applicant/Recipient and understands and agrees to the following:

- It will comply with all applicable Federal laws, regulations and requirements in implementing its Award.
- It is under a continuing obligation to comply with the terms and conditions of its Grant Agreement
  or Cooperative Agreement with FTA for each Award, including the FTA Master Agreement and
  other documents incorporated by reference and made part its Grant Agreement or Cooperative
  Agreement, including any related amendments.

- 3. It recognizes that Federal laws, regulations and requirements may be amended from time to time and those amendments may affect the implementation of its Award.
- 4. It understands that Presidential executive orders and Federal guidance, including Federal policies and program guidance, may be issued concerning matters affecting it or its Award.
- It agrees that the most recent Federal laws, regulations, and requirements and guidance will apply its Award, excepts as FTA determines otherwise in writing.
- Except as FTA determines otherwise in writing, it agrees that requirements for FTA programs
  may vary depending on the fiscal year for which the Federal assistance for those programs was
  appropriated or made available.

#### **B-1**

### NONDISCRIMINATION ASSURANCE

Applicant/Recipient assures that:

- It will comply with the following laws, regulations and requirements so that no person in the
  United States will be denied the benefits of, or otherwise be subjected to discrimination in, any
  U.S. DOT or Federal Transit Administration (FTA) assisted program or activity (particularly in the
  level and quality of transportation services and transportation-related benefits) based on race,
  color, national origin, religion, sex, disability, or age, including:
  - a. Federal transit laws, specifically 49 U.S.C. 5332 (prohibiting discrimination based on race, color, religion, national origin, sex [including gender identity], disability, age, employment, or business opportunity),
  - b. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d,
  - c. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (prohibiting discrimination based on race, color, religion, sex [including gender identity and sexual orientation], or national origin),
  - d. Executive Order No. 11246, "Equal Employment Opportunity", September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to Federal assistance programs,
  - e. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.,
  - f. U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25,
  - g. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 et seq.,
  - h. The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.,
  - U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21,
  - j. U.S. DOT regulations, specifically 49 CFR Parts 27, 37, 38, and 39, and
  - k. Any other applicable Federal statutes that may be signed into law, Federal regulations that may be issued, or Federal requirements that may be imposed.
- 2. It will comply with Federal guidance implementing Federal nondiscrimination laws, regulations or requirements, except as FTA determines otherwise in writing.
- 3. As required by 49 CFR 21.7, Applicant/Recipient assures:
  - a. It will comply with 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR Part 21 in the manner that it:
    - (1) Implements its Award,
    - (2) Undertakes property acquisitions, and
    - (3) Operates all parts of its facilities, as well as its facilities operated in connection with its Award.
  - This assurance applies to its Award and to all parts of its facilities, as well as its facilities used to implement its Award.

- c. It will promptly take the necessary actions to carry out this assurance, including:
  - (1) Notifying the public that discrimination complaints about transportation-related services or benefits may be filed with U.S. DOT or FTA Headquarters Office of Civil Rights, and
  - (2) Submitting information about its compliance with these provisions to U.S. DOT or FTA upon their request.
- d. If it transfers U.S. DOT or FTA assisted real property, structures, or improvements to another party, any deeds and instruments recording that transfer will contain a covenant running with the land assuring nondiscrimination:
  - (1) While the property is used for the purpose that the Federal assistance is extended, or
  - (2) While the property is used for another purpose involving the provision of similar services or benefits.
- The United States has a right to seek judicial enforcement of any matter arising under:
  - (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
  - (2) U.S. DOT regulations, 49 CFT Part 21, or
  - (3) This assurance.
- It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request, to comply with:
  - (1) Title VI of the Civil Rights Act, 42 U.S.C. § 2000d,
  - (2) U.S. DOT regulations, 49 CFR Part 21, and
  - (3) Federal transit law, 49 U.S.C. 5332.
- g. It will comply with applicable Federal guidance issued to implement Federal nondiscrimination requirements, except as FTA determines otherwise in writing.
- h. It will extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR Part 21 to each Third-Party Participant, including any:
  - (1) Subrecipient.
  - (2) Transferee.
  - (3) Third-Party Contractor or Subcontractor at any tier,
  - (4) Successor in Interest,
  - (5) Lessee, or
  - (6) Other Participant in its Award, except FTA and the Applicant (and later, the Recipient).
- It will include adequate provisions to extend the requirements of 49 U.S.C. § 5332, 42 U.S.C. § 2000d, and 49 CFR Part 21 to each Third-Party agreement, including each:
  - (1) Subagreement at any tier,
  - (2) Property transfer agreement,
  - (3) Third party contract or subcontract at any tier.
  - (4) Lease, or
  - (5) Participation agreement.
- The assurances made will remain in effect as long as FTA determines appropriate, including, for example, as long as:
  - (1) Federal assistance is provided for its Award,
  - (2) Its property acquired or improved with Federal assistance is used for a purpose for which the Federal assistance is extended or for a purpose involving similar services or benefits.
  - (3) It retains ownership or possession of its property acquired or improved with Federal assistance provided for its Award, or
  - (4) It transfers property acquired or improved with Federal assistance, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits, or
  - (5) FTA may otherwise determine in writing.
- 4. As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27, specifically 49 CFR § 27.9, and consistent with 49 U.S.C. § 5322, the Applicant/Recipient assures that:
  - a. It will comply with the following prohibitions against discrimination based on disability, of which compliance are a condition of approval or extension of any FTA assistance awarded to:

(1) Construct any facility,

- (2) Obtain any rolling stock or other equipment,
- (3) Undertake studies,

(4) Conduct research, or

- (5) Participate in any benefit or obtain any benefit from any FTA administered program, and
- b. In any program or activity receiving or benefiting from Federal assistance that U.S. DOT administers, no qualified individual with a disability will, because of their disability, be:
  - (1) Excluded from participation,
  - (2) Denied benefits, or
  - (3) Otherwise subjected to discrimination.

### **B-2**

## INTERGOVERNMENTAL REVIEW ASSURANCE

The Applicant/Recipient will provide the following certification, except if the Applicant/Recipient is an Indian tribe, an Indian organization or a tribal organization that applies for assistance made available for 49 U.S.C. 5311(c)(1), which authorizes FTA's Tribal Transit Programs.

As required by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR Part 17, the Applicant/Recipient assures that it has submitted or will submit each application for Federal assistance to the appropriate State and local agencies for intergovernmental review.

#### C-1

### **PROCUREMENT**

Each Applicant/Recipient that is a State, local or Indian tribal government seeking federal assistance to acquire property or services in support of its project must provide the following certification.

The Applicant/Recipient agrees to comply with:

- 1. U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200, particularly 2 CFR §200.317-200.326 "Procurement Standards":
- 2. Federal laws, regulations and requirements applicable to FTA procurements; and
- 3. The latest edition of FTA Circular 4220.1 and other applicable federal guidance.

#### C-2

# SUSPENSION AND DEBARMENT and TAX LIABILITY and FELONY CONVICTIONS

Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. As prescribed by U.S. DOT Order 4200.6, FTA requires each applicant to certify as to its tax and felony status.

### Suspension and Debarment

The Applicant/Recipient certifies that:

- a. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180
- b. To the best of its knowledge and belief that, it, and each of its principals:
  - Is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily or involuntarily excluded from covered transactions by and Federal department or agency;
  - (2) Has not, within the preceding three-years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
  - (3) It is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense listed in the preceding section of this certification;

Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

# Tax Liability and Felony Convictions

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

C-3

### LOBBYING

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 C.F.R. § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 C.F.R. Part 20.

# Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) 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 an agency, a Member of Congress, an 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.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 section 1352, title 31, U.S. Code. 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.

### Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### C-4

### PRIVATE SECTOR PROTECTIONS

Each Applicant/Recipient that is a state, local government or Indian tribal government that seeks FTA assistance to acquire the property of a private transit operator or operate public transportation in competition with or in addition to a public transportation operator must provide the following certification, except as FTA determines otherwise in writing.

To facilitate FTA's ability to make the findings required by 49 U.S.C. § 5323(a)(1), the Applicant/Recipient certifies that:

- 1. It has or will have:
  - a. Determined that the federal assistance it has requested is essential to carrying out its Program of Projects as required by 49 U.S.C. §§ 5303, 5304, and 5306;
  - b. Provided for the participation of private companies engaged in public transportation to the maximum extent feasible; and
  - c. Paid just compensation under state or local law to the company for any franchise or property acquired.
- 2. It has completed the actions listed above before it:
  - Acquires the property or an interest in the property of a private provider of public transportation, or

- b. It operates public transportation equipment or facilities:
  - (1) In competition with transportation service provided by an existing public transportation operator or
  - (2) In addition to transportation service provided by an existing public transportation operator.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

### 4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 C.F.R. § 604.4.

The applicant agrees that it, and each of its subrecipients, and Third-Party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 C.F.R. Part 604, the terms and conditions of which are incorporated herein by reference.

### 4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 C.F.R. § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 C.F.R. § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
  - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
  - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 C.F.R. § 605.11, the applicant agrees as follows:
  - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
  - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
  - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
  - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

## TRANSIT ASSET MANAGEMENT PLAN

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it has, or will develop, a transit asset management plan in compliance with 49 C.F.R. Part 625.

C-6

# ROLLING STOCK BUY AMERICA REVIEWS and BUS TESTING

## 6.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 C.F.R. § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 C.F.R. Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 C.F.R. Part 663.

### 6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 C.F.R. § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 C.F.R. Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

C-7

# ALCOHOL AND CONTROLLED SUBSTANCES TESTING

An Applicant/Recipient that seeks federal assistance to operate transit service must comply with the alcohol and controlled substance testing requirements of 49 U.S.C. § 5331 and it's implementing regulation and provide the following certification, as required by 49 C.F.R. § 655.83.

### Note:

WisDOT requires 5311 recipients to join the statewide Drug and Alcohol Testing Consortium.

Recipients solely engaged in JARC or 5310 capital activities are exempt from drug and alcohol testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4.

Contact the WisDOT Transit Section for more information.

As required by 49 U.S.C § 5331, and FTA regulations "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655., subpart I, specifically 49 CFR § 655.83 the Applicant/Recipient certifies:

- 1. The Applicant/Recipient and its contractors to which these testing requirements apply have established and implemented an alcohol misuse testing program and a controlled substance testing program.
- 2. The Applicant/Recipient and its contractors to which these testing requirements apply have complied or will comply with all applicable requirements of 49 CFR part 655 to the extent those regulations are consistent with 49 U.S.C. § 5331, and
- 3. Consistent with U.S. DOT Office of Drug and Alcohol Policy and Compliance Notice, issued October 22, 2009, if the Applicant/Recipient or its contractors to which these testing requirements apply reside in a State that permits marijuana use for medical or recreational purposes, the Applicant/Recipient and its contractors to which these testing requirements apply have complied or will comply with the Federal controlled substance testing requirements of 49 CFR part 655.

C-8

# PUBLIC TRANSPORTATION AGENCY SAFETY PLAN

The Applicant/Recipient will provide the following certification if it applies for funding made available or appropriated for 49 U.S.C chapter 53, except as FTA determines otherwise in writing.

The Applicant/Recipient certifies it will comply with applicable regulations and follow federal guidance and directives that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329(b)-(d), except at FTA determines otherwise in writing.

C-9

### **DEMAND RESPONSIVE SERVICE**

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 C.F.R. Part 37, it must make the following certification. This certification is required by 49 C.F.R. § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time:
- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service:
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

C-10

## **ACQUISITION OF CAPITAL ASSETS BY LEASE**

An Applicant/Recipient that intends to request the use of Federal funding authorized under 49 U.S.C. Chapter 53 to acquire capital assets (other than rolling stock or related equipment) through a lease is required to provide the following certification.

As required by FTA regulations, "Capital Leases," 49 CRF part 639, to the extent consistent with the FAST Act, if the Applicant/Recipient acquires any capital asset (other than rolling stock or related equipment) through a lease financed with Federal assistance appropriated or made available under 49 U.S.C. Chapter 53, it will not enter into a capital lease for which FTA can provide only incremental federal assistance unless it has adequate financial resources to meet its future lease obligations if federal assistance is not available.

#### C-11

### CONSTRUCTION HIRING PREFERENCES

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. G, title I, § 191.

The applicant certifies the following:

(a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;

(b) That the applicant will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and

(c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

#### D-1

# DISADVANTAGED BUSINESS ENTERPRISE ASSURANCE

The Applicant/Recipient will adhere to the following assurance language:

Disadvantaged Business Enterprise (DBE) provisions apply to U.S. DOT (including FTA) assisted contracts. As a recipient of FTA planning, capital, and/or operating assistance with contracting opportunities in excess of \$250,000 (excluding transit vehicle purchases), WisDOT has a written DBE Program Plan to address the requirements. The WisDOT DBE program addresses FTA funded contracting activities conducted by WisDOT as well as those of its subrecipients.

As a subrecipient of FTA assistance, the DBE requirements apply to subrecipients. The following assurance applies to subrecipient grant agreements:

a) The Wisconsin Department of Transportation shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT- assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Wisconsin Department of Transportation of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer to the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.).

In addition, each contract a subrecipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following clauses:

- b) The contractor or subcontractor shall not discriminate based on 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 DOT-assisted contracts. 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 recipient deems appropriate, which may include, but is not limited to:
  - 1) Withholding monthly progress payments;
  - 2) Assessing sanctions;
  - 3) Liquidated damages, and/or;
  - Disqualifying the contractor from future bidding as non-responsible.
- c) The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in its written documentation of its contract commitment to the recipient unless the contractor obtains written consent from the recipient.
- d) The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the recipient unless the contractor obtains written consent from the recipient.
- e) The contractor will be required to report its DBE participation obtained throughout the period of performance.
- f) The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 calendar days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 calendar days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- g) The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the recipient to use a DBE subcontractor (or an approved substitute DBE firm) without the recipient's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
- h) The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

#### D-2

# PUBLIC TRANSPORTATION EMERGENCY RELIEF PROGRAM

Before FTA provides funding made available or appropriated for a Public Transportation Emergency Relief Project, the Applicant/Recipient must provide the following certification, except as FTA determines otherwise in writing.

As required by 49 U.S.C. § 5324(d), the Applicant/Recipient assures it will comply with the requirements of the Certifications and Assurances as FTA determines for federal assistance appropriated or made available for the Public Transportation Emergency Relief Program and comply with FTA regulations, "Emergency Relief," 49 CFR, part 602.

DATE:

May 8, 2019

TO:

Common Council

FROM:

Jodie Olson

RE:

Approval 5311 Capital Assistance Taxi Grant

**Background:** We applied for and were awarded grant assistance for a new taxi cab. Attached is the 5311 Capital Assistance Taxi Grant document for signing. This federal taxi grant agreement is for \$29,600 for a new taxi. At budget time, we anticipated the need for a non-accessible mini-van and had budgeted \$5,400 for a grant match. This assumed a \$27k vehicle.

Running Inc. requested we purchase rear-loading vans from now on to better serve the residents and reduce wait times. Rear-loading vans around approximately \$10k higher than a regular mini-van at an approximate cost of \$37k. Therefore, the city grant match portion for a rear-loaded van is \$7,400, which is an additional \$2k from what was budgeted.

Unfortunately, there was an accident with one of the 2014 Dodge Caravan taxis back in 2018 which totaled the vehicle out. We received \$9,000 from Classic Cab's insurance for that vehicle. This money can be applied as the city's grant match portion and cover the additional funds needed.

<u>Recommendation</u>: Approve and authorize the Mayor to sign the 2019 Section 5311 Grant Agreement for \$29,600 for a rear-load minivan taxi.

	•	•



# **Grant Agreement**

Information and Signature Page

### Parties to the Agreement:

This Grant Agreement is made by and between the State of Wisconsin Department of Transportation ("the Department") and the **City of Berlin** ("the Recipient").

# Citation: Federal, State Statute, State Admin Code:

The Department agrees to provide financial assistance with program monies made available in accordance with the terms and conditions of this Grant Agreement and the provisions of the Recipient's 2019 Public Transit Assistance Program application for funding assistance, which is made part of this Grant Agreement by reference.

### **Period of Performance:**

April 1, 2019 through December 31, 2020

As specified on Attachment A to this agreement, the Department agrees to pay Recipient an amount not to exceed **\$29,600**.

### **Award Maximum:**

This Grant Agreement shall become effective upon its complete execution by the Recipient and the Department.

RECIPIENT	STATE OF WISCONSIN  DEPARTMENT OF TRANSPORTATION  Division of Transportation Investment Management  4822 Madison Yards Way, 6 <sup>th</sup> Floor South  P.O. Box 7913  Madison, WI 53707-7913
Signature:	Signature:
	Name: lan Ritz
	Title: _Transit Section Chief
	Date
Date:	
Contact:	Contact: (608) 266-0189



DUNS: 8519626

# **Grant Agreement**

Outline

RESPONSIBILITIES OF THE DEPARTMENT Section I:

A general statement of the Department's responsibilities to the Recipient.

Section II: **RESPONSIBILITIES OF THE RECIPIENT** 

> Statements concerning the Recipient's various responsibilities under this Grant Agreement, including (but not limited to) record-keeping requirements, procurement instructions, and reporting requirements to

the Department.

Section III: ACCOUNTING, RECORDS, AND AUDIT

Statements concerning the Recipients various responsibilities under this Grant Agreement, including (but not limited to) financial accounting and record-keeping requirements, record maintenance and reporting requirements, and audit procedures.

Section IV: TERMINATION OF AGREEMENT

Statements concerning various ways this Grant Agreement may be terminated.

Section V: **ADDITIONAL DOCUMENTS** 

> A list of documents that are part of this Grant Agreement, including: Incorporated Documents, which are part of this Grant Agreement by reference (but are not physically included in this Grant Agreement); and Attached Documents, which are included with and part of this Grant Agreement.



# **Grant Agreement**

**General Provisions** 

# Section I: RESPONSIBILITIES OF THE DEPARTMENT

A. The Department agrees to remit payment to the Recipient in accordance with appropriate statutes, administrative rules, program grant application, and program materials.

# Section II: RESPONSIBILITIES OF THE RECIPIENT

- A. The Recipient is responsible for submitting all program reports, invoices, or other required documents as outlined in the program application in the manner and form as prescribed by the Department. The Department may withhold any and all payments to the Recipient if program reports, invoices, and other required documents are not filed in the manner and form as prescribed by the Department.
- B. All assets procured with program funds shall comply with Department rules regarding satisfactory continuing control as prescribed in Department grant application and program materials. Vehicles purchased with state funding or a combination of federal and/or state funding will be an asset of record with the Department and shall comply with Department policies.
- C. The Recipient agrees to carry out the project as outlined in its approved application. If the Recipient determines that changes to approved projects are necessary, written approval from the Department must be received before the Recipient may proceed.
- D. The Recipient may not use program monies to purchase service from or make subgrants to any third party without a contract, agreement, or purchase-of-service order, and must follow Department procedures and approval process. Third-party contracts, agreements, or purchase-of-service orders shall be available for inspection by the Department, its officials, employees or designees upon request.
- E. If applicable, the Recipient will make payments to third-party contractors within 30 days of Recipient's receipt of invoice.



- F. All materials, equipment, and supplies acquired through this Grant Agreement by the Recipient must comply fully with all safety requirements as set forth in law or rule by the State of Wisconsin, and with all applicable OSHA Standards.
- G. Before purchasing services or capital items from a third party with funds from this grant, the Recipient will contact the Department in order to determine the best way to proceed with a state and federally compliant procurement. An overview of these procedures is available on the Department's web site at: <a href="http://www.dot.wisconsin.gov/localgov/transit/procurement.htm">http://www.dot.wisconsin.gov/localgov/transit/procurement.htm</a>.
  - 1. The Recipient must obtain Departmental approval for pre-solicitation and post-solicitation procurement activities as follows:
  - 2. The Recipient must notify the Department in writing of its intention to purchase the service or item. Such notification should include the funding source (i.e., grant number) by which the Recipient intends to fund the purchase, as well as assurances that the proposed procurement will follow all relevant federal and state purchasing rules and procedures.
  - 3. As requested by the Department, the Recipient will provide to the Department written documentation of the solicitation process. Upon review, the Department will issue written approval to the Recipient to make the award.

# Section III: ACCOUNTING, RECORDS, AND AUDITS

- A. The Recipient shall have a single, organization-wide financial and compliance audit performed by a qualified independent auditor, if required to do so under federal law and regulations. This audit shall be performed in accordance with federal Office of Management and Budget (OMB) Super Circular 2 CFR Part 200 and state single audit guidelines issued by the Wisconsin Department of Administration. Upon notice of any findings from this audit that involve the use of program funds, the Recipient shall inform the Department.
- B. All costs charged to this Grant Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers indicating the purpose of the charges. The Recipient, any Recipients, contractors, subcontractors, and their affiliates shall maintain all documents and evidence pertaining to revenues, expenses, and cost allocations related to this Grant Agreement. The Recipient shall be responsible for



insuring the compliance of all Recipients, contractors, subcontractors, and affiliates with this provision.

- C. The accounts and records as required above shall be retained for a period of three years after final payment and shall be available upon request by the Department or its designee for inspection and audit purposes.
- D. The Recipient shall permit the Department or their designee access to inspect all vehicles, facilities, and equipment acquired or used as part of the project; all transportation services rendered by the Recipient by the use of such vehicles, facilities, and equipment; and all relevant project data, documents, and records.

# Section IV: TERMINATION OF AGREEMENT

- A. The Department may terminate this Grant Agreement at any time that the Secretary of the Department of Transportation determines that the Recipient, lessee, or any third-party contractor has failed to perform in the manner called for in the Grant Agreement, or has failed to fulfill contract obligations. Failure of the Recipient or any third-party contractor to comply with the terms and conditions of this Grant Agreement shall be considered cause for termination.
- B. The Recipient may terminate this Grant Agreement upon receipt of a written, formal request by the Department at least 30 calendar days prior to the proposed termination date.
- C. In the event that this Grant Agreement is terminated, the Department shall be liable only for payment of Attachment A of this Grant agreement for services rendered before the effective date of termination.



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### Section V: ADDITIONAL DOCUMENTS

The Recipient shall review and understand and content and responsibilities of all the documents listed in Section V of this Grant Agreement.

### A. <u>Incorporated Documents</u>

The following documents are *incorporated by reference* and made part of this Grant Agreement. Review each document. The signature on page 1 signifies that you understand both the content and your responsibilities under each:

- 1. Recipient's current year approved application and application guidelines
- 2. Federal Transit Administration Master Agreement, FTA MA(25), October 1, 2018
- 3. Certifications and Assurances, as applicable to the Recipient's selected project

### B. Attached Documents

The following documents have been *included* with this Grant Agreement and are made part of this Grant Agreement. Review each document. The signature on page 1 signifies that you understand both the content and your responsibilities under each:

- 1. Program-Specific Requirements
- 2. Attachment A: Funding Allocation
- 3. Attachment B: Federal Clauses



# **Grant Agreement**

Section 5311 Capital Grant Program-Specific Provisions

## Section I: PROGRAM REQUIREMENTS

- A. The Recipient is responsible for adhering to the federal laws and regulations prescribed in the <u>Federal Transit Administration Master Agreement</u>, FTA MA(25), October 1, 2018.
- B. The Recipient agrees to comply with all federal statutes relating to Civil Rights and nondiscrimination, as applicable. The Recipient is required to create, maintain and comply with a Title VI Plan that has been approved by WisDOT.
- C. The Recipient agrees to comply with all federal and state statutes relating to Equal Employment Opportunity, as applicable.
- D. The Recipient agrees to comply with and participate in Compliance Site Reviews conducted by the State of Wisconsin or authorized contractor.
- E. The Recipient must include the following notification language of federal participation in all its requests for proposals, solicitations, contracts, press releases, brochures, web site(s), or other publications, etc., funded under this grant, based on the source of funding:

"This project is funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5311 Formula Grants for Rural Areas (CFDA 20.509)".



### Section II: PROJECT REQUIREMENTS

- A. The Recipient shall complete all projects included in this Grant Agreement during the Period of Performance on the first page of this Grant Agreement. If the Recipient fails to complete a given project(s) within the Period of Performance, the Department shall take necessary actions to withdraw any uncommitted funds in the Grant Agreement at that time. WisDOT retains the right to reassign uncommitted funds to other subrecipients.
- B. Payments under the terms of this Grant Agreement in based on 49 USC §5311, as amended.
- C. The Department agrees to pay the Recipient the maximum amount allowed under this Grant Agreement or 80% of the purchase price of the items listed on Attachment A, whichever sum is less. Project quantities are limited to the number shown in Attachment A.
- D. The Department shall make payment to the Recipient upon receipt of invoices prepared by the manufacturer or dealer showing the actual costs of purchased equipment or in the case of a construction project, upon receipt of invoices in accordance with the payment schedule as specified in the construction contract. Progress payments on capital equipment would be made only at the discretion of the Department and in compliance with all applicable federal requirements.
- E. If the Department's audit establishes that payment to the Recipient under the terms of this Grant Agreement has exceeded the allowable maximum within this Grant Agreement, the Recipient shall refund to the Department upon demand a sum sufficient to reduce the payment to the maximum allowed in this Grant Agreement.
- F. The Recipient agrees to inspect the equipment upon receipt from the vendor, including a check of specifications and a road test; complete paperwork [including Buy America Post-Delivery audit certifications] in a timely manner and send required documents to the program manager at the Bureau of Transit, Local Roads, Rails and Harbors. Documents must be reviewed and approved by WisDOT prior to vehicle entering into service.



DUNS: 8519626

- G. Title to project equipment and rolling stock shall be in the name of the Recipient, subject to the restrictions on use and disposition of the project equipment and rolling stock set forth herein. When the application for title registration is originally filed, the title holder must list the Department as the only secured party. Copies of form MV-1 or MV-11, Application for Title/Registration, must be filed with and approved by the Bureau of Transit and Local Roads before the federal share of the cost for any rolling stock is processed for payment.
- H. The Recipient may not execute any transfer of title, lease, lien, pledge mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way affects the federal interest in any project real property or equipment. Nor may the Recipient obligate itself, in any other manner, to any third party with respect to project real property or equipment, unless such transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation is expressly authorized in writing by the Department; nor may the Recipient, by any act or omission, adversely affect the federal interest or impair the Recipient's continuing control over the use of project real property or equipment.
- The Recipient agrees that the project equipment and rolling stock shall only be used for the provision of transportation service to the general public and rolling stock shall be clearly marked for public use. The Recipient shall keep satisfactory records with regard to the use of the equipment and rolling stock and submit to the Department upon request such information as may be required to assure compliance with this section. Project equipment and rolling stock shall be operated only within the transit service area described in the capital and operating grant applications that are made part of this Grant Agreement by reference for the duration of its useful life. If during the useful life, the project equipment and rolling is withdrawn from transportation service, the Recipient shall immediately notify the Department and request disposition instructions.
- J. The Recipient shall develop a written maintenance plan in accordance with Department requirements and shall perform preventive maintenance on the equipment, facilities, and rolling stock purchased with FTA funds, including accessibility equipment, at a level no less than the manufacturer's recommended specifications. Adequate records of preventive maintenance on each piece of equipment, rolling stock, and facilities shall be maintained by the Recipient. The equipment, facilities, and rolling stock shall be properly maintained at all times. The Department shall have the right to conduct



periodic inspections and reviews for the purpose of confirming that proper maintenance policies and procedures are being followed.

- K. The Recipient shall make available the equipment and rolling stock including maintenance and/or usage records to the Department upon demand for the purpose of verification or other inspections deemed necessary by the Department.
- L. The Recipient shall immediately notify the Department in all cases where project equipment or rolling stock is used in a manner substantially different from that described in the application. The Recipient shall obtain prior written concurrence from the Department for any proposed sale of equipment or rolling stock, title transfer, or lease to another agency.
- M. The Recipient shall maintain, in an amount and form satisfactory to the Department, such insurance or self-insurance (including property, personal injury and collision coverage) as will be adequate to cover the current value of project equipment and rolling stock throughout the period of required use.
- N. The Department reserves the right to require the Recipient to restore equipment and rolling stock or pay for damages to the equipment and rolling stock as a result of abuse or misuse of such equipment and rolling stock with the Recipient's knowledge and consent.
- O. Equipment purchased with assistance under this Grant Agreement must be used in the performance of transportation services as outlined in Recipient's application for the duration of its useful life. The Recipient shall complete the Department's procedures for disposal of the equipment before it is sold or utilized for another service other what was outlined in the Recipient's application.
- P. Upon termination of this Grant Agreement, the Recipient agrees to dispose of the project facilities, equipment, and/or rolling stock, in accordance with Wisconsin Department of Transportation instructions.
- Q. The Recipient shall submit to the Department, for the period in which the asset is used in the provision of public transit quarterly ridership data in a manner prescribed by the Department.



DUNS: 8519626

### R. WisDOT Contact:

Title:

Program Manager for Public Transit

Address:

Attn: Kevin Lange

4822 Madison Yards Way, 6th Floor South

P.O. Box 7913

Madison, WI 53707-7913

Contact:

(608) 266-2365

kevin.lange@dot.wi.gov



**Attachment A: Funding Allocation** 

Section 5311 Grant Program

### A. Award Details:

STIP ID	Activity Line Item	ALI Description	Quantity	Total Cost	Federal Share	Local Share
5311S19-3a	11.12.15	Minivan, rear-load	1	\$37,000	\$29,600	\$7,400

### **B. Funding Source:**

This project is funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5311 Formula Grants for Rural Areas (CFDA 20.509).

- i. Federal Award Agency: USDOT Federal Transit Administration
- ii. Pass through entity: WisDOT, Division of Transportation Investment Management
- iii. Federal Award Identification Number (FAIN): 1245-2019-3
- iv. Federal Award Date (estimated): September 23, 2019



# **Attachment B: Federal Clauses**

Section 5311 Grant Program

## SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

### FTA Master Agreement

Federal grant monies (\$29,600) fund this contract, in whole or in part (Section 5311 – CFDA 20.509). As such, agencies receiving such funds and contractors awarded contracts that use such funds must comply with certain Federal certifications and clause requirements. This includes, for purchases of rolling stock over \$150,000, compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as requirements and certifications applicable under the Federal Motor Vehicle Safety Standard (FMVSS). It is the contractor's responsibility to be aware of the pertinent certifications and contract clauses, as identified by the Issuing Agency for the instant procurement and ensure compliance with such requirements prior to award and throughout the term of any resultant contract. The full text of these clauses is available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: <a href="http://www.nationalrtap.org/home.aspx">http://www.nationalrtap.org/home.aspx</a>.

### FLY AMERICA REQUIREMENTS

49 U.S.C. §40118 41 CFR Part 301-10

### Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirements</u>: The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

<u>Model Clause/Language</u>: The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or



memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **BUY AMERICA REQUIREMENTS**

49 U.S.C. 5323(j) 49 CFR Part 661

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

<u>Flow Down Requirements</u>: The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$150,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language: The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to 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 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

# Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

approadic regulations in 45 CFK Pail 661.5.	
Date	
Signature	
Company Name	
Title	-
Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)	

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.



# **ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq. 49 CFR Part 18

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirements</u>: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

<u>Model Clause/Language</u>: No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA.

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



## **CLEAN WATER REQUIREMENTS**

33 U.S.C. 1251

<u>Applicability to Contracts</u>: The Clean Water requirements apply to each contract and subcontract which exceeds \$50,000.

<u>Flow Down Requirements</u>: The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language: While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements.

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et <a href="seq">seq</a>. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA.

### **BUS TESTING**

49 U.S.C. 5318(e) 49 CFR Part 665

<u>Applicability to Contracts</u>: The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases.

<u>Flow Down Requirement</u>: The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in <u>Master Agreement</u>.

<u>Model Clause/Language</u>: Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in



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configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date:	
Signature:	
Company Name:	
Title:	

# PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323 49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language: Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(i).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(I) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

The Contractor agrees to comply with 49 U.S.C. § 5323(I) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the



final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

- (2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- (3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$150,000.)

### Certificate of Compliance

## Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act. as amended, and regulations in 49 C.F.R. 661.7

of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.
Date:
Signature:
Company Name:
Title:

### **LOBBYING**

31 U.S.C. 1352 49 CFR Part 19 49 CFR Part 20

<u>Applicability to Contracts</u>: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$50,000.

Flow Down Requirement: The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.



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Mandatory Clause/Language: Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$50,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

# APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$50,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) 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 an agency, a Member of Congress, an 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.
- (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, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), 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 such expenditure or failure.]

The Contractor, its certification and disclosure, if any 31 U.S.C. A 3801, et seq., apply to the seq., apply the seq., apply to the seq., apply the se	, certifies or affirms the truthfulness and accuracy of each statement of . In addition, the Contractor understands and agrees that the provisions of his certification and disclosure, if any.
Sig	nature of Contractor's Authorized Official
Na	me and Title of Contractor's Authorized Official
D	ate

## ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: FTA does not require the inclusion of these requirements in subcontracts.

<u>Model Clause/Language</u>: The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - 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. 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 the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$50,000.



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- 3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 4. 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.
- 5. 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.
- 6. 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).
- 7. FTA does not require the inclusion of these requirements in subcontracts.

# Requirements for Access to Records and Reports by Types of Contract

Contract Characteristic s	Operation al Service Contract	Turnkey	Construction	Architectur al Engineerin g	Acquisitio n of Rolling Stock	Profession al Services
I <u>State</u> <u>Grantees</u> a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capit al Projects	None  None unless¹ non- competitiv e award	Those imposed on state pass thru to Contract or	None Yes, if non- competitive award or if funded thru <sup>2</sup> 5307/5309/53 11	None None unless non- competitive award	None None unless non- competitiv e award	None None unless non- competitiv e award



II Non State Grantees  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capit al Projects	Yes³ Yes³	Those imposed on non-state Grantee pass thru to Contract or	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:49 USC 5325 (a), 49 CFR 633.17, 18 CFR 18.36 (i)

### **FEDERAL CHANGES**

### 49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

<u>Model Clause/Language</u>: No specific language is mandated. The following language has been developed by FTA.

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

### **CLEAN AIR**

42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18

<u>Applicability to Contracts</u>: The Clean Air requirements apply to all contracts exceeding \$50,000, including indefinite quantities where the amount is expected to exceed \$50,000 in any year.

Flow Down Requirement: The Clean Air requirements flow down to all subcontracts which exceed \$50,000.

Model Clauses/Language: No specific language is required. FTA has proposed the following language.



- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA.

#### RECYCLED PRODUCTS

42 U.S.C. 6962 40 CFR Part 247 Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases.

Flow Down Requirement: These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language: No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

**Background and Application** 

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the



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United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 paragraph (1)(iv) of this section; 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 Part 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 classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) 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)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, 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. The contracting officershall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (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; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of



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receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(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.
- (v)(A) The contracting officer shall require that 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. The contracting officer 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; and
- (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 and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (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.



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- (2) Withholding The Recipient shall upon its own action or upon written request of an authorized representative of the 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Recipient 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.
- (3) Payrolls and basic records (i) 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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.
- (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (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 maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 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 Regulations, 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.

- (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 paragraph (a)(3)(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 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the 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, the Federal agency 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.
- (4) 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 a 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 of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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) <u>Trainees</u> 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 classification of 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) <u>Equal employment opportunity</u> The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) 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.
- (6) **Subcontracts** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, 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 29 CFR 5.5.
- (7) **Contract** te**rmination**: **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 a subcontractor as provided in 29 CFR 5.12.
- (8) 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.
- (9) **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 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 the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) **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).
- (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).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.



### NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language: While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

# PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001 49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

<u>Model Clause/Language</u>: These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

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



- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **TERMINATION**

#### 49 U.S.C. Part 18 FTA Circular 4220.1F

Applicability to Contracts: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$50,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

<u>Flow Down Requirement</u>: The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

<u>Model Clause/Language</u>: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

- a. Termination for Convenience (General Provision) The (Recipient) 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 (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. Termination for Default [Breach or Cause] (General Provision) 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 (Recipient) may terminate this contract for default. Termination shall be affected 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 (Recipient) 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 are beyond the control of the Contractor, the (Recipient), 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 (General Provision) The (Recipient) 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 cure is permitted and other appropriate conditions.



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

- d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'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 (Recipient), 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 Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient.
- 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 (Recipient) may terminate this contract for default. The (Recipient) 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 Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) 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 (Recipient).
- 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 (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete 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 Recipient resulting from the Contractor's refusal or failure to complete the work within 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 Recipient 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 Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- 2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) 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 Recipient.
- i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) 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 the convenience of the Recipient, 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 Recipient may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that 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 Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, 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 (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the 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 (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), 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 (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are



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beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

### GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 CFR part 180 2 CFR part 1200 2 CFR § 200.213 2 CFR part 200 Appendix II (I) **Executive Order 12549 Executive Order 12689** 

Background and Applicability

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, 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) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in ay federally assisted Award.



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 Recipeint. If it is later determined by the Recipient 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Date:	
Signature:	
Company Name:	
Title:	

### **CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000 42 U.S.C. § 6102, 42 U.S.C. § 12112 42 U.S.C. § 12132, 49 U.S.C. § 5332 29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts: The Civil Rights Requirements apply to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

<u>Flow Down Requirement</u>: The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

<u>Model Clause/Language</u>: The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

### Civil Rights - The following requirements apply to the underlying contract:

The following requirements apply to the underlying contract:

- (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) <u>Equal Employment Opportunity</u> 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 (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41



C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, 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) <u>Age</u> 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) <u>Disabilities</u> 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) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

#### BREACHES AND DISPUTE RESOLUTION

#### 49 CFR Part 18 FTA Circular 4220.1F

<u>Applicability to Contracts</u>: All contracts in excess of \$50,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

<u>Model Clauses/Language</u>: FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Recipient. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Recipient. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Recipient shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.



Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

#### 49 CFR Part 26

<u>Applicability to Contracts</u>: The Disadvantaged Business Enterprise (DBE) program provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT- assisted contracting activities. A formal clause such as that below must be included in all contracts <u>and</u> subcontracts above the micro-purchase level.

#### Clause Language

Each contract the **Recipient** signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following Federal Clause language:

- 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%. WisDOT's DBE transit goal for FFY 2017-2019 is 1.1%. A separate contract specific goal has <u>not</u> 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 **Recipient** deems appropriate, which may include, but is not limited to:
  - 1) Withholding monthly progress payments
  - 2) Assessing sanctions
  - 3) Liquidated damages, and/or



Disqualifying the contractor from future bidding as non-responsible

c. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in its written documentation of its contract commitment to the Recipient unless the contractor obtains written consent from the Recipient.

d. The contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to the **Recipient** unless the contractor obtains written consent from the **Recipient**.

e. The contractor will be required to report its DBE participation obtained throughout the period of performance.

f. <u>Prompt Payment</u> - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 calendar days after the contractor's receipt of payment for that work from the Recipient. In addition, the contractor is required to return any retainage payments to those subcontractors within 10 calendar days after incremental acceptance of the subcontractor's work by the Recipient and contractor's receipt of the partial

g. The contractor shall not terminate a DBE subcontractor listed in its written documentation of its commitment to the Recipient to use a DBE subcontractor (or an approved substitute DBE firm) without the Recipient's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

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

#### INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

#### FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The incorporation of FTA terms has unlimited flow down.

Model Clause/Language: FTA has developed the following incorporation of terms language:

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



ADA ACCESS 49 USC 531 (d)

Applicability to Contracts: The ADA Access Requirements apply to all contracts.

<u>Applicability to Micro-Purchases</u>: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

Flow Down Requirement: The ADA Access Requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language: ADA Access. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination and ensures equal opportunity and access for persons with disabilities.

#### Access Requirements for Persons with Disabilities

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

Special Events on Streets, Highways, and Municipal Parking Lots
(Provisions of SEC. 18-331 thru SEC.18-337 Municipal Code Apply)
If you need additional space for any answers, attach additional sheets as necessary

Applicant's Name: Street/Highway 18-333 Parade 18-333 Event  Applicant's Name: Date of Applicati	on Municipal Parking Lot
Applicant's Telephone Number: 920-229-5356 Applicant's DOB/Organized:	
Applicant's Address: 143 Water ST #108 Seelin	
Purpose of Application Request: Temporny street closupe and	
If applicant is an organization, provide the name(s), title(s) or position(s), address(es) of authorizing official(s) (for corporations, all officers and directors; for LLC's, all moratnerships, all partners; for trusts, all trustees):	and telephone number(s)
Regident Down Cutere Wason Red Bealin	Telephone Number
Vice Resident Michele Cassidy 181 E Noyes SB Benlin	920-267-2755
Vice Recident: Michele Cresidy 181 E Noyes 50 Bealin	920-361-0709
Scenoling: Rapmond Spengge W2193 Prolyan Rd. Barlin	920-361-3766
TRENSHARER: BARBARA & Resorp 143 WARRES # 108 Berlin	920-229-5856
Benfin Veterans Foundation Unc  OFFICERS / Directors of Above  Details of Event: (For extended details, use the back of this form and include drawings of	of proposed event or voite)
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What: FARMER Appreciation	
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### City of Berlin

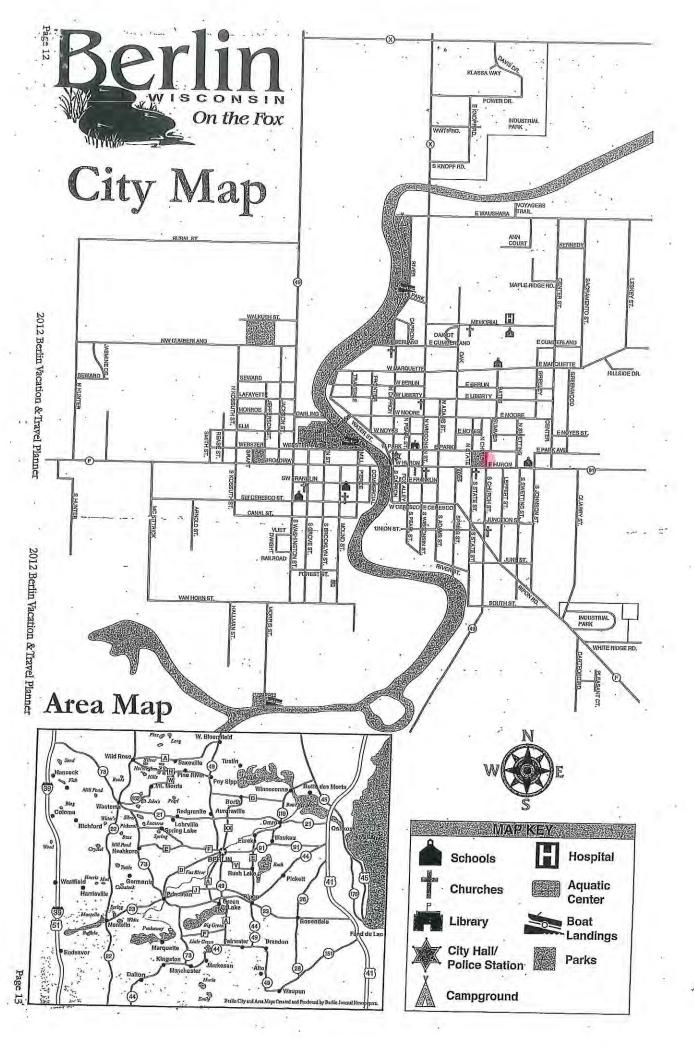
P.O. Box 272 108 North Capron Street Berlin, WI 54923 920-361-5400 Phone 920-361-5454 Fax

## Indemnification, Defense, and Hold Harmless Agreement

The undersigned, as an applicant for a permit from the City of Berlin, hereby agrees to indemnify, defend, and hold harmless the City of Berlin and its employees and agents against all claims, liabilities, loss, damages, or expenses against or incurred by the City of Berlin on account of any injury to or death of any person, or any damage to property, caused by or resulting from the activities for which the permit was granted.

Specifically this Agreement applies to:
EARNERS Appreciation (Description of Event)
On: August 13, 2019 (Date(s) of Event)
By: Jackson Reso 9 (Name of Applicant)
On Behalf Of: Bencin Veterms Foundation luc (Name of Organization and Title if applicable)

If signing on behalf of an organization, you must have authority from the organization to sign an agreement like this. By signing this agreement, you are warranting to the City of Berlin that you have such authority.



## Resident Petition Granting Consent For Special Event Permit For Use Of Street, Highway, Or Municipal Parking Lot

(Provisions of SEC 18-333(e) Municipal Code Apply)

The undersigned residents of the City of Berlin hereby consent to the City of Berlin granting a permit for use of the street, highway or municipal parking lot, or portion(s) thereof, designated in the attached application for permit, for the purposes described, and as proposed in the attached application.

If the proposed use is for a street or highway, the undersigned consists of not less than 75 percent of the residents over 18 years of age residing along that portion of the street or highway designated for the proposed use.

If the proposed use is for a municipal parking lot, the undersigned consists of not less than 75 percent of the residents over 18 years of age residing within 200 feet of the closest portion of the municipal parking lot designated for the proposed use.

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### CITY OF BERLIN PERMIT APPLICATION

Special Events on Streets, Highways, and Municipal Parking Lots
(Provisions of SEC. 18-331 thru SEC.18-337 Municipal Code Apply)
If you need additional space for any answers, attach additional sheets as necessary

Applicant's Name: Applicant's Name: Date of Appli	cation: 4 /5/2019
Applicant's Telephone Number: 920-229-5856 Applicant's DOB/Organize	
Applicant's Address: 143 Warfer SB # 108 Berlin	
Purpose of Application Request: Timpowny Staret Closure	inel
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If applicant is an organization, provide the name(s), title(s) or position(s), address of authorizing official(s) (for corporations, all officers and directors; for LLC's, alpartnerships, all partners; for trusts, all trustees):	es), and telephone number(s) I members and managers; for
Name, Title, and Address asserbat drum Putzke W2202 Puchyar Rd Berlin	Telephone Number 920-229-2325
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2nd Vice Pass: Patrick Florigan 208 N appear St Boston	920-361-0709
Secretary: Raymond Spangue W2193 Richam Rd. Berlin	920-361-3766
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Name, Title, and Address Sentin Viden Ans Foundation Inc  DEFICURS/DIRECTORS AS Above	Telephone Number
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### City of Berlin

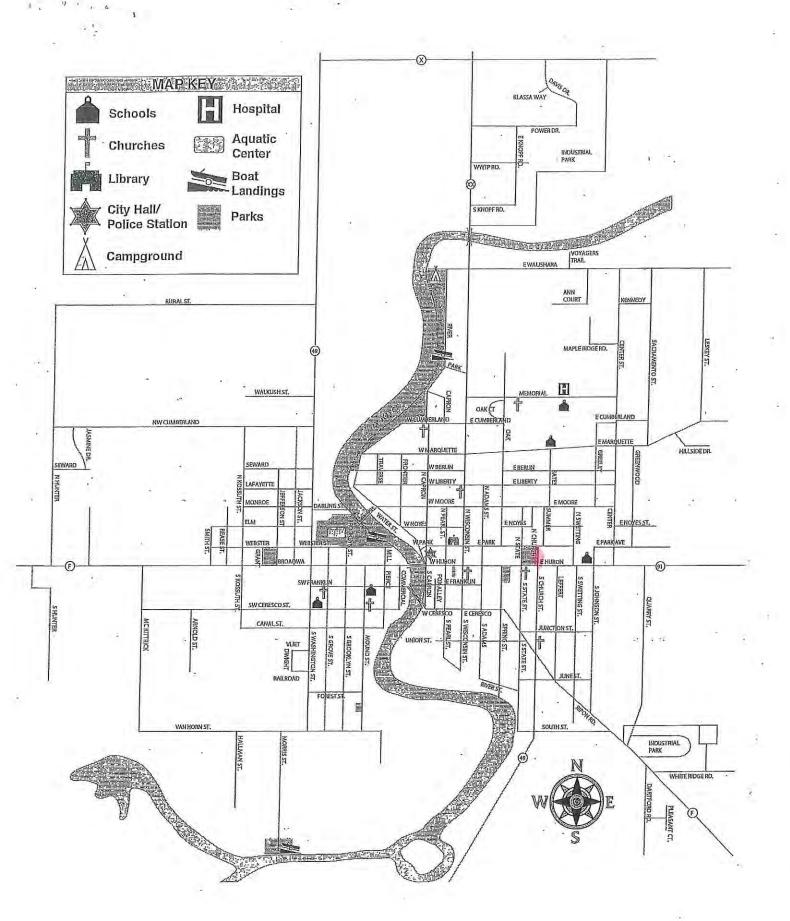
P.O. Box 272 108 North Capron Street Berlin, WI 54923 920-361-5400 Phone 920-361-5454 Fax

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Specifically this Agreement applies to:
Jome Coun Heros (Description of Event)
On: September 1.0, 2019 (Date(s) of Event)
By:
On Behalf Of: Serlin Veterons Foundation, Inc. (Name of Organization and Title if applicable)

If signing on behalf of an organization, you must have authority from the organization to sign an agreement like this. By signing this agreement, you are warranting to the City of Berlin that you have such authority.



## Resident Petition Granting Consent For Special Event Permit For Use Of Street, Highway, Or Municipal Parking Lot

(Provisions of SEC 18-333(e) Municipal Code Apply)

The undersigned residents of the City of Berlin hereby consent to the City of Berlin granting a permit for use of the street, highway or municipal parking lot, or portion(s) thereof, designated in the attached application for permit, for the purposes described, and as proposed in the attached application.

If the proposed use is for a street or highway, the undersigned consists of not less than 75 percent of the residents over 18 years of age residing along that portion of the street or highway designated for the proposed use.

If the proposed use is for a municipal parking lot, the undersigned consists of not less than 75 percent of the residents over 18 years of age residing within 200 feet of the closest portion of the municipal parking lot designated for the proposed use.

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