

AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, MAY 5, 2020, 7:00 PM

**DUE TO THE CONTINUED CONCERN SURROUNDING COVID-19, THE CITY OF
BERLIN IS TEMPORARILY TRANSITIONING THEIR PUBLIC MEETINGS TO A
TELECONFERENCE FORMAT, VIA ZOOM.**

TO JOIN THE MEETING FROM YOUR COMPUTER, TABLET OR SMARTPHONE (AUDIO/VIDEO):

JOIN ZOOM MEETING:

<https://zoom.us/j/84263312009>

Meeting ID: 842 6331 2009

TO JOIN THE MEETING FROM YOUR PHONE WITH AUDIO ONLY:

1 312 626 6799 US TOLL-FREE

Meeting ID: 842 6331 2009

1. Roll Call.
2. General Public Comments. Registration card required (located at podium in Council Chamber).
3. Approval of Minutes. RECOMMENDATION: Approve the minutes from the March 3, 2020 Committee of the Whole meeting.
4. Discussion on Potential Land Donation on HWY49 South. RECOMMENDATION: Discuss and action as appropriate.
5. Community Development Block Grant Revolving Loan Fund Close Program. RECOMMENDATION: Review and discuss. Action if appropriate.
6. Discussion on Potential 2021 Capital Projects and Funding Options. RECOMMENDATION: Discussion and action if appropriate.
7. Authorizing Resolution to Submit a Community Development Block Grant Application. RECOMMENDATION: Recommend to Common Council to approve the Authorizing Resolution to Submit a CDBG Grant application.
8. Residential Anti-Displacement and Relocation Assistance Plan (RADRAP) for CDBG Programs. RECOMMENDATION: Recommend to Common Council to approve the Residential Anti-Displacement and Relocation Assistance Plan (RADRAP) for CDBG Programs.
9. Resolution to Adopt the Policy to Prohibit the Use of Excessive Force and to Enforce the Applicable State and Local Laws Prohibiting Physically Barring Entrances/Exits for Non-

Violent Civil Rights Demonstrations. RECOMMENDATION: Recommend to Common Council to approve the Resolution to Adopt the Policy to Prohibit the Use of Excessive Force and to Enforce the Applicable State and Local Laws Prohibiting Physically Barring Entrances/Exits for Non-Violent Civil Rights Demonstrations.

10. Review of State of Emergency Declaration Status. RECOMMENDATION: Discuss and action if necessary.
11. 2020 Taxi Grant. RECOMMENDATION: Recommend to Common Council to approve and authorize the Mayor to sign the 2020 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 2020, including the Federal Certifications and Assurances.
12. Adjourn.

Note: 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 e-mailing Mayor Schramer at berlinmayor@centurytel.net 24 hours prior to the meeting.

DATE: April 30, 2020

TO: Mayor & Common Council

FROM: Lindsey Kemnitz, Scott Zabel, Chief Lind, and Jodie Olson

RE: Potential Donation of Property on HWY49 South

Staff has been working with Bruce Bohn and Ducks Unlimited (DU) on their request to consider the donation of 200+ acres of property on HWY49 south that is currently owned by Bohn. Bohn has been working with Ducks Unlimited and the DNR on a DNR Stewardship Grant to acquire the property. Once Ducks Unlimited would acquire the property from Bohn with DNR grant funding, DU would subsequently donate the property to the City for public recreational use.

The DNR Stewardship Grant application must acknowledge if the end owner (City) will allow all types of hunting on the property. The DNR prefers the land to be open for all types of hunting. If the City chooses not to open the land for all types of hunting, the grant process will be delayed and it may decrease the likelihood of the grant being awarded. If limited hunting would be the Council's choice for this land, an internal public safety committee of the DNR, which includes the DNR Warden, would need to review and validate the Council's reasoning for those restrictions.

Things to consider for discussion:

- Currently about 175 acres of the 200 plus allows all types of hunting.
- DNR hunting regulations would be enforced on this property such as not shooting across the road, must be 100 yards from dwelling to discharge firearm, etc.
- Current taxes on property that would go tax exempt would be \$503.93, of which the City of Berlin portion is \$173.63
- Annexation of Town of Berlin property (98.3 acres) to the City of Berlin would be required. The current property owner plans to initiate any annexation necessary.
- Council would need to consider an Ordinance change to accommodate proper land use and restrictions pertaining to the property.
- Understand that if the property donated was secured with DNR Stewardship Grant funding, it must permanently be restricted as public land for a specific purpose.
- In working with the Police Department, the Chief has indicated he would not have an issue leaving the property open to all types of hunting. Chief Lind will attend the meeting for any questions you may have.
- Any specific considerations for future costs related to maintenance, improvements and enforcement.

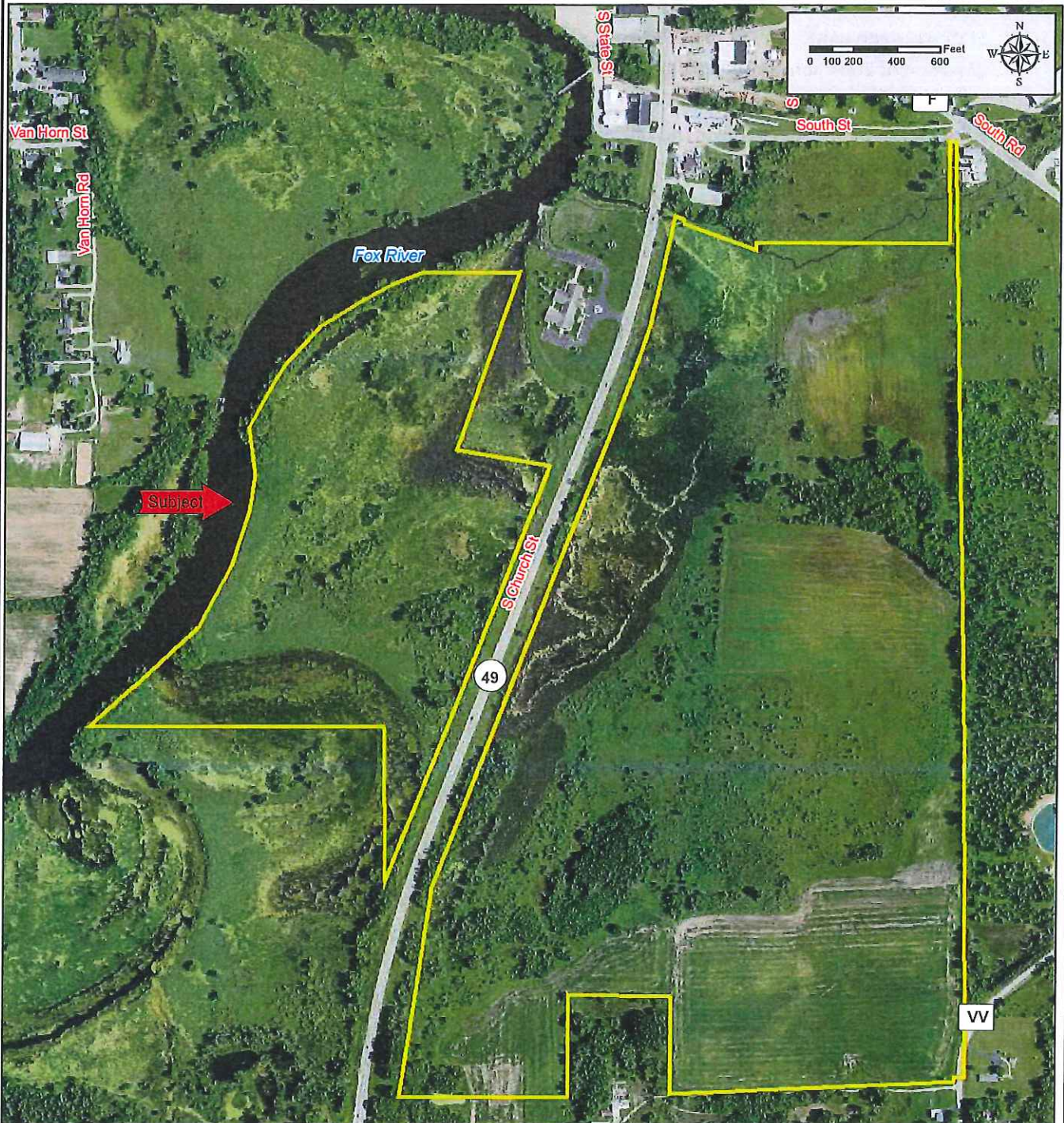
Questions that need to be addressed at this point by Council are:

- If the DNR Stewardship grant is awarded and DU is able to acquire the property from Bohn, is the City willing to approve the annexation of this property and accept the donation of land through Ducks Unlimited to be used for public recreational use?
- Does the City agree to open the land to all types of hunting per the DNR hunting regulations? If concerns developed in the future, any changes to restrictions on the property would require DNR approval and would be handled on a case by case basis.

Subject Property
Part of Sec. 9, 10 & 15, T17N-R13E
Green Lake Co., Wisconsin

Figure 3
2017 NAIP Background


STEIGERWALDT
Your confidence lands here.
May 2019



Map Disclaimer:

This map is intended to provide a visual representation of property and geographic features. It is not a legal survey but a depiction of the property based on reasonably available information suitable for the intended purposes. This map shows the approximate relative location of property boundaries but was not prepared by a professional land surveyor. The use of this map is limited to applications consistent with the intent and accuracy of the map and source data. It may not be sufficient or appropriate for legal, engineering, or surveying purposes. No guarantees or warranties are expressed. This map is not a survey of the actual boundary of any property this map depicts.

April 30, 2020

TO: Mayor & Common Council

FROM: Lindsey Kemnitz

SUBJECT: CDBG Closed Funds

Many years ago, the City of Berlin received Community Development Block Grant (CDBG) Revolving Loan Fund (RLF) Economic Development (ED) funds for several projects in Berlin. The funds were initially used for one specific business project and have been revolving as a loan fund for various businesses ever since. Currently the City has five outstanding loans. The CDBG is federal funding that the Department of Administration (DOA) administers for the U.S. Department of Housing and Urban Development (HUD). HUD audited the DOA funds and found some communities not using the funds and other not providing the proper documentation. Due to that, the DOA recommended the CDBG-Close program to HUD which was approved.

The CDBG-Close program requires the local funds to be returned to the DOA and administered through the DOA to confirm the HUD requirements are being met. The City has two options for the closed program.

1. Transfer the RLF portfolio funds to DOA which includes RLF bank balance and accounts receivable. The portfolio has about \$700,000 in account receivable (loans) and \$500,000 in the bank totaling \$1.2 million. Once the funds are paid in, the City can receive the \$1.2 million back in a grant for a CDBG project. The accounts receivable (loans) of \$700,000 will become de-federalized and the City of Berlin can retain the funds and continue the revolving loan program for businesses in the City of Berlin.
2. Retain the responsibility to service outstanding loans locally and return the funds to the state once received from the outstanding account receivable. The city would lose the revolving loan program and still be responsible to administer the existing loans.

The City Council has to decide by January of 2021 to decide if they want buyout the existing accounts receivable. The benefit of buying out the RLF portfolio funds is that the City will receive \$500,000 grant towards CDBG project and will receive the \$700,000 back from the existing loans and can use those funds to assist additional businesses in the community.

The next item on the agenda we are going to discuss potential projects to utilize the CDBG-close grant.

DATE: April 30, 2020

TO: Committee of the Whole

FROM: Jodie Olson

RE: Discussion on Potential 2021 Capital Projects and Funding Options

BACKGROUND: If Council were to choose to take advantage of the Community Development Block Grant (CDBG) Revolving Loan Fund (RLF) Closeout dollars via a CDBG grant for 2021, we will need to consider capital projects that would qualify. Staff referred to the City Capital Improvement Plan to consider which projects would be most benefitted by this opportunity. Between the W&S Utility and the City, reconstruction of Water Street (W. Park-W. Cumberland) remains a high priority. Not only is the road surface poor, but there is a significant water infiltration issue in that area as well as lead lines. This would be a \$3M project (\$1M city \$2M utility). It has been too expensive to consider in recent years, but using the RLF close fund dollars via grant would be a significant help to get the project done if we coupled it with other grant opportunities.

This CDBG RLF closeout opportunity, along with other grants, could provide a financial path to accomplish both the reconstruction of Water Street as well as the Pedestrian Bridge and potentially a little more. We are looking at combining several funding opportunities to make this happen including: CDBG Public Facilities Grant, CDBG RLF Closeout Grant, TAP Grant, using moneys already set aside for the pedestrian bridge repair, and if necessary, possible fund balance or borrowing for the balance of which we approximate will be \$700k (to buy out CDBG RLF).

On the Utility side, we will look at a Clean Water Fund loan with 30% principal forgiveness as part of their funding. The Utility reserves set aside for infrastructure can accommodate the water portion of this project and they have other loan opportunities available as well. The Utility can more easily afford this project, but the City will need to secure grant funding in order to fund its share.

Attached are four scenarios which look at options depending on which funding vehicles we would be awarded and how the RLF close out funds would be financed. It is a bit complicated and there are several moving parts to this and we are working from estimates at this point. We believe the estimates are high enough to account for a margin of error, but they are estimates none the less.

We reviewed options to buy out of the RLF close out funds by utilizing reserves, city borrowing, or the Utility up fronting the \$700k. In the latter, the Utility would be reimbursed via the CDBG RLF close out grant funds that will come back to the city and would be made whole.

Staff would like to review and discuss these options with Council so we can begin preparing for the 2021 capital projects if this is a route you would want to consider taking. If you have any questions or want to review with me prior to the meeting, please feel free to reach out and I would be happy to discuss. I know this is a lot to absorb, so please let me know if you need clarification.

RECOMMENDATION: Discussion and action if appropriate.

Scenarios for potential 2021 project funding

All Scenarios assume the City participates in the buy-out of the CDBG RLF and applies for a grant for \$1.2M in addition to the other assumptions outlined.

SCENARIO 1

ASSUMPTIONS-General City:				
City Applies for and is awarded CDBG Public Facilities Grant for \$1M for Water Street.				
City applies for and is awarded TAP Grant Funding for Pedestrian Bridge 80/20 split				
<i>Utility buys out the \$1.2M CDBG RLF Program for \$700K and is reimbursed thru closeout fund grant</i>				
Utility receives \$42,523 of CDBG PF Grant Proceeds				
City includes \$500k in other capital projects for Closeout fund CDBG grant				
Expenses				
City Project Costs	\$	957,477	Water Street Project	
City Project Costs	\$	378,000	Pedestrian Bridge	
City Project Costs	\$	500,000	Other Capital Projects	
	\$	1,835,477		
Revenues				
CDBG PF Grant Proceeds	\$	(957,477)	Water Street	
TAP Grant Fund Proceeds	\$	(302,400)	Pedestrian Bridge	
City Bridge Reserves	\$	(75,600)	Pedestrian Bridge (\$105K reserve)	
CDBG Close Out Grant Proceeds	\$	(500,000)	Other Capital Projects	
	\$	(1,835,477)		

SCENARIO 2

ASSUMPTIONS-General City:				
City IS NOT awarded the CDBG Public Facilities Grant for \$1M for Water Street.				
City IS awarded TAP Grant Funding for Pedestrian Bridge 80/20 split				
City buys out the \$1.2M CDBG RLF Program for \$700K				
City includes \$242k in other capital projects for Closeout fund CDBG grant				
Expenses				
Buy-Out RLF	\$	700,000	Reserves/Borrow	
City Project Costs	\$	957,477	Water Street Project	
City Project Costs	\$	378,000	Pedestrian Bridge	
City Project Costs	\$	242,523	Other Capital Projects	
	\$	2,278,000		
Revenues				
CDBG Close Out Grant Proceeds	\$	(957,477)	Water Street	
TAP Grant Fund Proceeds	\$	(302,400)	Pedestrian Bridge	
City Bridge Reserves	\$	(75,600)	Pedestrian Bridge (\$105K reserve)	
CDBG Close Out Grant Proceeds	\$	(242,523)	Other Capital Projects	
	\$	(1,578,000)		
City Cost Share	\$			700,000

SCENARIO 1A

ASSUMPTIONS-General City:				
City Applies for and is awarded CDBG Public Facilities Grant for \$1M for Water Street.				
City applies for and is awarded TAP Grant Funding for Pedestrian Bridge 80/20 split				
<i>City buys out the \$1.2M CDBG RLF Program for \$700K</i>				
City includes \$500k in other capital projects for Closeout fund CDBG grant				
Expenses				
Buy-Out RLF	\$		700,000	Reserves/Borrow
City Project Costs	\$	957,477	Water Street Project	
City Project Costs	\$	378,000	Pedestrian Bridge	
City Project Costs	\$	500,000	Other Capital Projects	
	\$	2,535,477		
Revenues				
CDBG PF Grant Proceeds	\$	(957,477)	Water Street	
CDBG PF Grant Proceeds	\$	(42,523)	Pedestrian Bridge	
TAP Grant Fund Proceeds	\$	(302,400)	Pedestrian Bridge	
City Bridge Reserves	\$	(33,077)	Pedestrian Bridge (\$105K reserve)	
CDBG Close Out Grant Proceeds	\$	(500,000)	Other Capital Projects	
	\$	(1,835,477)		
City Cost Share	\$			700,000

SCENARIO 3

ASSUMPTIONS-General City:				
City IS NOT awarded the CDBG Public Facilities Grant for \$1M for Water Street.				
City IS NOT awarded TAP Grant Funding for Pedestrian Bridge 80/20 split				
City buys out the \$1.2M CDBG RLF Program for \$700K				
Expenses				
City Borrowers/Uses Reserves	\$	700,000	Reserves/Borrow	
City Project Costs	\$	957,477	Water Street Project	
City Project Costs	\$	378,000	Pedestrian Bridge	
	\$	2,035,477		
Revenues				
CDBG Close Out Grant Proceeds	\$	(957,477)	Water Street	
CDBG Close Out Grant Proceeds	\$	(242,523)	Pedestrian Bridge	
City Bridge Reserves	\$	(105,000)	Pedestrian Bridge (\$105K reserve)	
	\$	(1,305,000)		
City Cost Share	\$			730,477

DATE: May 1, 2020

TO: Committee of the Whole

FROM: Jodie Olson

RE: CDBG Application Requirements

In order to submit CDBG applications there are several requirements that need to be met. Three of them that we need to act on now would be as follows:

1. Authorizing Resolution to Submit a Community Development Block Grant Application

BACKGROUND: In order to apply for the CDBG grant for utilization of the close funds or the Public Facilities grant, Council needs to formally approve submission of a grant application. Staff is proposing we apply for up to \$2.4M in grant for 2020.

RECOMMENDATION: Recommend to Common Council to approve the Authorizing Resolution to Submit a CDBG Grant application.

2. Residential Anti-Displacement and Relocation Assistance Plan (RADRAP) for CDBG Programs

BACKGROUND: Municipalities are required to have an updated RADRAP Plan in place in order to apply for these CDBG grants. This is a plan in case we would tear down low-income housing units and had to displace people. This plan will not apply to any project we are looking to apply for, but the state requires it be on file if we apply for grants.

RECOMMENDATION: Recommend to Common Council to approve the Residential Anti-Displacement and Relocation Assistance Plan (RADRAP) for CDBG Programs.

3. Resolution to Adopt the Policy to Prohibit the Use of Excessive Force and to Enforce the Applicable State and Local Laws Prohibiting Physically Barring Entrances/Exits for Non-Violent Civil Rights Demonstrations

BACKGROUND: Although we currently have an "Excessive Force" policy in place, it needs to be updated for any new CDBG grant applications.

RECOMMENDATION: Recommend to Common Council to approve the Resolution to Adopt the Policy to Prohibit the Use of Excessive Force and to Enforce the Applicable State and Local Laws Prohibiting Physically Barring Entrances/Exits for Non-Violent Civil Rights Demonstrations.



RESOLUTION # 20-07

**AUTHORIZING RESOLUTION TO SUBMIT A
COMMUNITY DEVELOPMENT BLOCK GRANT APPLICATION
FOR THE CITY OF BERLIN, WI**

Relating to the City of Berlin's participation in the Community Development Block Grant Public Facilities and Close Programs;

WHEREAS, federal monies are available under the Community Development Block Grant (CDBG) Program, administered by the Wisconsin Department of Administration (DOA) Division of Energy, Housing and Community Resources (DEHCR) for the purpose of the provision or development of a Public Facility Improvement for the CDBG-PF and CDBG Close Programs; and

WHEREAS, after public meeting and due consideration, the City of Berlin Common Council has recommended that an application be submitted to DOA for the following project: City of Berlin – 2021 Street & Utilities Improvement Project; and

WHEREAS, it is necessary for the Common Council to approve preparation and filing of an application for the City of Berlin to receive funds from these Programs; and

WHEREAS, the City of Berlin Common Council has reviewed the need for the proposed project and the benefits to be gained therefrom;

NOW, THEREFORE, BE IT RESOLVED, that the City of Berlin Common Council does hereby approve and authorize the preparation and filing of an application for the above-named project, and that the City Clerk of the City of Berlin is hereby authorized to sign all necessary documents on behalf of the City of Berlin, and that authority is hereby granted to the City of Berlin Common Council to take the necessary steps to prepare and file the application for funds under these Programs in accordance with this Resolution.

Passed, approved and adopted this _____ day of May, 2020.

ROLL CALL VOTE:

_____ AYES
_____ NAYS
_____ ABSENT

CITY OF BERLIN

BY: _____
RICHARD D. SCHRAMER, Mayor

APPROVED AS TO FORM:

MATTHEW G. CHIER
City Attorney

ATTEST: _____
JODIE OLSON, City Clerk



RESOLUTION # 20-08

**RESOLUTION TO ADOPT THE POLICY TO PROHIBIT THE USE OF EXCESSIVE FORCE
AND TO ENFORCE THE APPLICABLE STATE AND LOCAL LAWS
PROHIBITING PHYSICALLY BARRING ENTRANCES/EXITS
FOR NON-VIOLENT CIVIL RIGHTS DEMONSTRATIONS
CITY OF BERLIN, WI**

WHEREAS, Section 104 (L)(1) of Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 69 §5304) prohibits the State from expending or obligating any Community Development Block Grant funds to any unit of general local government that does not have a policy prohibiting the use of excessive force by local law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and a policy of enforcing State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction;

AND WHEREAS, it is in the interest of the City of Berlin to pursue Community Development Block Grant Funds and to adopt policy that complies with Section 104 (L)(1) of Title I of the Housing and Community Development Act of 1974 as amended (42 USC 69 §5304);

NOW, THEREFORE, BE IT RESOLVED, by the City of Berlin Mayor and the City of Berlin Common Council;

It is the POLICY of the City of Berlin to prohibit the use of excessive force by law enforcement agencies within the City of Berlin's jurisdiction against any individuals engaged in nonviolent civil rights demonstrations.

It is POLICY of the City of Berlin to enforce applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within the City of Berlin's jurisdiction.

The officials and employees of the City of Berlin shall assist in the orderly prevention of all excessive force within the City of Berlin by implementing the authority and enforcement procedures set forth in Title I of the Housing and Community Development Act of 1974.

The City of Berlin Common Council directs the Chief of Police of the City of Berlin to implement this Resolution by amending applicable City of Berlin Police Department procedures.

Passed, approved and adopted by the City Of Berlin Mayor and the City of Berlin Common Council this _____ day of May, 2020.

ROLL CALL VOTE:

CITY OF BERLIN

_____ AYES
_____ NAYS
_____ ABSENT

BY: _____
RICHARD D. SCHRAMER, Mayor

APPROVED AS TO FORM:

ATTEST: _____
JODIE OLSON, City Clerk

MATTHEW G. CHIER
City Attorney



RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN (RADRAP) FOR CDBG PROGRAMS FOR THE CITY OF BERLIN, WI

This Residential Anti-Displacement and Relocation Assistance Plan (RADRAP) is prepared by the City of Berlin in accordance with the Housing and Community Development Act of 1974, as amended, and HUD regulations 24 CFR 42.325, and is applicable to our CDBG project(s).

MINIMIZE DISPLACEMENT

Consistent with the goals and objectives of activities assisted under the Act, the City of Berlin will take the following steps to minimize the direct and indirect displacement of persons from their homes:

- Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement.
- If feasible, demolish or convert only dwelling units that **are not** occupied, or vacant occupiable dwelling units (especially those units which are "lower income dwelling units" as defined in 24 CFR 42.305).
- Target only those properties deemed essential to the need or success of the project.
- Coordinate code enforcement with rehabilitation and housing assistance programs.
- Stage rehabilitation of apartment units to allow tenants to remain in the building/complex during and after the rehabilitation, working with empty units first.

RELOCATION ASSISTANCE TO DISPLACED PERSONS

The City of Berlin will provide relocation assistance for lower income tenants who, in connection with an activity assisted under the CDBG Program, move permanently or move personal property from real property as a result of the demolition of any dwelling unit or the conversion of a lower income dwelling unit in accordance with the requirements of 24 CFR 42.350. A displaced person who is not a lower income tenant will be provided relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR Part 24.

ONE FOR ONE REPLACEMENT OF LOWER INCOME DWELLING UNITS

The City of Berlin will replace all occupied and vacant occupiable lower income dwelling units demolished or converted to a use other than lower income housing in connection with a project assisted with funds provided under the CDBG Program in accordance with 24 CFR 42.375.

Before entering into a contract committing the City of Berlin to provide funds for a project that will directly result in demolition or conversion of lower-income dwelling units, the City of Berlin will notify the public through publication in the Berlin Journal, and submit to the U.S. Department of Housing and Urban Development (HUD) through the State, under the State CDBG Program, the following information in writing:

1. A description of the proposed assisted project;
2. The address, number of bedrooms, and location on a map of lower income dwelling units that will be demolished or converted to a use other than as lower income dwelling units as a result of an assisted project;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. To the extent known, the address, number of lower income dwelling units by size (number of bedrooms) and location on a map of the replacement lower income housing that has been, or will be provided. See also 24 CFR 42.375(d).
5. The source of funding and a time schedule for the provision of the replacement of dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a lower income dwelling unit for at least 10 years from the date of initial occupancy; and
7. Information demonstrating that any proposed replacement of lower income dwelling units with smaller dwelling units (e.g. a 2-bedroom unit with two 1-bedroom units), or any proposed replacement of efficiency or single room occupancy (SRO) units with units of a different size, is appropriate and consistent with the housing needs and priorities identified in the HUD approved Consolidated Plan and 24 CFR 42.375(b).

To the extent that the specific location of the replacement dwelling units and other data in Items 4 through 7 are not available at the time of general submission, the City of Berlin will identify the general location of such dwelling units on a map and complete the disclosure and submission requirements as soon as the specific data is available.

REPLACEMENT NOT REQUIRED BASED ON UNIT AVAILABILITY

Under 24 CFR 42.375(d), the City of Berlin may submit a request to HUD (or to the State, if funded by the State) for a determination that the one for one replacement requirement does not

apply based on objective data that there is an adequate supply of vacant lower income dwelling units in standard condition available on a non-discriminatory basis within the area.

CONTACTS

The City of Berlin's Community Development Director, 920-361-5156, is responsible for tracking the replacement of lower income dwelling units and ensuring that they are provided within the required period.

The City of Berlin's Community Development Director, 920-361-5156, is responsible for providing relocation payments and other relocation assistance to any lower income person displaced by the demolition of any dwelling unit or the conversion of lower income dwelling units to another use.

Passed, approved and adopted by the City of Berlin Common Council this _____ day of May, 2020.

ROLL CALL VOTE:

CITY OF BERLIN

_____ AYES
_____ NAYS
_____ ABSENT

BY: _____
RICHARD D. SCHRAMER, Mayor

APPROVED AS TO FORM:

ATTEST: _____
JODIE OLSON, City Clerk

MATTHEW G. CHIER
City Attorney

DATE: April 30, 2020

TO: Common Council

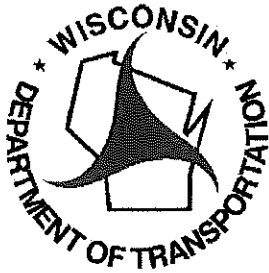
FROM: Jodie Olson

RE: Approval of 2020 State & Federal Tax Grant Documents

Background: At the August 13, 2019 Common Council meeting staff was authorized to apply for the 2020 state and federal shared-ride taxi grant. The grants have been awarded and the additional CARES Act funding is included in the 2020 State and Federal Tax Grant documents for signing. The state taxi grant amount noted in the agreement is \$52,687 and the federal taxi funding is \$284,028. The CARES Act funding level for federal funding covers 100% instead of the typical 60/65%.

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.

Recommendation: Approve and authorize the Mayor to sign the 2020 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 2020, including the Federal Certifications and Assurances.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 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 2020 Public Transit Assistance Program application for funding assistance, which is made part of this Grant Agreement by reference.

Period of Performance:

January 20, 2020, through December 31, 2020

Award Maximum:

As specified on Attachment A to this agreement, the Department agrees to pay Recipient an amount not to exceed **\$284,028.**

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: _____

Name: _____

Title: _____

Date: _____

Contact: _____

Signature: _____

Name: Ian Ritz

Title: Transit Section Chief

Date: _____

Contact: (608) 266-0189



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 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.



Grant Agreement

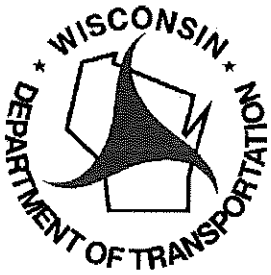
Main Provisions

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

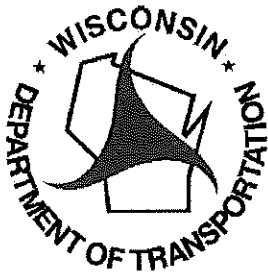
- A. The Recipient is responsible for submitting all program reports, invoices, or other required documents as outlined in the program application in the manner and form as prescribed by the Department. The Department may withhold any and all payments to the Recipient if program reports, invoices, and 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 sub-grants 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.



- 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: <https://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/transit/procure.aspx>.
 - 1. The Recipient must obtain Departmental approval for pre-solicitation and post-solicitation 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



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.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 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

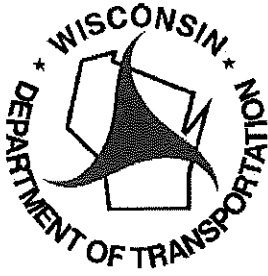
The following documents are *incorporated by reference* and made part of this Grant Agreement:

1. Recipient's current year approved application and application guidelines
2. *Federal Transit Administration Master Agreement, FTA MA(26), October 1, 2019* (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



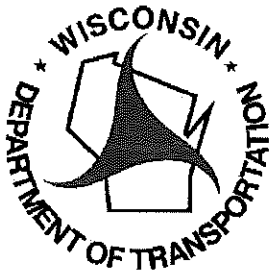
Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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 Federal Transit Administration Master Agreement, FTA MA(26), October 1, 2019.
- 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)".

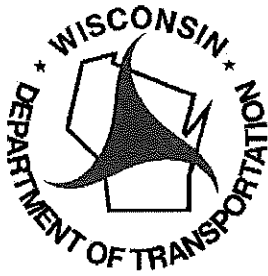


Section II: PROJECT REQUIREMENTS

- 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. The Department agrees to pay the Recipient the least of these amounts:
 - 1. the award maximum as stated on page 1 of this agreement,
 - 2. the audited project deficit less state assistance payments and required local match to receive state assistance payments.

Reimbursements to the Recipient may be reduced by the Department to prevent overpayments based on paragraph Section II, part C, number 2 above. 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.

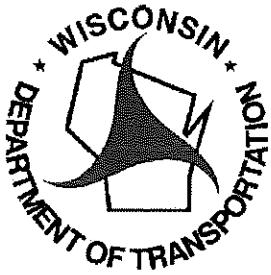
- C. Payment by the Department to the Recipient shall be made upon submittal of quarterly reimbursement and operations reports by the Recipient to the Department.
- D. If the Department's audit establishes that payment to the Recipient under the terms of this Grant Agreement has exceeded the allowable 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.
- E. 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.
- F. 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



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

such contracts and determine their conformance with the provisions of this agreement.

- G. 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.
- H. 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 2020 application for operating assistance and that the full application is made part of this Grant Agreement by reference. Modifications to the 2020 Transit Management Plan may be proposed by either the Recipient or the Department.
- I. A request by the Recipient to modify the 2020 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.
- J. If the Department determines that a proposed modification is a "substantive change" to the 2020 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 2020 Transit Management Plan until an appropriate amendment to this Grant Agreement has been executed.
- K. If the Department determines that a proposed modification to the 2020 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.
- L. A request by the Department to modify the 2020 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.

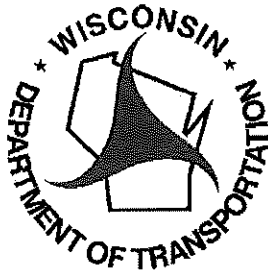


Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

M. 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.

N. WisDOT Contact:

Title:	Program Manager for Public Transit
Address:	Attn: Kevin Lange 4822 Madison Yards Way, 6 th Floor South P.O. Box 7913 Madison, WI 53707-7913
Contact:	(608) 266-2365 kevin.lange@dot.wi.gov



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

Attachment A: Funding Allocation

Section 5311 Grant Program

A. Award Details:

Grant Maximum (based on estimated CY 2020 Expenses):	\$ 284,028
Estimated Local Match:	\$0

*Local Share estimated -- actual expenses, revenues, and WisDOT state assistance payments 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): **WI-2020-014-00**
- iv. Federal Award Date: **May 15th, 2020**
- 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

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

FTA Master Agreement

Federal grant monies (\$284,028) 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: <http://www.nationalrtap.org/home.aspx>.

BUY AMERICA REQUIREMENTS

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

Applicability to Contracts

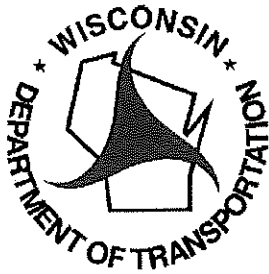
The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).

Flow Down Requirements: 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.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

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.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but 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.

Date _____

Signature _____

Company Name _____

Title _____



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

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

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

Model Clause/Language: 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**

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

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

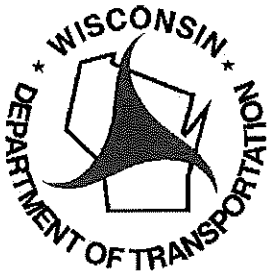
Model Clause/Language: The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 49 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.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

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

Model Clause/Language: 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 \$50,000.

Flow Down Requirements: 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 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.

LOBBYING

31 U.S.C. 1352

49 CFR Part 19

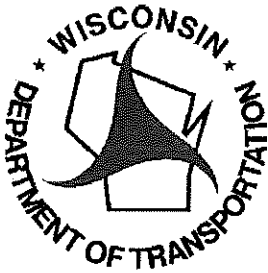
49 CFR Part 20

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 \$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.

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)



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.]



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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"

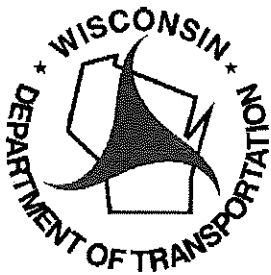
Applicability to Micro-Purchases: Micro-purchases are defined as those purchases under \$5,000. These requirements do not apply to micro-purchases; except for construction contracts over \$2,000.

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

Model Clause/Language: 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.
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.



Federal Transit Administration §5311
 Formula Grants for Rural Areas - Operating
 CARES Act 2020 Program Grant Agreement
 City of Berlin
 DUNS: 8519626

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.

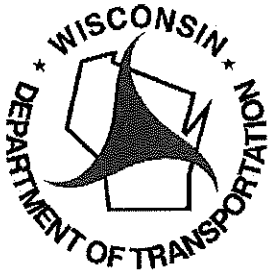
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

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 Characteristics		Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects		None None unless ¹ non-competitive award	Those imposed on state pass thru to Contract or	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
II Non State Grantees a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects		Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contract or	Yes Yes	Yes Yes	Yes Yes	Yes Yes



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

--	--	--	--	--	--	--	--

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 \$5,000. 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 Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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 \$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.



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

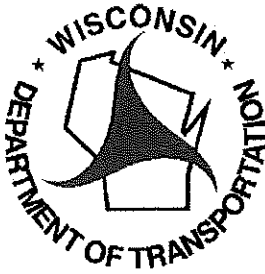
Contract Work Hours and Safety Standards

(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.



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts Applicable to all contracts

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.

Flow Down Requirement: 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.

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.

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

Model Clause/Language: 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.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

(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.

Flow Down Requirement: 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.

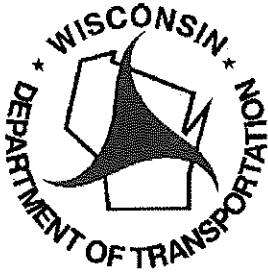
Model Clause/Language: FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

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.



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

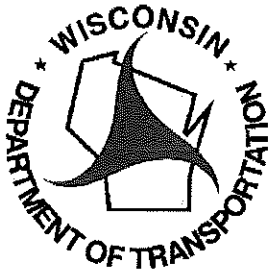
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

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 complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the 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



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

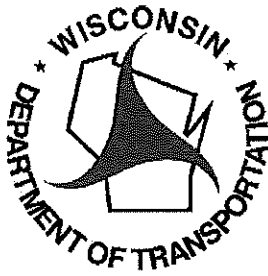
If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

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 or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (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



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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 any federally assisted Award.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Recipient. If it is later determined 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: _____

PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: 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.

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.

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

Model Clause/Language: 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.

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.

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

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

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (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) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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**

Applicability to Contracts: 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.

Model Clauses/Language: 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.

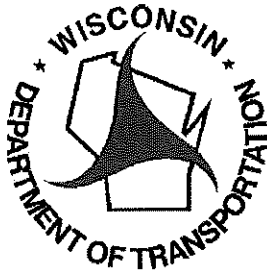
Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Recipient. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, 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 by 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 or 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**

Applicability to Contracts: 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.)

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.

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.

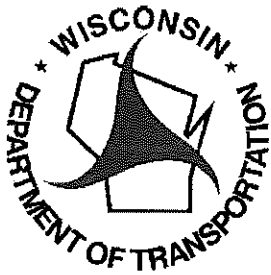
§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

- 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.



Federal Transit Administration \$5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

(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

Applicability to Contracts: 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 and 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 not been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Recipient** deems appropriate, which may include, but is not limited to:

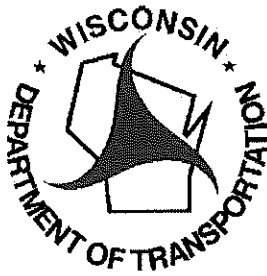
- 1) Withholding monthly progress payments
- 2) Assessing sanctions
- 3) Liquidated damages, and/or
- 4) Disqualifying the contractor from future bidding as non-responsible

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. **Prompt Payment** - 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** 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.

For purposes of this paragraph, good cause includes the following circumstances:

- i. The listed DBE subcontractor fails or refuses to execute a written contract.
- ii. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- iii. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- iv. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- v. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- vi. WisDOT determined that the listed DBE subcontractor is not a responsible contractor;
- vii. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- viii. The listed DBE is ineligible to receive DBE credit for the type of work required;
- ix. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- x. Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

i. 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**.

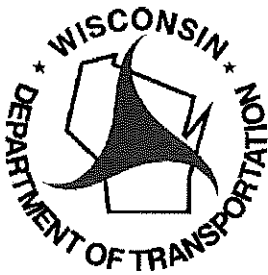
j. Before transmitting to WisDOT its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to WisDOT, of its intent to request to terminate and/or substitute, and the reason for the request.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

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

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.



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

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 \$5,000. These requirements do not apply to micro-purchases, except for construction contracts over \$2,000.

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



Federal Transit Administration §5311
Formula Grants for Rural Areas - Operating
CARES Act 2020 Program Grant Agreement
City of Berlin
DUNS: 8519626

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.

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.

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.

Veterans Employment. 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.



Wis. Stats. 85.20 (State ID: 395.17700)
Urban Mass Transit Assistance - Operating
2020 Program Grant Agreement
City of Berlin

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 2020 Public Transit Assistance Program application for funding assistance, which is made part of this Grant Agreement by reference.

Period of Performance:

January 1, 2020, through December 31, 2020

Award Maximum:

As specified on Attachment A to this agreement, the Department agrees to pay Recipient an amount not to exceed **\$52,687.**

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, 6th Floor South
P.O. Box 7913
Madison, WI 53707-7913

Signature: _____

Name: _____

Title: _____

Date: _____

Contact: _____

Signature: _____

Name: Ian Ritz

Title: Transit Section Chief

Date: _____

Contact: (608) 266-0189



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 2020 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 sub-grants 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.



Wis. Stats. 85.20 (State ID: 395.17700)
Urban Mass Transit Assistance - Operating
2020 Program Grant Agreement
City of Berlin

Section V: ADDITIONAL DOCUMENTS

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

A. Attached Documents

The following documents have been *included* 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
- _____ 2. Attachment A: Schedule of Payments



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 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.

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 year-end 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.



Wis. Stats. 85.20 (State ID: 395.17700)
Urban Mass Transit Assistance - Operating
2020 Program Grant Agreement
City of Berlin

- 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 2020 application for operating assistance and that the full application is made part of this Grant Agreement by reference. Modifications to the 2020 Transit Management Plan may be proposed by either the Recipient or the Department.
- J. A request by the Recipient to modify the 2020 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 2020 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



Wis. Stats. 85.20 (State ID: 395.17700)
Urban Mass Transit Assistance - Operating
2020 Program Grant Agreement
City of Berlin

"substantive change" to the 2020 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 2020 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 2020 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, 6 th Floor South P.O. Box 7913 Madison, WI 53707-7913
Contact:	(608) 266-2365 kevin.lange@dot.wi.gov



Wis. Stats. 85.20 (State ID: 395.17700)
 Urban Mass Transit Assistance - Operating
 2020 Program Grant Agreement
 City of Berlin

Attachment A: Schedule of Payments

Wis. Stats. 85.20 – Urban Mass Transit Assistance

A. Award Details:

Total Budgeted Expenses	\$284,028
Total Anticipated Revenues	- \$75,000
Total Anticipated Net Deficit	= \$209,028
5311 Grant Allotment	\$104,514
85.20 State Assistance	\$52,687
*Estimated Local Match	\$51,827

*Local Share estimated, actual expenses and revenues will determine the local contribution.

B. Schedule of Payments:

Period	Scheduled Amount	Estimated Payment Date
1st Payment (Quarter 1)	\$ 13,172	June 5, 2020
2nd Payment (Quarters 2-4)	\$ 39,515	August 30, 2020
Total	\$ 52,687	

Federal Certifications and Assurances

for

WisDOT Grant Agreement



Calendar Year 2020

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

March 17, 2020

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 2020 Annual Certification and Assurances for FTA grants is available at

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grantee-resources/certifications-and-assurances/147956/fy20-certifications-and-assurances.pdf>

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:

- ✓ Previous legislation that remains in effect, and
- ✓ Appropriations Acts or Continuing Resolutions funding the U.S. Department of Transportation during Federal Fiscal Year 2020.

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/sites/fta.dot.gov/files/docs/funding/grantee-resources/sample-fta-agreements/146616/fta-master-agreement-fy-2020.pdf>

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:** Read each Certification and Assurance.
- 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.

2020 FTA Certifications and Assurances

CATEGORY	SUBJECT	Initial or N/A for each
CATEGORY A certification is for 5311 subrecipients only		5311 Subrecipients
A-1	Labor Warranty <i>Note: Subrecipients are required to post the Special Section 5333(b) Labor Warranty language on an employee bulletin board.</i>	
CATEGORY B certifications are required for every subrecipient		Initial each
B-1	Standard Assurances	
B-2	U.S. OMB Assurances	
B-3	Nondiscriminatory Assurances	
B-4	Procurement	
B-5	Suspension and Debarment, Tax Liability and Felony Convictions	
CATEGORY C certifications should be reviewed for applicability by every subrecipient		Initial or N/A
C-1	Lobbying	
C-2	Private Sector Protections <ul style="list-style-type: none"> o Charter Bus o School Bus 	
C-3	Transit Asset Management Plan	
C-4	Rolling Stock Buy America Reviews and Bus Testing	
C-5	Alcohol and Controlled Substances Testing	
C-6	Demand Responsive Service	
C-7	Construction Hiring Preferences	
C-8	Disadvantaged Business Enterprise Assurance	

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: _____

**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:	
By:	
	<i>(signature of chief elected or administrative official)</i>

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 not 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 area 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 by 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 the 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 for 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 first 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 (1/12th) 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 by 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 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 or the 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 employee's 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 to 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 in 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 within 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

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 party 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 or 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 date when he employee was so affected.

B-1

STANDARD ASSURANCES

The Applicant/Recipient assures that it:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970, relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

B-2

U.S. OMB ASSURANCE

These assurances are consistent with U.S. Office of Management and Budget's (OMB) assurances required in U.S. OMB's standard form F-424B.

Statutory and Regulatory Requirements:

The Applicant/Recipient assures that it will comply, as applicable, with:

1. The requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("Uniform Act") (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 C.F.R. Part 24.
2. Provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal Funds.
3. Provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted constructed subagreements.
4. Flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurances if the total cost of insurable construction and acquisition is \$10,000 or more.
5. Environmental standards which may be prescribed pursuant to the following:
 - (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (b) Notification of violating facilities pursuant to EO 11738;

- (c) Protection of wetlands pursuant to EO 11990;
 - (d) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (e) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
 - (f) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
 - (g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (h) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
6. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic river system.
 7. Assist with the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic priorities), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
 8. P.L. 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
 9. Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C §§2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching or other activities supported by this award of assistance.
 10. Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
 11. Required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F, "Audit Requirements", as adopted and implemented by U.S. DOT at 2 C.F.R. Part 1201.
 12. All applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.
 13. Requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. §7104) which prohibits grant award recipients or a subrecipient from:
 - (a) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (b) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (c) Using forced labor in the performance of the award or subawards under the award.

Construction Project Specifics:

The Applicant/Recipient assures that it:

1. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and the facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
2. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
3. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that complete work confirms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

B-3

NONDISCRIMINATION ASSURANCE

The Applicant/Recipient assures that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin as effectuated by U.S. DOT regulation 49 C.F.R. Part 21;
2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 C.F.R. Part 25;
3. Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance from FTA because of race, color, regional, national origin, sex, disability, or age.
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 C.F.R. Part 27.
5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age.
6. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.
7. The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
8. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
9. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.
10. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
11. The requirements of any other nondiscrimination statute(s) which may apply to the application.

B-4

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.

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

The Applicant/Recipient certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), beginning on and after August 13, 2020, it will not use assistance awarded by FTA to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) if such equipment or services will be used as a substantial or essential component of any system or as critical technology as part of any system.

B-5

SUSPENSION AND DEBARMENT and TAX LIABILITY and FELONY CONVICTIONS

Pursuant to Executive Order 12549, FTA requires each applicant to certify as to its tax and felony status.

Suspension and Debarment

The Applicant/Recipient certifies that:

1. 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
2. To the best of its knowledge and belief that, it, and each of its principals:
 - (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily or involuntarily excluded from covered transactions by and Federal department or agency;
 - (b) 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;
 - (c) 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;
 - (d) 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:

1. 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
2. It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

C-1

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 Applicant/Recipient 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 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.
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 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 Applicant/Recipient 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-2

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:
 - (a) 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/Recipient 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.

1. 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:
 - (a) 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.
 - (b) 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)).
2. 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:
 - (a) 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.
 - (b) 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.
 - (c) 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)).
 - (d) 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.

C-3

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/Recipient certifies that it is in compliance with 49 C.F.R. Part 625.

C-4

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/Recipient 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/Recipient 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-5

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-6

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/Recipient 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:

1. Response time;
2. Fares;
3. Geographic area of service;
4. Hours and days of service;
5. Restrictions or priorities based on trip purpose;
6. Availability of information and reservation capability; and
7. Any constraints on capacity or service availability.

C-7

CONSTRUCTION HIRING PREFERENCES

If the Applicant/Recipient 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, 2020, Pub. L. 116-94, div. H, title I, § 191.

Hiring Preferences

The Applicant/Recipient certifies the following:

1. 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;
2. 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
3. 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.

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:

1. 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:

1. 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:
 - (a) Withholding monthly progress payments;
 - (b) Assessing sanctions;
 - (c) Liquidated damages, and/or;
 - (d) Disqualifying the contractor from future bidding as non-responsible.
2. 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.
3. 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.
4. The contractor will be required to report its DBE participation obtained throughout the period of performance.
5. 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.

6. 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.
7. 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.

