

**APPENDIX A-1  
NONDISCRIMINATION**

During the performance of this contract, the contractor agrees as follows:

- (1) Nondiscrimination – in accordance with Title VI of the Civil Rights Act, as amended, 42 USC subsection 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC subsection 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC subsection 12132, and Federal transit law at 49 USC subsection 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, Sec - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC subsection 2000e and Federal transit laws at 49 USC subsection 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the Department of Labor (USDOL) regulations. “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” 41 CFR 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 USC subsection 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 tested 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 of 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 USC subsections 623 and Federal transit law at 49 USC subsection 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 USC subsection 12112, the Contractor agrees that it will comply with the requirements of the US Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the 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.

**APPENDIX B-1**  
**APPLICATION OF FEDERAL TRANSIT ADMINISTRATION**  
**REGULATIONS AND REQUIREMENTS**

To achieve compliance with changing Federal requirements, the City of Kalamazoo hereby includes notice that Federal requirements may change and the changed requirements will apply to this contract, as applicable, unless the Federal government determines otherwise.

The contractor also recognizes that the United States Environmental Protection Agency, Federal Highway Administration, and other agencies in the Federal Government have issued and are expected to issue regulations, guidelines, orders, or other requirements that may affect this contract. The Contractor acknowledges that other obligations relative to this contract involving Federal law may exist.

The City of Kalamazoo has agreed to include provision adequate to ensure compliance of participation entities with Federal requirements. The contractor agrees to include in its subcontracts for service under this contract provisions adequate to impose Federal requirements including those below:

**For all Contracts:**

**NOTICE OF FEDERAL REQUIREMENTS:** The contractor shall comply with the rules of 49 CFR Part 18, relative to third party contracts with the City of Kalamazoo, Uniform Administrative Requirements for Grants and Cooperative Agreements.

**INTEREST OF MEMBERS OR DELEGATES TO CONGRESS:** No member or delegate to the Congress of the United States shall be admitted to any share or part of this project or any benefit therefrom.

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

**ACCESS TO RECORDS** (sole source or offer): The contractor agrees to provide the Metro Transit system, 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. 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. 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 Metro Transit System, 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).

**CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS** (applies to the contractor and its employees that administer any system of records on behalf of the Federal Government under any contract. Specific attention is drawn to contractors administering drug and alcohol enforcement activities for FTA): (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. subsection 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.

**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 Agreement (Form FTA MA (2) dated October, 1999) between the Metro Transit System, and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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

**NO OBLIGATIONS BY THE FEDERAL GOVERNMENT:** (1) The Metro Transit System and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government or in 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.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS:** These 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 4220.1D, dated April 15, 1996, 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 Kalamazoo Metro Transit requests which would cause Kalamazoo Metro Transit to be in violation of the FTA terms and conditions.

**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. subsection 3801 et seq. And U.S. DOT regulations, Program Fraud Civil Remedies, 49 CFR 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 assistance project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the

Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The contractor also acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. subsection 5307, the Government reserves the right to impose the penalties of 18 U.S.C. subsection 1001 and 49 U.S.C. subsection 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 the FTA. It is further agreed that the clauses shall not be modified, except to identify the contractor who will be subject to the provisions.

**DISADVANTAGED BUSINESS ENTERPRISE PROVISION:** The Federal Fiscal Year goal has been set by Kalamazoo Metro Transit in an attempt to match projected procurements with available qualified disadvantaged businesses. Kalamazoo Metro Transit goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by Kalamazoo Metro Transit as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this solicitation.

- (1) Policy. It is the policy of the Department of Transportation and Kalamazoo Metro Transit that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURRA of 1987, apply to this contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or physical handicap in the award and performance of subcontracts. It is further the policy of Kalamazoo metro Transit to promote the development and increase the participation of businesses owned and controlled by disadvantaged individuals. DBE involvement in all phases of Kalamazoo Metro Transit procurement activities are encouraged.

- (2) DBE obligation. The contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- (3) Where the contractor is found to have failed to exert sufficient reasonable and good faith efforts to involved DBEs in the work provided, Kalamazoo Metro Transit may declare the contractor noncompliant and in breach of contract.

- (4) The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with Kalamazoo Metro Transit's DBE program. These records and documents will be made available at reasonable times and placed for inspection by an authorized representative of Kalamazoo Metro Transit and will be submitted to Kalamazoo Metro Transit upon request.
- (5) Kalamazoo Metro Transit will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request: identification of a qualified DBE; available listing of minority assistance agencies; holding bid conferences to emphasize requirements.
- (6) Definitions:
- X Disadvantaged business: A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it - OR - Which is at least 51 percent owned by one or more women, or in the case of public owned business, at least 51 percent of the stock of which is owned by one or more women; and, whose management and daily business operations are controlled by one or more women who own it.
  - X Small Business Concern: A small business, as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
  - X Socially and economically disadvantaged individuals: Those individuals who are citizens of the United States or lawfully admitted permanent residents and who are black Americans, Hispanic Americans, native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, or any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Black Americans includes persons having origins in any of the Black racial groups of Africa; Hispanic Americans includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; Native Americans includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; Asian-Pacific Americans includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; Asian-Indian Americans includes persons whose origins are from India, Pakistan, and Bangladesh.

**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. subsection 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the US 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 US 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. subsection 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. subsection 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. subsection 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. subsection 5310(a)(2), and if the US Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. subsection 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. subsection 5333(b), US DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the US 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 US DOL letter. (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. subsection 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. subsection 5311, the contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the US Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implements by US DOL or any revision thereto. (2) The contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.

**ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES:** The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) as amended, 42 USC subsection 12101, et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC, subsection 794, 49 USC subsection 5301(d), and the following Federal regulations, as they relate to this contract:

- (1) United States Department of Transportation regulations, Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37.
- (2) United States Department of Transportation regulations, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 49 CFR Part 27.
- (3) United States Department of Transportation regulations, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles, 49 CFR Part 38.
- (4) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 CFR Part 35.
- (5) United States Department of Justice regulations, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 28 CFR Part 36.
- (6) United States General Services Administration regulations Accommodations for the Physically Handicapped, 41 CFR Subparts 101-19.
- (7) United States Equal Employment Opportunity Commission, Regulations to Implement the Equal Employment Provisions of the ADA, 29 CFR Part 1630.

- (8) United States Federal Communications Commission regulations, Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled, 47 CFR Part 64, Subpart F.
- (9) Federal Transit Administration regulations, Transportation for Elderly and Handicapped Persons, 49 CFR Part 609.
- (10) Any implementing requirements FTA may issue.

**TERMINATION PROVISIONS** – If there is a conflict between the termination provisions of the terms and conditions and these FTA provisions, the FTA provisions prevail.

- a. Termination for Convenience – The City of Kalamazoo 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-outs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Kalamazoo to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Kalamazoo, the Contractor will account for the same, and dispose of it in the manner the City of Kalamazoo directs.
- b. Termination for Default (Breach or Cause) – If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Kalamazoo may terminate this contract for default. Termination shall be effective by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.  
If it is later determined by the City of Kalamazoo that the Contractor had an excusable reason for not performing, such as strike, flood, events which are not the fault of or are beyond the control of the Contractor, the City of Kalamazoo, 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 – The City of Kalamazoo in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.  
If Contractor fails to remedy to the City of Kalamazoo’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the established timeframe, the City of Kalamazoo shall have the right to terminate the Contract without any further obligation to the Contractor. Such termination for default shall not in any way operate to preclude the City of Kalamazoo from also pursuing all available remedies against the Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for Any Breach – In the event that the City of Kalamazoo elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of the Contract, such waiver by the City of Kalamazoo shall not limit the City of Kalamazoo’s remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract.

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

**CARGO PREFERENCE REQUIREMENTS** - Use of United States Flag Vessels: (applies to anything transported by ocean vessels) The contractor agrees to a) use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b) furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rates, on-board commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Metro Transit System; c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**For Operational Contracts (excluding transportation services) in excess of \$2,500; rolling stock contracts; and, construction contracts over \$2,000 (in conjunction with the Davis-Bacon Act clauses set forth below).**

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** Pursuant to Section 102 (Overtime):

- (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 damage.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore 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 Kalamazoo Metro Transit System shall upon its own action or upon written request for 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 this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
- (5) **Special Provision of Section 102 Nonconstruction Contracts: Payroll and basic records.** (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing

apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (6) **Section 107 (OSHA): (This section is applicable to construction contracts only) Contract Work Hours and Safety Standards Act -**
- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 USC section 333 and applicable DOL regulations. “Safety and Health Regulations for Construction” 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
  - (ii) Subcontracts – The Contractor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for a specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

**For Research Contracts:**

**PATENT AND RIGHTS IN DATA:** The following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term subject data does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this attachment has been added:
  - (a) Except for its own internal use, Kalamazoo Metro Transit or the contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Kalamazoo Metro Transit or contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - (b) In accordance with 49 CFR subsection 18.34 and 49 CFR subsection 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes, any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, for Federal Government purposes, means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
    1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    2. Any rights of copyright purchase by Kalamazoo Metro Transit or contractor using Federal assistance in whole or in part provided by FTA.
  - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, Kalamazoo Metro Transit and the contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptation of automatic data processing equipment or programs for which Kalamazoo Metro Transit or the contractor’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (d) Unless prohibited by state law, upon request by the Federal Government, Kalamazoo Metro Transit and the contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Kalamazoo Metro Transit or the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither Kalamazoo metro Transit nor the contractor shall be required to indemnify the Federal Government of any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - (f) Data developed by Kalamazoo Metro Transit or the contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Kalamazoo Metro Transit or the contractor identifies that data in writing at the time of delivery of the contract work.
  - (g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Kalamazoo metro Transit and the contractor agree to take the necessary actions to provide through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, 37 CFR Part 401.
- (4) The contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**PATENT RIGHTS:** (1) General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Kalamazoo Metro Transit and the contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified. (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government, or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Kalamazoo Metro Transit and the contractor agree to take the necessary actions to provide through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements, 37 CFR Part 401. (3) The contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**For Operational Service Contracts:**

**DRUG AND ALCOHOL TESTING:** (Maintenance contractors and subcontractors -- these rules do not apply): The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the Michigan Department of Transportation, or the Kalamazoo Metro Transit System to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 and to submit the Management Information System (MIS) reports before February 15th to the Metro Transit System Operations Supervisor. To certify compliance the contractor shall use the Substance Abuse Certifications in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, which is published annually in the Federal Register.

**CHARTER BUS REQUIREMENTS:** The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients 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., must not interfere with or detract from the provision of mass transportation).

**SCHOOL BUS REQUIREMENTS:** 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.

**Special Requirements for Construction Contracts**

**Prime Contractor Participation.** The prime contractor shall perform on the site with his own staff, work equivalent to at least ten percent of the total amount of construction work at the site. Only pay items of the construction contract will be used in computing the total amount of construction work at the site. The City may increase this minimum amount of prime contractor participation depending upon the degree of specialization or time to perform the work.

**Certified Payrolls Construction Project.** The City shall obtain from each contractor and subcontractor, a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by the City of compliance with State and Federal labor laws, the payroll copy shall be retained by the City for later review by FTA. A contractor may use the Department of Labor form WH-347, optional payroll form, which provides for all of the necessary payroll information and certifications. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, the contractor may use his own payroll form provided it includes the same information and certifications as the Department of Labor form WH-348 Statement of Compliance.

**Site Inspections.** The City shall have access to the site of construction and shall have the right to inspect all work.

**Project Signs.** The contractor shall erect at the site of construction, and maintain during construction, signs satisfactory to the Department of Transportation identifying the project and indicating that the Government is participating in the development of the project.

**Warranty of Construction.** For a period of one year from the date of completion as evidenced by the date of final acceptance of the work, the contractor warrants the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, materials, or workmanship performed by the contractor or any other subcontractors or suppliers.

Under this warranty, the contractor shall remedy at his own expense any such failure to conform or any such defect. Nothing in the above intends or implies that this warranty shall apply to work which has been abused or neglected by the owner.

**Accessibility Requirements.** Construction projects shall comply with 41 CFR, Section 101-19.6, General Services Administration specifications on construction design for the physically disabled, and other mandates for accessibility as contained elsewhere in this specification or as may be implemented by the Federal Government.

**For Construction Contracts in Excess of \$2,000****DAVIS-BACON ACT****(1) Minimum wages.**

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers and mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill except as provided in 29 CFR part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (iv) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (2) **Withholding.** The City of Kalamazoo shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Kalamazoo may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violation have ceased.

## (3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated of the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)
  - (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Kalamazoo for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
  - (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of The persons employed under the contract and shall certify the following:
    - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
    - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.



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

- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered as participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  - (iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) **Compliance with Copeland Act requirements**. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts**. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

- (7) **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees of their representatives.
- (10) **Certification of eligibility.** (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statement is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**For Contracts in Excess of \$100,000****BREACHES AND DISPUTE RESOLUTION:**

**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 City of Kalamazoo. 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 City Manager. 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 City Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**PERFORMANCE DURING DISPUTE:** Unless otherwise directed by the City of Kalamazoo, the 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/her employees, agent or others for who acts he/she is legally liable, a claim for damages therefore 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 City of Kalamazoo 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 City of Kalamazoo 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 City of Kalamazoo, Architect or Engineer, 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 constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**USE OF FACILITIES:** In contracts exceeding \$100,000, the use of facilities included on the EPA list of violating facilities is expressly prohibited, per the requirements contained at 49 CFR Part 15.

**CLEAN WATER REQUIREMENTS:** (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 \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

**LOBBYING:** (Construction/A&E/Rolling Stock/Professional Service/Operational Service) Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Metro Transit System.

**BUY AMERICA:** (Applicable to construction contracts; acquisition of goods or rolling stock (over \$100,000)): The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR 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 Part 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchased (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the Metro Transit System the appropriate Buy America certificate with all bids 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 non-responsive. The requirement does not apply to lower tier subcontractors.

**SEISMIC SAFETY (applies to buildings - new construction or additions):** The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**CLEAN AIR:** (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 41 U.S.C. subsections 7401 *et seq.* The contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will in turn report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**For Contracts in Excess of \$25,000****CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Metro Transit System may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to Kalamazoo Metro Transit if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, persons, lower tier covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Kalamazoo Metro Transit for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized in writing by Kalamazoo Metro Transit.
6. **The prospective lower tier participant further agrees by submitting this proposal that it will include the clause entitled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.**
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determined the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Kalamazoo Metro Transit may pursue available remedies including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Transactions**

- (1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its principals [as defined at 49 CFR subsection 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**For Rolling Stock Procurement**

**BUS TESTING:** The contractor agrees to comply with 49 U.S.C., subsection 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following: 1) a manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle. 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public. 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. 4) If the manufacturer represents that the vehicle is grand fathered (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

**PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS:** The contractor agrees to comply with 49 U.S.C. subsection 5323(1) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications: 1) Buy America Requirements: The contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of activities that will take place at the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. (2) Solicitation Specification Requirements: The contractor shall submit evidence that it will be capable of meeting the bid specifications. (3) Federal Motor Vehicle Safety Standards (FMVSS): The contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**Special Requirements for Vehicle Acquisition**

**Buy America.** In accordance with 49 CFR Part 661.13, the attached certification shall be completed and submitted with the bid in accordance with this part.

**Motor Vehicle Pollution.** 40 CFR Parts 84 and 85, Motor Vehicle Pollution Requirements, establish emission standards for vehicles, and are applicable to Federal contracts for vehicle acquisition.

**Safe Vehicles.** Contracts for vehicles must comply with 49 CFR Part 500, Motor Vehicle Safety Standards, which set forth requirements for delivery of safe vehicles.

**Accessible Vehicles.** Contractors must comply with 49 CFR Part 27, Elderly and Handicapped. This regulation implements Section 504 of the Rehabilitation Act of 1973, and outlines accessibility requirements. In the provision of accessible vehicles, the contractor shall also comply with the U.S. Department of Transportation regulations Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, 49 CFR Part 38.

**BUY AMERICA CERTIFICATE (A)**

**Certification requirement for procurement of steel, iron, or manufactured projects:**

*Certificate of Compliance with 49 CFR 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.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

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), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Title \_\_\_\_\_

**BUY AMERICA CERTIFICATE (B)**

**Certification requirement for procurement of buses, other rolling stock and assorted 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 CFR U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

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 CFR U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations at 49 CFR Part 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION OF COMPLIANCE WITH  
FTA'S BUS TESTING REQUIREMENTS**

The undersigned certifies that the vehicle offered in this procurement complies with 49 U.S.C. subsection 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

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

**Certification requirement for procurement of buses, other rolling stock and assorted 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 CFR U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Title \_\_\_\_\_

**49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

The undersigned certifies to the best of his/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, or 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 as 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., subsection 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. subsection 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Company \_\_\_\_\_  
Title \_\_\_\_\_

**DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by U.S. Department of Transportation regulations on Government and Suspension at 49 CFR 29.510, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state anti-trust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with the commission of any of the offenses listed in paragraph (2) of this certification.
- (4) Have not within a three-year period preceding this contract had one or more public transactions (Federal, state, or local) terminated for cause of default.

The contractor certifies that if it becomes aware of any later information that contradicts the statements of paragraphs (1) through (4) above, it will promptly inform FTA. Should the contractor be unable to certify to the statements of paragraphs (1) through (4) above, it shall acknowledge on its signature page and provide a written explanation to FTA.

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Title

This certification must be attached and returned with any bid/proposal/offer exceeding \$100,000.

**APPEALS AND REMEDIES - FTA GRANT REQUIREMENTS****(A) PROTESTS****(1) *Right to Protest***

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may file a written protest with the Purchasing Director. A protest with respect to an Invitation for Bids or Request for Proposal shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and would not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In all cases, the protest shall be submitted within ten (10) calendar days after receiving knowledge of the action about which the protest is being made.

**(2) *Stay of Procurement During Protests***

In the event of a timely protest, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the City Manager makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the City.

**(3) *Notification of Granter Agency - Grant Funding***

If a procurement action which spends grant funding is subject to a protest, the grantor agency shall be notified in writing of such protest and any subsequent response made by the City or the challenging vendor.

**(4) *Decision of Purchasing Director***

The Purchasing Director shall issue a decision in writing within fourteen (14) calendar days after receipt of such protest or notice of other controversy. A copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken.

**(5) *Appeal***

The decision of the Purchasing Director shall be final and conclusive unless the aggrieved party files a written appeal with the Purchasing Director, addressed to the City Manager, within ten (10) calendar days after receipt of the Purchasing Director's decision.

**(6) *Decision of City Manager***

The City Manager shall issue a decision, in writing, within fourteen (14) calendar days after receipt of appeal unless the parties agree to a longer period. The decision of the City Manager shall be final and conclusive, and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party and shall state the reasons for the action taken. In the absence of a decision by the City Manager within the time specified, the decision of the Purchasing Director shall stand.

**(B) CONTRACT CLAIMS****(1) *Decision of the Purchasing Director***

All claims by the contract against the City relating to a contractor, except bid protests, shall be submitted in writing to the Purchasing Director for a decision. The contractor may request a conference with the Purchasing Director on the claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

**(2) *Notice to the Contractor of the Purchasing Director's Decision***

The decision of the Purchasing Director shall be issued in writing within fourteen (14) calendar days after receipt of such protest, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

**(3) *Finality of Purchasing Director's Decision: Contractor's Right to Appeal***

The Purchasing Director's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the City Manager or commences an action in a court of competent jurisdiction.

**(4) *Decision of City Manager***

The City Manager shall issue a decision, in writing, within fourteen (14) calendar days after receipt of an appeal unless the parties agree to a longer period. The decision of the City Manager shall be final and conclusive and a copy of that decision shall be mailed, or otherwise furnished, to the aggrieved party, and shall state the reasons for the action taken. In the absence of a decision by the City Manager within the time specified, the decision of the Purchasing Director shall stand.