

**2018 GRANT AGREEMENT BETWEEN  
THE CITY OF APPLETON, VALLEY TRANSIT  
AND  
LUTHERAN SOCIAL SERVICES OF WI AND UPPER MI, INC.**

This 2018 Grant Agreement (“Agreement”) is made by and between The City of Appleton, Valley Transit, hereafter referred to as “Valley Transit,” and Lutheran Social Services of WI and Upper MI, Inc., hereafter referred to as “Recipient.” Valley Transit and the Recipient shall be referred to herein as the “Parties.”

**PRELIMINARY STATEMENT**

Valley Transit is authorized to administer the federal Enhanced Mobility of Seniors and Individuals with Disabilities Program (“Program”) under 49 USC §5310 (CFDA 20.513). The Recipient has requested funds to assist in financing project costs for their Making the Ride Happen project and Volunteer Driver project (“the Project”) for the period January 1, 2018, through December 31, 2018. Valley Transit agrees to provide financial assistance for the Project with Program monies made available in accordance with the terms and conditions of this Agreement and the provisions of the Recipient’s 2018 grant application for assistance, which are made part of this Agreement by reference and attached hereto as Attachment A (“2018 Grant Application”).

In consideration of the reciprocal promises expressed in this Agreement, the Parties mutually agree as follows:

**Article I: Payment by Valley Transit**

- A. Valley Transit agrees to pay the Recipient quarterly the respective federal share of the Recipient’s eligible expenses reported up to the funding level specified in Attachment B for expenses incurred during the period of January 1, 2018, through December 31, 2018, as funding for the Project.
- B. Valley Transit shall make payments to the Recipient upon receipt of the proper documentation of eligible expenses required to fund the Project.
- C. Funding for this Agreement is made available solely through federal funding through the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program (CFDA 20.513).

**Article II: Responsibility of Recipient**

- A. The Recipient shall maintain a system of accounting controls to identify, segregate, allocate, and safeguard allowable expenses and revenues for the Project. The Recipient shall also ensure that all sub-recipients and/or third-party transportation service providers comply with this requirement.
- B. Should any portion of the Project be contracted to a sub-recipient and/or a third-party transportation service provider, the Recipient agrees to pay all expenses of the transportation service as its bills become due. The Recipient also agrees to provide the local share of the Projects

operating deficit as required. 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 sub-recipient and/or third-party by an amount equal to any overpayments made to the sub-recipient and/or third-party under this Agreement or under any prior operating assistance contract entered into with any party, including Valley Transit.

- C. This Agreement shall be in effect from January 1, 2018, through December 31, 2018, and payments shall be based exclusively on expenses incurred by the Project during that time period.
- D. The Recipient shall file quarterly reimbursement and performance measures reports (“Reports”) within 30 days of the close of the reporting period. Other special reports (“Special Reports”) may also be required by Valley Transit, which Valley Transit may request on a case-by-case basis from the Recipient as needed. The Recipient assures that all Reports and Special Reports will be submitted in a manner and form prescribed by Valley Transit.

**Article III: Disbursements of Funds**

- A. Payment by Valley Transit to the Recipient shall be made upon the submittal of the Reports and Special Reports, if applicable, by the Recipient to Valley Transit. Said payments will be made within 30 calendar days of receipt of the Reports by Valley Transit and shall be issued by check.
- B. Valley Transit may withhold and/or refuse to pay any and all payments due and owing the Recipient should the Recipient fail to file a Report or Special Report as required pursuant to Article II above, until such time as the report is filed in the manner and form prescribed.

**Article IV: Accounting Records and Department 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) Circular A-133, its Compliance Supplement, and state single audit guidelines issued by the Wisconsin Department of Administration (DOA). Any findings from this audit that are relevant to the use of FTA funds shall be brought immediately to the attention of Valley Transit by the Recipient.
- B. The Recipient, any sub-recipients and/or third-party and their affiliates shall maintain all documents and evidence pertaining to revenues, expenses and cost allocations related to the Recipient for inspection by Valley Transit or its designee during normal business hours in their respective offices, for a period of three years following final agreement payment, and shall make said documents available to Valley Transit upon 24 hours’ notice by Valley Transit to the Recipient. The Recipient shall be responsible for insuring the compliance of all sub-recipients and/or third-parties and affiliates with this provision.

- C. The Recipient shall permit Valley Transit, the Comptroller General of the United States, and the Secretary of the U.S. Department of Transportation, or their authorized representatives, 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. The Recipient shall also permit access to audit the books, records, and accounts of the Recipient pertaining to the project upon 24 hours' notice by Valley Transit to the Recipient.

**Article V: Notification of Federal Participation**

The Recipient must include the following notification language of federal participation in all of its requests for proposals, solicitations, contracts, press releases, brochures, web sites, 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. §5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CFDA 20.513).”*

**Article VI: Arbitration**

Any claim, counterclaim or dispute arising out of or relating to this Agreement may, by mutual consent, be submitted to arbitration, if the parties mutually agree, or in a court of competent jurisdiction within the State of Wisconsin.

**Article VII: Applicable Law**

This Agreement shall be governed under the laws of the State of Wisconsin. The Recipient shall at all times comply with and observe all federal and state laws, local laws, ordinances and regulations which are in effect during the period of this Agreement and which in any manner affect the work or its conduct.

**Article VIII: Safety Requirements**

All materials, equipment, and supplies acquired through this Agreement by the Recipient must comply fully with all safety requirements as set forth in law or rule by the State of Wisconsin, and all applicable OSHA Standards.

**Article IX: Project Management**

- A. The Recipient agrees that the Project will be that as described in the 2018 Grant Application and will be managed and operated in accordance with the provisions of the 2018 Grant Application, which is made part of this Agreement by reference.
- B. Should the Recipient wish to modify the Project from that described in its 2018 Grant Application, the Recipient must submit in writing to Valley Transit in a manner prescribed by Valley Transit the request for modification. The Recipient shall not act on the proposed modification unless and until approval is granted by Valley Transit and the Recipient shall continue to work on the Project

per the description in its 2018 Grant Application unless and until they receive approval from Valley Transit to modify the Project

- C. Should Valley Transit determine a proposed modification to the 2018 Grant Application is a “substantive change” to the initial grant application, Valley Transit may, in its discretion, prepare an Amendment to this agreement and forward it to the Recipient for execution. The Recipient shall not implement a proposed “substantive change” to the Project until an appropriate amendment to this Agreement has been executed by both Parties.
- D. Should Valley Transit determine that a proposed modification to the 2018 Grant Application is a “non-substantive change,” Valley Transit may, in its discretion, authorize in writing the Recipient to implement the change, and a formal amendment to this Agreement shall not be required.

**Article X: City Approval of Procurements and Contracts**

- A. The Recipient will be provided a copy of the Valley Transit Procurement Manual. All rules within the manual must be followed when making any purchases.
- B. Before purchasing services or capital items from a third-party with funds from this grant, the Recipient must contact Valley Transit 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 Wisconsin Department of Transportation web site at:  
<http://www.dot.wisconsin.gov/localgov/transit/procurement.htm>
- C. The Recipient must obtain Valley Transit approval for pre-solicitation and post-solicitation procurement activities as follows:
  - i. Recipient Notification to Valley Transit of Intent to Purchase. The Recipient must notify Valley Transit 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.
  - ii. Valley Transit Notification to Recipient to Make Award. As requested by Valley Transit, the Recipient will provide to Valley Transit written documentation of the solicitation process. Upon review, Valley Transit will issue written approval to the Recipient to make the award.
- D. The Recipient shall send to Valley Transit all draft contracts between the Recipient and any third-party vendor receiving funds under this Agreement. Valley Transit shall review such draft contracts and determine their conformance with the provisions of this Agreement. Only upon authorization by Valley Transit shall the Recipient execute such contracts.

**Article XI: Prohibited Interests**

- A. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.
- B. No member, officer, or employee of Valley Transit or of the Recipient during his or her tenure or for one year thereafter shall have any personally benefiting interest, direct or indirect, in this Agreement or the proceeds thereof.

**Article XII: Termination**

- A. Valley Transit may terminate this Agreement at any time that it determines that the Recipient or its sub-recipient and/or third-party has failed to perform in the manner called for in the Agreement or has failed to fulfill the obligations herein. Failure of the Recipient, or its sub-recipient and/or third-party, to comply with the terms and conditions of its grant application and/or the provisions of this Agreement shall be considered cause for termination.
- B. The Recipient may terminate this Agreement for whatever reason such request to terminate is made.
- C. The Parties agree that notice of intent to terminate the Agreement shall be made in writing though "return-receipt certified mail" at least 30 calendar days prior to the proposed termination date.
- D. In the event this Agreement is terminated, Valley Transit shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

**Article XIII: Attachments and Appendices**

All attachments and appendices to this agreement are incorporated herein by annexation.

Witness the execution of this Agreement by the parties hereto in the manner most appropriate to each.

**2018 GRANT AGREEMENT BETWEEN  
THE CITY OF APPLETON, VALLEY TRANSIT  
AND  
LUTHERAN SOCIAL SERVICES**

In witness whereof, the parties have executed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF APPLETON:**

By: \_\_\_\_\_  
Timothy M. Hanna, Mayor

By: \_\_\_\_\_  
Kami Lynch, City Clerk

By: \_\_\_\_\_  
Ronald C. McDonald, Valley Transit General  
Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
James P. Walsh, City Attorney

Provision has been made to pay the liability which will accrue under the contract.

\_\_\_\_\_  
Anthony Saucerman, Director of Finance

**LUTHERAN SOCIAL SERVICES:**

By: \_\_\_\_\_

**Attachment B**  
**2018 Section 5310 Grant Agreement**  
**LUTHERAN SOCIAL SERVICES**

Operating Project

Net Project Cost:	\$126,923
Local Match:	\$74,178
Federal Program Amount:	\$52,745

Capital Project

Net Project Cost:	\$79,791
Local Match:	\$15,975
Federal Program Amount:	\$63,816

**Attachment C**  
**2018 Section 5310 Grant Agreement**  
**LUTHERAN SOCIAL SERVICES**

## **FEDERAL TRANSIT ADMINISTRATION**

### **Federally Required Contract Clauses**

Federal regulations state that recipients (and their sub-recipients) of specific FTA funds are required to comply with the established FTA Required Contract Clauses. **Valley Transit will not contract with any agency that does not comply with FTA regulations.**

\_\_\_\_\_ certifies that it complies with the  
(Name of company)

following FTA regulations on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

#### **RECIPIENT CERTIFICATION OF COMPLIANCE WITH FTA CONTRACT CLAUSES**

Energy Conservation requirements 42 U.S.C. 6321 et seq. 49 CFR Part 18	_____ Signature
Clean Water requirements 33 U.S.C. 1251	_____ Signature
Access to records and reports 49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17	_____ Signature
Federal Changes 46 U.S.C. 1241 46 CFR Part 381	_____ Signature
Clean Air 42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR Part 18	_____ Signature
Contract Work Hours and Safety Standards Act	_____ Signature
No Government Obligation to third parties	_____ Signature
Program fraud and false or fraudulent statements 31 U.S.C. 3801 et seq. 49 CFR Part 31 18 U.S.C. 1001	_____ Signature
Termination 42 U.S.C. Part 18 FTA Circular 4220.1E	_____ Signature



**RECIPIENT CERTIFICATION OF COMPLIANCE WITH FTA CONTRACT CLAUSES  
(continued)**

Government-wide debarment and suspension

\_\_\_\_\_  
Signature

Civil rights requirements

29 U.S.C 623, 42 U.S.C 2000, 6102, 12112, 12132

\_\_\_\_\_  
Signature

Breaches and dispute resolution

49 CFR Part 18 FTA Circular 4220.1E

\_\_\_\_\_  
Signature

Disadvantaged business enterprise (DBE)

49 CFR Part 26

\_\_\_\_\_  
Signature

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

\_\_\_\_\_  
Signature

**ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

**Energy Conservation** - The Recipient 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.

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**CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

**Clean Water** - (1) The Recipient 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 Recipient agrees to report each violation to Valley Transit and understands and agrees that Valley Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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**ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**

**18 CFR 18.36 (i)**

**49 CFR 633.17**

**Access to Records** - The following access to records requirements apply to this Contract:

1. Where Valley Transit is not a State but a local government and is the FTA Designated Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Recipient agrees to provide Valley Transit, 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 Recipient which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Recipient also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Recipient access to Recipient'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. The Recipient agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The Recipient 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 Recipient agrees to maintain same until Valley Transit, 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).

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

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

Sources of Authority:

<sup>1</sup> 49 USC 5325 (a)

<sup>2</sup> 49 CFR 633.17

<sup>3</sup> 18 CFR 18.36 (i)

**FEDERAL CHANGES**  
**49 CFR Part 18**

**Federal Changes** - Recipient 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 Valley Transit and FTA, as they may be amended or promulgated from time to time during the term of this contract. Recipient'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**

**Clean Air** - (1) The Recipient 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 Recipient agrees to report each violation to Valley Transit and understands and agrees that Valley Transit will, in turn, report each violation

as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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## **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.

- **Contract Work Hours and Safety Standards**

(1) **Overtime requirements** - No Recipient or sub-recipient 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 Recipient and any sub-recipient responsible therefor shall be liable for the unpaid wages. In addition, such Recipient and sub-recipient 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** – Valley Transit 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 Recipient or sub-recipient under any such contract or any other Federal contract with the same prime Recipient, or any other

federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Recipient, such sums as may be determined to be necessary to satisfy any liabilities of such Recipient or sub-recipient for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The Recipient or sub-recipient shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-recipients to include these clauses in any lower tier subcontracts. The prime Recipient shall be responsible for compliance by any sub-recipient or lower tier sub-recipient with the clauses set forth in paragraphs (1) through (4) of this section.

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**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**No Obligation by the Federal Government.**

(1) Valley Transit and Recipient 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 Valley Transit, Recipient, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Recipient 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 sub-recipient who will be subject to its provisions.

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**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**

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

(1) The Recipient 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 Recipient 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 Recipient 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 Recipient to the extent the Federal Government deems appropriate.

(2) The Recipient 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 Recipient, to the extent the Federal Government deems appropriate.

(3) The Recipient 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 sub-recipient who will be subject to the provisions.

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**TERMINATION**  
**49 U.S.C. Part 18**  
**FTA Circular 4220.1E**

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

**b. Termination for Default [Breach or Cause] (General Provision)** If the Recipient does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Recipient fails to perform in the manner called for in the contract, or if the Recipient fails to comply with any other provisions of the contract, Valley Transit may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Recipient setting forth the manner in which the Recipient is in default. The Recipient 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 Valley Transit that the Recipient 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 Recipient, Valley Transit, after setting up a new delivery of performance schedule, may allow the Recipient to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** Valley Transit in its sole discretion may, in the case of a termination for breach or default, allow the Recipient [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 Recipient fails to remedy to Valley Transit's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Recipient of written notice from Valley Transit setting forth the nature of said breach or default, Valley Transit shall have the right to terminate the Contract without any further obligation to Recipient. Any such termination for default shall not in any way operate to preclude Valley Transit from also pursuing all available remedies against Recipient and its sureties for said breach or default.

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

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**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Suspension and Debarment**

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

The Recipient is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

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

The \_\_\_\_\_ hereby certifies that it [ ] is, [ ] is not included in the U.S. Comptroller General's Consolidated List of Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standards Provisions.

The \_\_\_\_\_ hereby certifies that it [ ] is, [ ] is not included on any current list for debarred or ineligible Recipients for Federal contracts. The Provider further certifies that it will not award any subcontract to any firm on any current list for debarred or ineligible Recipients for Federal contracts.

\_\_\_\_\_ Signature of Recipient's Authorized Official

\_\_\_\_\_ Name and Title of Recipient's Authorized Official

\_\_\_\_\_ Date

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**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.**

**Civil Rights** - 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 Recipient 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 Recipient 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 Recipient 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 Recipient 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 Recipient 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 Recipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Recipient 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 Recipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Recipient agrees to comply with any implementing requirements FTA may issue.

(3) The Recipient 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 4220.1E**

**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 Valley Transit. This decision shall be final and conclusive unless within ten (10)] days from the date of receipt of its copy, the Recipient mails or otherwise furnishes a written appeal to Valley Transit. In connection with any such appeal, the Recipient shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Valley Transit shall be binding upon the Recipient and the Recipient shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by Valley Transit, Recipient 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 Valley Transit and the Recipient 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 Valley Transit 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 Valley Transit, (Architect) or Recipient 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.

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

### **49 CFR Part 26**

#### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.9%. A separate contract goal has not been established for this contract.

b. The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Recipient shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of this DOT-assisted contract. Failure by the Recipient 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 Valley Transit deems appropriate. Each subcontract the Recipient signs with a sub-recipient must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The recipient will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The Recipient is required to pay its sub-recipients performing work related to this contract for satisfactory performance of that work no later than 30 days after the Recipient's receipt of payment for that work from Valley Transit. In addition, is required to return any retainage payments to those sub-recipients within 30 days after the sub-recipient's work related to this contract is satisfactorily completed.

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

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**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**  
**FTA Circular 4220.1E**

**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 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Recipient 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.