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Milwaukee County Transit System

1942 N 17th Street

Milwaukee, WI 53205

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| **Milwaukee Transport Services Contract for Services** | |
| Contractor: | PO Number: |
| Funding Source: Federal Funds | Procurement Basis: RFP |

This Contract for Services (“Contract”), dated as of the final signature on this Contract ( “Effective Date”) is entered into by and between Milwaukee Transport Services, a Quasi-Governmental Instrumentality of Milwaukee County and operator of Milwaukee County Transit System, 1942 North 17th Street, Milwaukee, Wisconsin 53205 (“MTS” or “MCTS”) and enter Contractor's name and address (“Contractor”, “Seller” or “Short Name of Contractor”), combined to be considered the parties to this Contract (“Parties”).

# SCOPE OF SERVICES

Full details on the services and objectives of this Contract are set forth in      , attached hereto as Exhibit(s)       and herein expressly incorporated by reference.

Contractor represents and warrants that it will provide sufficient personnel to timely perform the services under this Contract; proper supervision to all personnel providing programs or services under this Contract; and will be at all times be liable and responsible for such personnel and their acts and omissions. The Contractor further represents and warrants that all personnel providing services, including its employees, its subcontractors and their employees (“Personnel”), possess the necessary qualifications, skills, expertise, and capabilities to perform the services in a professional and workmanlike manner. Contractor further represents and warrants all such Personnel have and will maintain all necessary licenses, consents, and permissions required to perform the obligations under this Contract in compliance with all applicable federal, state and local laws as well as applicable rules, regulations, guidance and MTS rules, including tax laws and regulations.

# TERM

The term of this Contract shall commence on      , 20     , and expire on      , 20     , unless earlier terminated as set forth herein.

# COMPENSATION

This contract is a fixed fee, time and materials, cost plus etc. Total compensation under this Contract shall not exceed      . Contractor shall be compensated for work performed as follows:      .

A detailed cost breakdown of services must be set forth on the Cost Proposal sheet. Costs not included on the Cost Proposal will not be allowable or paid. Travel costs will be reimbursed at actual rates not to exceed those set forth in the US General Service Administration CONUS rates. (See [Milwaukee CONUS Rates](file:///\\transit.mcts.org\files\shared\Procurement\A%20-Templates\Contracts\see%20https:\www.gsa.gov\travel\plan-book\per-diem-rates\per-diem-rates-results%3faction=perdiems_report&fiscal_year=2024&state=WI&city=&zip=))).

There shall be no changes in compensation unless specifically agreed to by MTS in writing for good cause, such as an expanded scope of services.

Federal excise taxes or state sales taxes erroneously included on the invoice will be subtracted from the invoice amount.

Contractor shall be responsible for all federal, state, and local permits, licenses, and fees, together with all governmental filing related to such permits, licenses, and fees, which arise out of Contractor’s performance of services under this Contract, or which arise as a result of any compensation paid to Contractor under this Contract.

# INVOICING

MTS shall make payment only after receipt of a Properly Submitted Invoice; MTS will not pay in advance for services. A properly submitted invoice includes sufficient detail to determine the nature of services/goods delivered and appropriate remittance information, including minimally: Contractor’s name, Address and remit to information; Unique invoice number and date, Detailed description of goods delivered and/or services provided; Dates of goods sent and/or services provided or deliverables being invoiced; Detailed breakdown of amounts due; Payment terms and discounts; MTS Contact and their delivery location/Ship-to address, phone and email; Purchase Order Number; and contact information for the person to notify in event of incomplete invoice.

If there is an invoicing schedule, include that here.

Invoices shall be submitted to [accountspayable@mcts.org](mailto:accountspayable@mcts.org). The PO number must be included both on the face of the invoice and in the subject line of the email.

MTS strives to make payment within 30 days of receipt of a properly submitted invoice. MTS reserves the right to determine in its sole discretion to withhold payment or to disallow a pro rata share of payments for services not fully and adequately delivered.

Unless otherwise agreed, MTS will not pay invoices submitted more than 90 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

Notwithstanding anything in Contractor’s terms, MTS shall not be liable for late fees, credit card fees, collection fees, attorneys’ or audit fees, court fees or any other fee in connection with late payment. The Parties stipulate that Wisconsin Prompt Pay Law, Section 66.285, does not apply to this Contract.

# NON-APPROPRIATION OF FUNDS

Contractor acknowledges and agree that that MTS makes no guarantee as to the amount of service hours or goods to be purchased under this Contract. This Contract is contingent upon federal grants and Milwaukee County funding continuing at their present levels. Should such funding sources terminate or be reduced, MTS reserves the right, in its sole discretion, to terminate or revise the Scope of Services to reflect any reduction in such funding.

# COMPLIANCE WITH LAWS

The Contractor agrees to comply with all applicable federal, state, and local statutes, laws, rules, regulations, ordinances, and all policies, procedures, standards, and regulations of any accreditation agencies or bodies. The Contractor agrees to indemnify and hold MTS harmless as more specifically set forth herein from any loss, damage, or liability resulting from a violation on the part of the Contractor of any such laws, rules, regulations, policies, procedures, standards, or ordinances.

# DISADVANTAGED BUSINESS ENTERPRISE GOAL

The approved Disadvantaged Business Enterprise (“DBE”) participation percentage for this contract is:      %.

Contractor shall comply with all provisions detailed in the Milwaukee County Office of Economic Inclusion Office’s DBE program implementing 49 CFR Part 26, and all other applicable laws and regulations related to DBEs.

Neither the Contractor nor any subcontractor shall discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.

Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains written consent from Milwaukee County Office of Economic Inclusion Office or MTS. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBEs as listed in its written documentation of its commitment to MTS. Contractor may not replace a DBE subcontractor without prior written consent of the Milwaukee County Office of Economic Inclusion Office or MTS as set forth in 49 CFR § 26.53 (f)(1)(i).

Contractors are required to make payment to subcontracts no later than 30 days from receipt of payment from MTS, as more fully set forth in per 49 CFR § 26.29.

Contractor shall not terminate a DBE subcontractor (or an approved substitute DBE) without prior written consent of Milwaukee County Office of Economic Inclusion Office or MTS as set forth in 49 CFR Part 26.53(f). This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Failure to comply with the above requirements may be considered a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Milwaukee County Office of Economic Inclusion Office or MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the Contractor from future bids as a non-responsible contractor. 49 C.F.R. § 26.13(b).

For a list of certified DBEs see [Wisconsin Department of Transportation Unified Certification Program (UCP) DBE certified firms (wisconsindot.gov)](https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx)

# PROHIBITED PRACTICES/CONFLICT OF INTEREST

Contractor represents and warrants that no employee, officer, agent, board member, or immediate family member, partner, or organization that employs or is about to employ any of the parties listed above may participate in the selection, award, or administration of a contract supported with Federal Transit Administration (“FTA”) or Milwaukee County funds if a conflict of interest, real or apparent, is involved. Contractor represents and warrants no person performing services or otherwise deriving a benefit from the Contract are employees of MTS, Milwaukee County and that neither Contractor, its Employees or their immediate family members have any conflict of interest as defined by FTA rules

Contractor represents and warrants that it, its employees and its subcontractors and their employees will comply with Chapter 9 of Milwaukee County Ordinances (Code of Ethics) and any applicable FTA rules which prohibits giving anything of value to any public official or employee that could be reasonably expected to influence a procurement action.

Contractor shall furnish MTS with written disclosure of any financial interest, purchase or lease agreements, employment relationship, or professional services/consultant relationship which any of Contractor's employees, officers, board members, stockholders, or members of their immediate family may have with respect to any supplier to Contractor of goods and services under this Contract.

Contractor represents and warrants there are no activities, relationships, circumstances or duties which would render it unable to provide impartial and objective assistance to MTS under this Contract.

# ASSIGNED PERSONNEL

Contractor shall not replace employees that Contractor and MTS have agreed upon to perform services without the prior approval of MTS, which shall not be unreasonably withheld. The replacement staff must be of like or better qualifications. Should MTS in its sole discretion become unsatisfied with assigned personnel, MTS may request a replacement and Contractor shall replace or cause replacement of the assigned personnel at no additional cost to MTS. MTS retains the right to interview and approve any personnel to provide services under any MTS Contract.

# WARRANTY

Contractor represents and warrants that all goods and services provided under this Contract (1) shall be of good quality and workmanship and free from all material defects, latent or patent, in design, materials and workmanship, (2) shall conform to all specifications, drawings, samples and other descriptions furnished, specified or adopted by MTS, (3) shall be merchantable and suitable, sufficient, and fit for their intended and particular purpose, and (4) shall be free of all liens and encumbrances and any claim of title by any third party.

Unless otherwise specifically stated, equipment purchased as a result of this request shall be warranted against defects by Supplier for one year from date of receipt. Contractor shall automatically assign or cause to be assigned any manufacturer’s warranty to MTS and such warranties shall run to MTS, its successors, assigns, and customers, and to users of the goods sold. Unless specifically directed by the warranty, Contractor shall not charge MTS for any costs related to the warranty including but not limited to investigation, shipping, travel for Contractor’s employees to MTS site and other related costs. All warranties shall be construed as conditions as well as warranties. All warranty work must be completed in the continental United States.

# CONTINUITY OF SERVICE

Contractor recognizes that the services under this Contract are vital to MTS and must be continued without interruption and that, upon Contract expiration or termination, a successor, either MTS or another contractor, may continue them. Contractor agrees to furnish phase-in, phase-out services for up to 60 days after this Contract expires or terminates for any reason; and negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to MTS approval. Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

Contractor shall keep as many personnel as practicable on the job to help the successor maintain the continuity and consistency of the services required by this Contract. Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees.

# CONTINUATION CLAUSE

Contractor recognizes that the services under this Contract are vital to MTS and to the public and must be continued without interruption. Contractor agrees that MTS, in its sole discretion, and by written notice to Contractor at least 30 days prior to Contract expiration, may extend this Contract for up to an additional 120 days. If extended by MTS, Contractor shall continue to provide services under this Contract, on the same Terms as set forth herein. MTS may terminate any such extension by providing the Contractor with 30 days’ notice. Contractor further agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to any successor Contractor.

# INDEMNIFICATION

Contractor agrees to the fullest extent permitted by law to indemnify, hold harmless and defend MTS, Milwaukee County, their employees, officers, directors, agents and assigns from any and against all claims, demands, suits, actions or proceedings, whether meritorious or not, and from any liability, loss or expense whatsoever (“Claims”), including reasonable attorneys’ fees or statutory benefits under Workers’ Compensation laws (collectively “Liabilities”) against MTS as a result of granting of this Contract. The aforementioned is inclusive but not limited to Claims resulting from the carelessness, negligence, or intentional acts of Contractor, its agents or employees for injuries, including death; for damage to property; for lost revenue; for defects in the goods or services subject of this Contract; for failure to comply with specifications or with the express and implied warranties; for violation of any statute, ordinance or administrative order, rule or regulation in the manufacture or sale of the good and services subject of the Contract; or for the infringement of any third party intellectual property rights.

In the event of any claim, demand, action or proceeding being commenced against MTS due to any of the above matters, MTS agrees to give Contractor prompt notice thereof in writing. MTS’ failure to provide prompt notice shall not affect Contractor’s obligation to indemnify MTS unless such failure to notify Contractor materially prejudices Contractor’s ability to defend against the action.

If judgment is recovered against MTS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys’ fees or other expenses resulting therefrom.

Contractor shall not have sole control over the defense of the claim unless agreed upon in writing by MTS. Contractor cannot agree to a settlement or consent judgment that requires any affirmative payment or other conduct on the part of MTS without MTS’ prior written consent, such consent shall not be unreasonably withheld or delayed. MTS will provide Contractor with all reasonable information and assistance that is requested by Contractor to defend such claim at Contractor’s expense, however, MTS’s failure to provide reasonable information and assistance shall not affect Contractor’s obligation to indemnify MTS unless such failure materially prejudices Contractor’s ability to defend against the action. MTS has the right to obtain its own counsel at its own expense.

Notwithstanding any other provision in the Contract or applicable PO Terms and Conditions, the indemnification clause set forth herein shall take priority if in conflict with any other indemnification clause, including that set forth in the PO Terms and Conditions.

# TERMINATION FOR CONVENIENCE

MTS may in its sole discretion terminate this Contract for convenience by providing 30 days written notice when it is in MTS’, Milwaukee County’s or FTA’s best interest. In the event of such termination, Contractor shall reduce its activities immediately, and MTS shall make payment for services performed in accordance with the manner or performance as set forth in this Contract without further financial liability. MTS shall have the right to return any products received with no additional fees such as restocking fees. Should Contractor have possession of MTS’ property, MTS may direct Contractor to protect and preserve the property until surrendered to the MTS. Contractor agrees to flow down this provision to all tiers.

# TERMINATION FOR CAUSE

If the Contractor fails to fulfill its obligations under this Contract with respect to any covenant, term or condition of the Contract in a timely or proper manner, or fails to prosecute the work with the diligence that will ensure timely completion of the work (“Breach”), MTS shall there upon have the right to terminate it by giving 30 days written notice of termination of Contract, specifying the alleged violations, and effective date of termination. MTS, may, in its sole discretion allow the Contractor 10 days (or a longer agreed-upon time-period) in which to cure the defect. The notice of termination shall state the permitted time to cure and other appropriate conditions.

If Contractor fails to remedy the Breach to MTS' satisfaction within 10 days after receipt by Contractor of written notice from MTS setting forth the nature of said Breach, MTS shall have the right to terminate the Contract without any further obligation to Contractor. Such termination shall not preclude MTS from also pursuing all available remedies against Contractor and its sureties for said Breach.

If MTS may immediately terminate Contract if it determines that Contractor purposefully or willfully submitted false information in response to a procurement resulting in the award of this Contract.

In the event of termination, MTS will only be liable for supplies delivered and accepted, or for services performed according to the standards set forth in this Contract. Contractor shall protect and preserve any of MTS’ property in its possession until surrendered to MTS or its agent. MTS may opt to complete the work itself or with another contractor.

For construction related contracts, MTS may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to MTS resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by MTS in completing the work.

Contractor agrees to flow down this provision to all tiers.

# TIME IS OF HTE ESSENCE

Time is of the essence in performance of this Contract.

# LIQUIDATED DAMAGES

The Parties acknowledge that MCTS will suffer actual damages that will be impractical or extremely difficult to determine for Contractor’s failure to comply with the Contract terms as set forth below. Accordingly, both Parties agree to the imposition of liquidated damages, not as a penalty, but as a reasonable estimate of the loss that MTS will incur, as set forth below. These damages are in addition to any other damages MTCS is allowed at law or in equity.

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# DEBARMENT OR SUSPENSION

The Contractor represents and warrants that neither it, its principles, officers, shareholders, key employees, directors, and/or member partners: (1) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; (2) have, within a three-year period preceding the date of execution of this Contract, 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 or governmental transaction or contract under a public or governmental transaction, violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (3) are presently indicted for or otherwise criminally charged by a governmental entity with commission of any of the offenses stated in section 2, above; and (4) have, within a three-year period preceding the date of execution of this Contract, had one or more public or governmental transactions terminated for cause or for default.

# NOTICE

All notices shall be in writing and shall be deemed to be properly given when: (1) Delivered, if delivered in person; (2) Sent, if transmitted by facsimile or email; or (3) Deposited with proper postage, when sent by USPS or common carrier.

MTS Contractor

Insert Name

Address

Address

Phone

Email

Contractor or MTS may designate a new address for purposes of this Contract by written notice to the other Party.

# TAXES

MTS is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor must be without such taxes. Including taxes on invoices will delay payment.

# PROMOTIONAL ADVERTISING / NEWS RELEASES

Contractor shall not disseminate the subject matter of any Contract, except as is necessary for the performance of the Contract without MTS’ prior written consent. Contractor agrees that they will not use any promotional or marketing material which states expressly or impliedly that MTS endorses either the Contractor or any party related to the Contractor with respect to its products, services or performance related to the Contract. News releases pertaining to this Contract shall not be made without prior approval of MTS. Release of broadcast e-mails pertaining to this Contract shall not be made without prior written authorization of MTS.

# SEVERABILITY

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of the Contract shall be interpreted as if such invalid term or provision were not contained therein.

# NONEXCLUSIVE REMEDIES

The rights and remedies provided herein shall not be exclusive; they are in addition to and not a limitation of any other rights and remedies in law or equity.

# TOTAL LIABILITY

MTS shall not be bound by any provision that attempts to limit, define or eliminate the liability of Contractor to MTS, including provisions that limit the type of damages MTS may claim or that amount of damages that MTS may recover. Such liability shall be determined by applicable law (the Uniform Commercial Code or such other substantive law as may apply).

# INSURANCE

Contractor, at its sole cost and expense, shall maintain in full force and effect the following insurance policies and shall require the same minimum insurance requirements of all its contractors, and subcontractors, and these contractors, subcontractors shall also comply with the additional requirements listed below.

**Coverage Type Minimum Limit**

Worker's Compensation Statutory Limits

* Each Accident $100,000
* Disease - Policy Limit $500,000
* Disease - Each Employee $100,000

Commercial General Liability (bodily injury & property damage)

* General Aggregate & Products Liability $2 million
* Each occurrence $1 million
* Products – Completed Operations Limit $2 million
* Personal and Advertising injury Limit $1 million

Professional Liability/Errors and Omissions insurance

* Each Event $1 million
* Aggregate $5 million

Automobile Liability

* Combined single limit $1 million/accident

Employer Lability

* Policy Limit $500,000

Excess/Umbrella Lability

* Each occurrence $5 million

Additional Requirements:

* Supplier shall add MTS and Milwaukee County, their officers, employees and agents as an additional insured under the commercial general liability policy.
* The policy must be issued with a 60-day cancellation notice, by an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of “A-” and signed by an authorized agent.
* Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against MTS, its, its agents, invitees, employees, contractors, subcontractors, and their insurers.

# INDEPENDENT CAPACITY OF CONTRACTOR

Both Parties agree and stipulate that in the performance of this Contract, the Contractor is acting as an Independent Contractor and no relationship of employer and employee, partnership or joint venture is created by the Contract. Neither Contractor nor its personnel, agents or assigned are employees of MTS. They are not entitled to tax withholding, Worker’s Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income.

Contractor specifically covenants that neither Contractor, its personnel, agents or assigns shall file any complaint, charge, or claim with any local, state or federal agency or court claiming any person to be or have been an employee of MTS during the period of time covered by this Contract. Contractor shall indemnify and hold harmless MTS for any costs resulting from such claim.

# RECORDKEEPING AND AUDIT

Contractor shall maintain complete records relating to services provided under this Contract for a period of 3 years after final payment if this source of funding for this Contract is federal funds and 7 years after the final payment if the source of payment is County funds. Records shall include, but not be limited to, information collected in carrying out services under this Contract such as survey information; information created in carrying out the services under this Contract, including drawings, compilation of data, or partially complete or completed work product; and documentation of costs supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature (collectively “Data”). The Data shall be inclusive of computerized data and/or other electronic information used by the Contractor. Contractor shall maintain written verification of programs and services provided under this Contract, including the dates of programs and services performed for all of the purchased programs and services rendered.

Contractor shall allow the County Audit Services Division and MTS contract administrators (collectively “Designated Personnel”) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all Records. Access to Records shall include computerized data and/or other electronic information used by the Contractor, made available in formats suitable for data analysis, such as queries, using conventional software programs.

The obligations set forth herein shall run to any person or entity only acting on Contractor’s behalf including but not limited to its employees, agents, assigned and its subcontractors. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the Contract, and any subcontractors understand and will abide by the requirements of Chapter Section 34.09 (Audit) and Section 34.095 (Investigations concerning fraud, waste, and abuse) of the Milwaukee County Code of General Ordinances.

# OWNERSHIP OF DATA/PROPERTY

MTS shall have and retain ownership over all data that Contractor has collected, created or possesses as a result of the granting of this Contract. Upon Contract termination, or upon earlier request of MTS, all data shall be provided to MTS at no additional cost. Such data shall be made available in formats suitable for data analysis, such as queries, using conventional software programs. Contractor shall maintain written verification of programs used under this Contract. Contractor shall not make available any Data to any individual or organization by Contractor without the prior written approval of MTS. No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

Contractor shall likewise return any tangible property belonging to MTS.

No reports or documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

# CONFIDENTIAL INFORMATION

Contractor understands and agrees that any information obtained as part of this Contract that a reasonable person would consider to be confidential (“Confidential Information”), including but not limited to ridership data or any work product, shall be treated as confidential and afforded all the protections applied to Contractor’s own Confidential Information, but in no event less than industry standard protections.

Within thirty (30) days of termination or expiration of an MTS Contract, Contractor shall return to the MTS all of the Confidential Information in its possession. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for MTS and may require Contractor to indemnify MTS as provided herein.

# SUBCONTRACTORS

No right or duty in whole or in part of the Contractor under this Contract may be assigned or delegated without the prior written consent of MTS. If subcontractors are employed, Contractor is responsible for their performance, including their acts and omissions. Contractor shall have a written and enforceable agreement in place with each of its subcontractors that abide by the terms and conditions of this Contracts and that enables Contractor to perform its obligations under this Contract.

# IRREPARABLE HARM

It is mutually agreed that Contractor’s breach will result in irreparable and continuing damage to MTS for which money damages may not provide adequate relief.

# INTELLECTUAL PROPERTY OF MTS

Contractor acknowledges and agrees that this Contract does not grant Contractor any intellectual property rights to MTS’ or its employees’ intellectual property, including but not limited to copyrights, trademarks, patents, inventions, and know-how.

Contractor shall indemnify and hold MTS harmless from any award of damages and costs against MTS for any action based on U.S. patent or copyright infringement resulting from the performance of this Contract.

# WAIVER

The failure of either party to exercise or enforce any right or provision of the Contract shall not constitute a waiver of such right or provision. If any provision of this Contract is found by a court of competent jurisdiction to be invalid, the Parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision, and the other provisions of the Contract remain in full force and effect.

# ASSIGNMENT

Neither party shall assign this Contract or any interest herein without the other party’s prior written consent. Contractor shall not subcontract any of the services to be provided under this Contract without the prior written approval of MTS.

# FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations hereunder due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease, a pandemic, or other cause beyond the non-performing party’s reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party’s financial condition or negligence). A state, federal or local emergency order presumptively supports invocation of this clause; however, no order is necessary to invoke this clause.

Contractor shall immediately notify MTS if Contractor believes, or has reason to believe, Contractor will be unable to provide services or goods under this Contract.

Notwithstanding the foregoing, it is mutually agreed that during any force majeure, including a pandemic, Contractor agrees to take good faith steps to continue services, as set forth more specifically herein and including by operating remotely if feasible. Contractor also agrees to follow MTS’ policies or procedures to address health or safety emergencies and provide MTS with its own policies and procedures.

Contractor agrees that MTS is not responsible for any costs, and will not be invoiced for any incomplete work, if MTS revokes permission for Contractor’s employees to be on MTS’ property pursuant to policies or procedures to address a health emergency.

# PUBLIC RECORDS

It is MTS’ intention and legal obligation to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities as required by Wisconsin Open Records Law, Wis. Stat. § 19.21 et. seq. Contractor acknowledges that documents it submits to MTS as part of the procurement process and documents relating to any resulting contacts are subject to Open Records request.

Contractor also acknowledges that should it wish to shield any information from disclosure, it must submit a redacted copy of its proposal or other documents subject to Open Records that comply with Wisconsin Open Records Law. Contractor acknowledges and agrees that failing to provide such redacted document constitutes a waiver of any objection that any information is exempt from disclosure. Contractor acknowledges and agrees it shall be required to provide legal counsel or other necessary assistance to defend the designation of confidentiality and agrees to hold MTS harmless for any costs or damages arising out of MTS’ agreement to withhold or release.

Contractor understands it may be obligated to assist the County in retaining and timely producing records that are subject to Open Records and that any failure to do so shall constitute a material breach of this Contract, potentially invoking indemnification as set forth herein.

# NONDISCRIMINATION

All services provided under this Contract shall be provided without regard to the race, color, creed, sex, age, disability status, or national origin. In addition to any other requirements of law, neither Contractor nor MTS shall discriminate against any employee, applicant for employment, student, or applicant for registration because of age, race, religion, color, handicap, sex, sexual orientation, or national origin in the performance of their obligations under this Contract, including, but not limited to, the following: Employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Notices will be posted in compliance with applicable state and federal laws in conspicuous places, available for employees and applicants for employment, setting forth the provisions of this nondiscrimination clause, as required by law.

# FEDERAL TERMS AND CONDITIONS

Contractor acknowledges and agrees it shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those set forth in the United States Code, its implementing regulations, the United States of America DOT FTA Master Agreement and the FTA Circular 4220.1F, whether or not expressly set forth herein. Contractor further acknowledges changes in federal law, regulation, other requirements, or guidance will become part of the Contract by automatic amendment thereto, and those changes shall apply to subcontractors at any tier. Contractor’s failure to so comply shall constitute a material breach of this Contract.

The applicable federal terms and conditions are detailed in MTS’ Terms and Conditions for Purchase Orders Using Federal Funds found on MTS’ website, <https://www.ridemcts.com/business-partners>, which are herein expressly incorporated by reference.

As set forth below, all DOT- or FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of MTS' requests that would cause MTS to be in violation of the FTA terms and conditions. In the event of any conflict among the requirements of clauses applicable to the Contractor, the most stringent requirements of the clauses will apply.

# ENTIRE AGREEMENT/ORDER OF PRIORITY

The following documents shall constitute the entire agreement between MTS and Contractor with respect to the subject matter set forth herein: (1) MTS’ PO Terms and Conditions; (2) MTS’ PO Terms for Professional Services and Purchase of Materials/Supplies using Federal Funds; (3) MTS Supplemental Terms and Conditions; (4) Any DOT- or FTA-mandated term, whether or not expressly set forth herein; (5) this Contract; (6) any RFP issued resulting in this Contract; and (7) Contractor’s responsive RFP documents, including but not limited to Proposal Response, Clarification, and BAFO. PO terms and conditions are found at https:/www.ridemcts.com/business-partners.

This Contract supersedes all prior proposals, understandings and all other documents, oral and/or written, between the parties. MTS shall not be bound by other any terms and conditions, including but not limited to terms and conditions found on Contractor’s quotes, click-on/click-through agreements, shrink wrapped agreements; order acknowledgements, invoices, service catalog, Contractor’s website, brochures, service catalogs, technical data sheets or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein unless expressly agreed to in writing by MTS subsequent to the execution of the Contract.

In the event of any conflicts or disputes among the documents constituting the Contract, the order of priority to resolve those conflicts shall be the order the documents are listed above.

No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

# MODIFICATIONS

Contractor recognizes the right of MTS to make reasonable modifications in the programs and services purchased under this Contract. Contractor shall be notified in writing of any such modifications. Contractor also acknowledges the necessity for Contract modification as mandated by law, regulations, or court action.

# COUNTERPARTS

This Contract may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

# AUTHORIZATION.

IN WITNESS WHEREOF, this Contract is effective on the date of the last acquired signature. Both signatories represent and warrant they have the legal authority to bind the entity for which they sign.

# MTS

Date:

# Contractor

Date:

Signature: Signature:

Print Name/Title Print Name/Title