

AGREEMENT FOR VEHICLE EVALUATION SERVICES

This Agreement for Vehicle Evaluation Services (this “Agreement”) is made this ___ day of _____, 2019, by and between **M-1 RAIL**, a Michigan nonprofit corporation (the “Client”), having a business address at 7520 Woodward Avenue, Detroit, MI 48202, and _____, a _____ corporation (the “Consultant”), having a business address at _____, _____, _____.

The circumstances underlying the execution of this Agreement are as follows:

A. The Client operates the M-1 RAIL Streetcar Project in Detroit, Michigan, commonly known as the QLine (the “Streetcar System”).

B. The Streetcar System deploys six (6) Liberty Modern Streetcars (each a “Streetcar” and collectively the “Streetcars”) designed and manufactured by Brookville Equipment Corporation (“Brookville”). The Streetcars went into service in the Spring of 2017.

C. The Client has retained Transdev Services, Inc. (“Transdev”) to operate and maintain the Streetcar System, although Brookville Services LLC (“Brookville Services”), an affiliate of Brookville, is maintaining the Streetcars.

D. The Client wishes to have the Consultant perform an evaluation of the Streetcars and related issues (including recommendations for the appropriate levels of spare parts), all as more particularly described in the Scope of Services (the “Streetcar Evaluation Services” or the “Services”) more particularly described in attached **Exhibit A**.

E. Capitalized terms used but not otherwise defined in the body of this Agreement shall have the meanings ascribed to them in **Exhibit A**.

NOW THEREFORE, the parties agree as follows:

Section 1 – Scope of Services. The Consultant shall provide the Vehicle Evaluation Services in a manner consistent with that degree of skill and care ordinarily exercised by practicing engineering professionals performing similar services and professing to have extensive experience in modern streetcars and in the rail service professional services industry. The Consultant’s scope of services must be performed in character, sequence and timing so that they will be coordinated with those of the Client, Transdev, Brookville and Brookville Services.

Section 2 – Period of Service. The Consultant shall begin the Services promptly after receipt of a fully executed copy of this Agreement, and will complete the Vehicle Evaluation Services (save for the final presentation referenced in **Exhibit A**) within thirty (30) calendar days thereafter, subject to delays caused by strikes, natural disasters, and similar events beyond the control of the Consultant.

Section 3 – Compensation. This is a fixed price contract, with the fixed price being inclusive of labor, overhead, administrative costs, direct costs and fees, plus any reimbursable expenses (without mark-up) approved by the Client. The fixed price and the reimbursable expenses

approved by the Client are set forth on attached **Exhibit B**. The fixed price and approved reimbursable expenses shall be payable within ten (10) days after the presentation by the Consultant of a correct and complete invoice following completion of the Services. The invoice shall provide such information and documents as the Client may reasonably require to verify and evaluate the invoice, including a waiver of any lien that may arise by virtue of the Services. The fixed price may be increased for increases in the scope of the Services requested by the Client as Additional Services pursuant to Section 4 below.

Section 4 – Additional Services. The Consultant shall provide services in addition to (i.e., outside the scope of) the Services described in **Exhibit A** only upon the prior written request of the Client. The Consultant shall be compensated for all authorized Additional Services only on the basis agreed upon in writing at the time such Additional Services are authorized. Absent such agreement, Additional Services shall be based on the standard hourly rates of applicable personnel that are set forth in **Exhibit B**. Additional Services shall be treated as Services for the purposes of Section 1 above.

Section 5 – Cooperation in Performing Services. The Consultant acknowledges that the Services will require the Consultant to perform interviews with employees of Transdev, Brookville, Brookville Services and employees of the Client, as well as to perform inspections of the Streetcars. The Consultant will perform such interviews and inspections at times and places that do not unreasonably interfere with the ongoing operations and maintenance activities of the Streetcar System. Without limiting the generality of the foregoing, the Consultant acknowledges that the Streetcars are frequently in service or under maintenance, and may only be inspected when they are out of service and not under maintenance (which may well require that some or all of them be inspected during evenings or early morning hours).

Section 6 – Key Personnel. The Consultant shall not remove, replace or add the key personnel previously identified by the Consultant to perform the services under this Agreement without the prior written consent of the Client. If any of such key personnel leave the employ of the Consultant for any reason, his or her replacement shall be subject to the approval of the Client.

Section 7 – Ownership of Documents; Confidentiality. The ownership and use of all documents, reports, findings and recommendations prepared by the Consultant, including but not limited to reports, test results, inspection reports, recommendation, findings and data (in paper or electronic form) (the “Vehicle Documents”), are the property of the Client. If the Client elects to provide the Vehicle Documents to an owner of streetcars other the Streetcars, the Consultant shall not be deemed to have made any representation or provided any other assurances to such owner, unless the Consultant and such owner enter into a separate agreement to such effect. However, the Vehicle Documents can (and will) be shared with Transdev and Brookville, and may be used and relied upon by them in formulating and performing operational, maintenance and spare parts programs for the Streetcars. The Consultant agrees to maintain the confidentiality of all documents, reports, findings and recommendations prepared by the Consultant, including test results, inspection reports and other data, and to not share or disclose them to parties other than the Client.

Section 8 – Indemnity. The Consultant shall indemnify, hold and save harmless the Client, M-2 RAIL (an affiliate of the Client that is the owner of the Streetcars) and their respective officers

and employees, from and against liability, obligation of expense, including reasonable attorneys' fees, for any or all claims or suits for damages to the extent caused by the negligent acts, errors or omissions of the Consultant or the breach by the Consultant of the terms of this Agreement.

Section 9 - Termination. The Client may terminate this Agreement for its convenience upon written notice to the Consultant. The obligation to provide further Services under this Agreement may be terminated by either party upon ten (10) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, which failure continues for a period of not less than ten (10) days after written notice thereof. Upon any termination, as its sole and exclusive remedy, the Consultant will be paid for all authorized Services satisfactorily completed prior to the date of termination.

Section 10 – Dispute Resolution. In the event that a dispute arises with regard to this Agreement, the dispute shall be promptly addressed by the parties' principals. In the event that the principals are not able to resolve the dispute within 10 days after the dispute is referred to them, either party may commence a court proceeding with regard to such dispute. Any court proceeding shall be filed in a federal or state court sitting in Wayne County, Michigan.

Section 11 – Remedies. In a dispute arising under this Agreement either party shall be entitled to all applicable remedies as may be available at law or in equity.

Section 12 – Amendment. This Agreement constitutes the entire and fully integrated agreement between the Client and the Consultant. This Agreement can be supplemented or amended only by a written document executed by both the Client and the Consultant.

Section 13 – Compliance with State and Federal Requirements. The Consultant acknowledges that the Streetcar Project has been funded in part by State funds (State Act 51 highway funds) and Federal funds, including Transportation Enhancement funding, Congestion Mitigation and Air Quality funding, a TIGER I grant and a TIGER VI grant. As such, all work hereunder is subject to State of Michigan and Federal requirements, as they may be updated during the course of the project. Relevant Federal requirements are generally available at <http://www.fta.dot.gov/>. Without limiting the generality of the foregoing, in performing its obligations hereunder the Consultant shall comply with the terms and conditions set forth in attached **Exhibit C**.

Section 14 – Insurance. During the term of this Agreement the Consultant shall maintain the insurance coverages and observe the other requirements set forth in attached **Exhibit D**.

Section 15 – E-Verify Compliance. The Consultant warrants that it complies with all Federal immigration laws and regulations that relate to its employees in the United States with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 *et seq.*). The Contractor further warrants that the Consultant and any sub-consultants retained or to be retained by the Consultant have implemented the E-Verify program for all employees who will perform work under this Agreement.

Section 16 – Notices. Any notices given under this Agreement may be given by: (a) hand delivery to the designated official of the other party at the address stated above, (b) overnight mail (via a nationally recognized overnight delivery service, such as Federal Express or UPS) to

the designated official of the other party at the address stated, or (c) e-mail to the designated official of the other party. As an initial matter, the designated officials (and their e-mail addresses) are Paul Childs at paul.childs240@gmail.com, on behalf of the Client, and _____ at _____, on behalf of the Consultant. Either party may change the address or person to whom notices are to be sent by advising the other party of such change by a notice given in accordance with the foregoing requirements.

The Client and the Consultant have caused this instrument to be signed by their duly authorized officers as of the date first written above.

M-1 RAIL

By: _____

Paul Childs

Its: Chief Executive Officer

By: _____

Its: _____

EXHIBIT A

(Scope of Vehicle Evaluation Services)

[Note: The Scope of Services May Be Revised If the Successful Proposal Does Not Include All Services]

Independent engineering organization (s) is/are being requested to perform an assessment of the Streetcars to determine vehicle conditions and longer term maintenance (System Lifecycle) projections. The effort would be in phases:

Phase 1: industry scan using the Liberty Street car and key parts and subcomponents (HVAC, Passenger Doors, Lighting, Primary Power Systems (Pantograph, AC Power Supplies, Low Voltage DC Power System, Propulsion System, Truck Assemblies, Braking, Communications etc.) used on “Buy America” compliant vehicles across the United States market.

Phase 2: Technical (quality assurance) review of the manufacturing/assembly/quality assurance processes employed by the various vehicles manufactured for United States-based streetcar systems.

Phase 2a: Summarized presentation of the findings, which may be used as the basis for fact finding for the subsequent phases.

Phase 3: Physical vehicle inspection and assessment as to the condition of the Streetcars, exclusive of exterior body parts, and an assessment of their future maintenance requirements based upon the manufacturer’s recommended preventative maintenance programs.

Phase 4: Summarized presentation of the findings.

Pre-work: The independent firm(s) will review design documents, maintenance data, spare parts inventory, and maintenance plans and will hold pre-teleconference calls with maintenance staff and streetcar agencies to ascertain comparable system performances and OEM suppliers. The independent firm(s) will develop an inspection plan for on-site activities.

On site work: The independent firm will conduct interviews, and will inspect the various systems on each Streetcar (estimated at one car/day) – Due to the age of the vehicles, the car body is not to be inspected. This activity may need to be done in stages, as the system runs a maximum of five vehicles Monday-Saturday during peak periods.

Report: The independent firm(s) will provide a PowerPoint summary report that identifies situations uncovered impacting reliability/maintainability of the Streetcars, if any, and categorizes the findings as expected or as excessive for equipment of this age. A formal detailed report will not be required. Any observations about materials used, manufacturing workmanship and vehicle performance as compared to other streetcar manufacturers summarized in Phases 1 and 2 will be included in the report. The independent firm(s) will evaluate the spare parts inventory and recommend changes to the minimum/maximum levels to maintain vehicle availability for servicing the Streetcars into the future. Root cause of failures, if fact based determined as part of this analysis, will be included in the PowerPoint summary.

The independent firm's proposed person (proposed Project Manager) to lead the effort will be specified, along with the names of additional support staff. QA will be performed by the independent firm. Resumes of proposed staff will be attached.

The expected duration of the assignment is not to exceed calendar 30 days exclusive of the final presentation.

The projected is "fixed fee" which includes all labor, overhead, indirect costs, and fee.

EXHIBIT B

(Fixed Price, Approved Reimbursable Expenses; Billing Rates for Additional Services)

Fixed Price: \$ _____

Reimbursable Expenses: [List] _____

Billing Rates for Additional Services: _____ - \$__ per hour

_____ - \$__ per hour

EXHIBIT C

(Federal and State Provisions)

Modified Michigan
Department
Of Transportation
3160 (0 /12)

AGREEMENT FOR VEHICLE EVALUATION SERVICES

This Exhibit C is attached to and forms a part of the Agreement for Vehicle Evaluation Services dated as of _____, 2019 between M-1 RAIL and _____.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions of this Agreement include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding provisions of this Agreement. All contractual provisions required by U.S. DOT, as set forth in the Federal Transit Administration (FTA) Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. _____ (the "CONTRACTOR") shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause M-1 RAIL (the "AGENCY") to be in violation of the FTA mandated terms and conditions. The CONTRACTOR agrees to include this provision in all subcontracts at any tier.

LOBBYING (For projects over \$100,000)

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an 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 CONTRACTOR.

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement,

and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of CONTRACTOR'S Authorized Official

Name and Title of CONTRACTOR'S Authorized Official

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The AGENCY and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the AGENCY, the CONTRACTOR, or any other party (whether or not a party to this

Agreement) pertaining to any matter resulting from this Agreement. (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.

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The CONTRACTOR acknowledges and agrees that:

(1) Civil Fraud. 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 the CONTRACTOR's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the CONTRACTOR also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

(2) Criminal Fraud. If the CONTRACTOR makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the CONTRACTOR the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate. The CONTRACTOR agrees to include this provision in each subcontract without modification except to identify the subcontractor who will be subject to the provision.

ACCESS TO THIRD PARTY CONTRACT RECORDS

1. The CONTRACTOR agrees to provide the AGENCY, 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 Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The 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 the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. 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.

3. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement or claims arising from the performance of this Agreement, in which case the CONTRACTOR agrees to maintain same until the AGENCY, 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).

4. The AGENCY agrees to require, and assures that the CONTRACTOR require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The CONTRACTOR further agrees to require, and assures that its subcontractors require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

CHANGES TO FEDERAL REQUIREMENTS

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement in compliance with 49 CFR Part 18. The CONTRACTOR agrees to include this provision in all subcontracts at any tier without modification except to identify the subcontractors who will be subject to this provision.

TERMINATION (For projects over \$10,000)

- a. **Termination for Convenience.** Please see Section 9 of the Agreement.
- b. **Termination for Default [Breach or Cause].** Please see Section 9 of the Agreement.
- c. **Opportunity to Cure.** Please see Section 9 of the Agreement.

CIVIL RIGHTS (For projects over \$10,000)

The CONTRACTOR agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, age or disability, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, creed or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and with U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the CONTRACTOR agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” and any other applicable Federal directives, regulations or requirements that may be issued.

c. Equal Employment Opportunity. The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the CONTRACTOR also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the CONTRACTOR agrees to comply and assures the compliance of each subcontractor, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

d. Nondiscrimination on the Basis of Sex. The CONTRACTOR agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

e. Nondiscrimination on the Basis of Disabilities. In accordance with section 102 of the American with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of the U.S. Equal Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

f. Nondiscrimination on the Basis of Age. The CONTRACTOR agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations,

“Age Discrimination in Employment Act,” 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the CONTRACTOR agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

h. Access to Services for Persons with Limited English Proficiency. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

i. Environmental Justice. The CONTRACTOR agrees to facilitate compliance with the policies of Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

j. Other Nondiscrimination Laws. The CONTRACTOR agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

(3) The CONTRACTOR 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.

DISADVANTAGED BUSINESS ENTERPRISE

To the extent authorized by Federal law, the CONTRACTOR agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subcontractor, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable as follows:

(1) The CONTRACTOR agrees and assures that it shall comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. Part 26.

(2) The CONTRACTOR agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurances in this paragraph.

The CONTRACTOR agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the CONTRACTOR's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative agreement for the Project. The CONTRACTOR agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the CONTRACTOR of the CONTRACTOR's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.

DEBARMENT AND SUSPENSION (For projects over \$25,000)

The CONTRACTOR agrees to comply, and assures the compliance of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327), and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The CONTRACTOR agrees to, and assures that its subcontractors, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <https://www.sam.gov/portal/public/SAM/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project, and to verify that the CONTRACTOR and its subcontractors, lessees, third party contractors and other participants at any tier of the Project are not Excluded Parties. Furthermore, the CONTRACTOR agrees to provide, and to cause each subcontractor, lessee, third party contractor or other participant at any tier of the Project to provide, such certifications as may be required for compliance with 49 C.F.R. Part 29.

BREACHES AND DISPUTE RESOLUTION (For project over \$100,000)

In compliance with 49 CFR Part 18/FTA Circular 4220.1F:

Disputes – Please see 10 of the Agreement.

Performance During Dispute - Unless otherwise directed by the AGENCY, the CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages – Please see Section 11 of the Agreement.

Remedies – Please see Sections 10 and 11 of the Agreement.

CLEAN AIR (For project over \$100,000)

(1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*/40 CFR 15.61/49 CFR Part 18. The CONTRACTOR agrees to report each violation to the AGENCY and understands and agrees that the AGENCY 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.

CLEAN WATER REQUIREMENTS (For project over \$100,000)

(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 AGENCY and understands and agrees that the AGENCY 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.

FLY AMERICA (FOR FOREIGN AIR TRANSPORT OR TRAVEL)

The CONTRACTOR understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143. The CONTRACTOR agrees to include the requirements of this paragraph in all subcontracts that may involve international air transportation.

PATENT RIGHTS (RESEARCH AND DEVELOPMENT)

a. General. If any invention, improvement, or discovery of the CONTRACTOR or of any subcontractor, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the CONTRACTOR agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The CONTRACTOR agrees that its rights and responsibilities, and those of each subcontractor, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the CONTRACTOR agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§ 200 *et seq.*, and 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 C.F.R. Part 401, irrespective of the status of the CONTRACTOR, subcontractor, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).

c. License Fees and Royalties. FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income.

Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

RIGHTS IN DATA AND COPYRIGHTS (RESEARCH AND DEVELOPMENT)

a. Definition. The term “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. “Subject data” does not include financial reports, cost analyses, or other similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

(1) Except for its own internal use, the CONTRACTOR may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONTRACTOR authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

(2) The restrictions on publication of Subsection 18.b(1) of the Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The CONTRACTOR agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in the Master Agreement. As used herein, “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 provide or otherwise extend to other parties the Federal Government’s license to:

(1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

(2) Any rights of copyright to which a CONTRACTOR, subcontractor, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.

d. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA’s purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the CONTRACTOR agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the CONTRACTOR agrees to provide other reports pertaining to the Project that FTA may request. The CONTRACTOR agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the CONTRACTOR of

Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of the Master Agreement, FTA may make available to any FTA CONTRACTOR, subcontractor, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18a of the Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the CONTRACTOR's use when the costs thereof are financed with Federal assistance through an FTA capital program.

e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the CONTRACTOR has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.

f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the CONTRACTOR agrees to indemnify, save, and hold harmless the Federal Government and 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 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 the Project. The CONTRACTOR shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

g. Restrictions on Access to Patent Rights. Nothing in Section 18 of the Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

h. Data Developed Without Federal Funding or Support. In connection with the Project, the CONTRACTOR may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of the Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the CONTRACTOR understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the CONTRACTOR understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records).

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS (For all ITS projects)

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

ACCESS FOR INDIVIDUALS WITH DISABILITIES (A&E)

The CONTRACTOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The CONTRACTOR also agrees to comply with all applicable provisions of section 04 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the CONTRACTOR agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

The CONTRACTOR agrees to include these provisions in all subcontracts.

STATE, TERRITORIAL, AND LOCAL LAW

Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the CONTRACTOR must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or any Cooperative Agreement for the Project, or the Master Agreement requires the CONTRACTOR to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or any Cooperative Agreement for the Project, or the Master Agreement violates or would require the CONTRACTOR to violate any State, territorial, or local law, regulation, or ordinance, the CONTRACTOR agrees to notify FTA immediately in writing. Should this occur, FTA and the CONTRACTOR agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

MDOT TERMS AND CONDITIONS

The following provisions, either listed below or attached to this Exhibit C as Attachments, include certain terms, conditions and other requirements as required to be included in the Agreement pursuant to a Project Management and Funding Agreement between MDOT, M-1 RAIL and M-2 RAIL.

Nondiscrimination and Disadvantaged Business Enterprise

In connection with the performance of this Agreement, the CONTRACTOR (hereinafter in Appendix A referred to as the "contractor", attached as Attachment A) agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendix A, dated June 2011, attached hereto and made a part hereof. This provision shall be included in all subcontracts relating to the Agreement.

Unfair Labor Practices

In accordance with 1980 PA 278, MCL 423.321 *et seq.*, the CONTRACTOR, in the performance of this Agreement, shall not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the United States Department of Labor of employees who have been found in contempt of court by a Federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 USC 158. M-2 RAIL may void this Agreement if the name of the CONTRACTOR or the name of a subcontractor, manufacturer, or supplier utilized by the CONTRACTOR in the performance of this Agreement subsequently appears in the register

during the performance of this Agreement and if, upon notification of such to the CONTRACTOR, the CONTRACTOR does not terminate its contract with the named party within thirty (30) days.

Assignment of Antitrust Rights

The CONTRACTOR and any subcontractors shall irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or MDOT with regard to claims based on goods or services that were used to meet M-2 RAIL's obligation to MDOT under the Project Management and Funding Agreement due to any violation of 15 USC, Sections 1 -15, and/or 1984 PA 274, MCL 445.771 – 445.788, excluding Section 4a, to the State of Michigan or MDOT as a third-party beneficiary.

EXHIBIT D

Insurance Requirements for Vehicle Evaluation Agreement

Amounts shown in each section define the limits of coverage required for the Agreement.

I. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY

Worker's Compensation

(Must fully comply with all State and Federal requirements)
(Broad Form All States and Voluntary Compensation Endorsement)

	Employer's Liability	Statutory Requirement
Bodily Injury by Accident	Each Accident	\$100,000.00
Bodily Injury by Disease	Each Occurrence	\$100,000.00
	Policy Limit	\$500,000.00

II. GENERAL COMMERCIAL LIABILITY

Bodily Injury/Property Damage

Each Occurrence \$1,000,000.00

General Aggregate \$1,000,000.00

Products/Completed

Operations Aggregate \$1,000,000.00

Personal Injury

Aggregate \$1,000,000.00

To include:

Coverage and terms comparable to ISO CG-0001 Form

Occurrence Form

Premises/Operations Coverage

Contractual liability for risks assumed in this agreement

III. AUTOMOBILE LIABILITY

Bodily Injury/Property Damage

Each Accident \$1,000,000.00

To include:

Coverage on all owned, non-owned and hired vehicles

IV. UMBRELLA LIABILITY

Personal Injury/Property Damage

Each Occurrence \$5,000,000.00

Aggregate \$5,000,000.00

To include:

Occurrence Insuring Agreement

First Dollar Defense Coverage

Insuring Agreement, which will:

Provide Excess Protection to the Primary Coverage, exclusive of Professional Liability

V. PROFESSIONAL LIABILITY

Wrongful Act

Per Claim \$5,000,000.00

Aggregate \$5,000,000.00

To include:

Insuring Agreement to cover acts, errors and omissions, including loss, costs and expenses, that result from the operations of the service provider, including subconsultants. Professional Liability coverage also shall include contractual liability coverage, and any retroactive date or prior acts exclusion in the Professional Liability coverage shall pre-date the Agreement and the date any Services were rendered under the Agreement.

A copy of the certificate shall be provided to M-1 RAIL as evidence thereof and except for Workers Compensation, Employers Liability and Professional Liability shall name M-1 RAIL and its affiliate M-2 RAIL, their officers, directors, agents, and employees and the Michigan Department of Transportation as additional insureds for public liability, bodily injury and property damage, and providing for a thirty (30) day notice to M-1 RAIL prior to change, termination or cancellation. All such policies shall be issued by insurance companies rated A/XII or better by the most current Best's Key Rating Guide. The Consultant shall not have self-insurance retention. The amount of any deductibles shall be consistent with prudent industry practices, disclosed to M-1 RAIL, and the Consultant shall be responsible for paying any deductibles. All liability insurance coverages shall be maintained in effect for a period of not less than five (5) years after completion of the services that are subject to the Agreement. The Consultant shall give the Owner prompt written notice of any claims made during the periods in which the insurance coverages are in effect.