

## Federal Funding Terms

To the extent applicable, the following terms and conditions are incorporated into the Purchase Order. For the avoidance of doubt, the funding agency is the federal agency that has directly or indirectly provided some funds for the applicable project such as the FTA or the FRA.

### 1. FLY AMERICA REQUIREMENTS

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

### 2. BUY AMERICA REQUIREMENT

To the extent applicable, the Seller agrees to comply with domestic content requirements, such as 49 USC § 5323, 49 USC § 24305(f), and 49 U.S.C. § 24405(a), and any amendments thereto, and any implementing regulations and guidance issued by the applicable government agency, with respect to this Purchase Order and any subcontracts.

### 3. CARGO PREFERENCE REQUIREMENTS

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

### 4. ENERGY CONSERVATION REQUIREMENTS

The Seller agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

### 5. CLEAN WATER REQUIREMENTS/ENVIRONMENTAL

Seller 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 Seller agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to funding agency and the appropriate EPA Regional Office.

The Seller also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by funding agency.

Also, where applicable, the Seller shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 et seq).

Seller may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations

have been completed and the funding agency has provided Seller with a written notice authorizing Seller to proceed.

If applicable, Seller shall assist the funding agency in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980, as revised May 26, 1999, 64 Fed. Reg. 28545 and as updated January 14, 2013, 78 Fed. Reg. 2713), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, Seller may be required to provide assistance to the State if the State is required to conduct certain environmental analyses and to prepare and submit to the funding agency draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by Seller without the prior written concurrence of funding agency. Seller shall assist the funding agency in complying with the requirements of 49 U.S.C. §303(c).

**6. LOBBYING**

By entering into the Purchase Order, the Seller certifies to the following and agrees to file this certificate as required by law:

The undersigned [Seller] certifies, to the best of his or her knowledge and belief, that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)] (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

The Seller, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Seller 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 Seller's Authorized Official  
\_\_\_\_\_  
Name and Title of Seller's Authorized Official  
\_\_\_\_\_  
Date

**7. ACCESS TO RECORDS AND REPORTS**

A. The Seller agrees to provide the Purchaser, the prime contractor, the transit authority, the funding agency, the FTA Administrator/Secretary of Transportation, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Seller which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

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

C. The Seller agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Seller agrees to maintain same until the Purchaser, the prime contractor, the transit authority, the funding 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.

## **8. FEDERAL CHANGES**

Seller shall at all times comply with all applicable funding agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between transit authority and funding agency, as they may be amended or promulgated from time to time during the term of this contract. Seller's failure to so comply shall constitute a material breach of this contract.

## **9. CLEAN AIR**

The Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Seller agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to funding agency and the appropriate EPA Regional Office.

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

## **10. RECYCLED PRODUCTS**

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

## **11. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications

and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Seller and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1.) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2.) The classification is utilized in the area by the construction industry; and
- (3.) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4.) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Seller and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Seller, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30- day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Seller shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Seller does not make payments to a trustee or other third person, the Seller may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Seller, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Seller to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Seller and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer

to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Seller, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The transit authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Seller under this contract or any other Federal contract with the same prime Seller, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Seller, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Seller or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the transit authority may, after written notice to the Seller, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Seller during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Seller shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Seller shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the transit authority for transmission to the funding agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Seller is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Seller or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Seller or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Seller or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the funding agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Seller or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Seller, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**(4) Apprentices and trainees -** (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Seller as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Seller is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Seller's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Seller will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Seller will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The Seller shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The Seller or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the funding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Seller shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Seller and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Seller (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Seller certifies that neither it (nor he or she) nor any person or firm who has an interest in the Seller's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## 12. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- (1) **Overtime requirements** - No Seller or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours

in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the Seller and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** - The transit authority, prime contractor, or Purchaser shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such contract or any other Federal contract with the same Seller, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Seller, such sums as may be determined to be necessary to satisfy any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The Seller or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

### **13. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

(2) The Seller agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by funding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

(1) The Seller acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Purchase Order. Upon execution of the underlying contract, the Seller certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Seller further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Seller to the extent the Federal Government deems appropriate.

(2) The Seller also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by funding agency under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Seller, to the extent the Federal Government deems appropriate.

(3) The Seller agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by funding agency. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **15. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Seller is required to verify that none of the Seller, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Seller is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

#### **16. PRIVACY ACT**

The following requirements apply to the Seller and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Seller agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Seller agrees to obtain the express consent of the Federal Government before the Seller or its employees operate a system of records on behalf of the Federal Government. The Seller understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Seller also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by funding agency.

#### **17. CIVIL RIGHTS REQUIREMENTS**

**Civil Rights** - The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Seller agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Seller agrees to comply with applicable Federal implementing regulations and other implementing requirements funding agency may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - a. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Seller agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Seller agrees to take affirmative action to ensure that applicants are employed, and

that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Seller agrees to comply with any implementing requirements funding agency may issue.

- b. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Seller agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Seller agrees to comply with any implementing requirements funding agency may issue.
- c. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Seller agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Seller agrees to comply with any implementing requirements funding agency may issue.

(3) The Seller also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by funding agency, modified only if necessary to identify the affected parties.

## 18. PATENT AND RIGHTS IN DATA

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

- (1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, the Seller may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:
    - i. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    - ii. Any rights of copyright purchased by the Purchaser or Seller using Federal assistance in whole or in part provided by funding agency.

(c) When funding agency awards Federal assistance for experimental, developmental, or research work, it is funding agency's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless funding agency determines otherwise, the Seller performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit funding agency to make available to the public, either funding agency's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Seller's use whose costs are financed in whole or in part with Federal assistance provided by funding agency for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Seller agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Seller of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Seller shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Seller and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Seller identifies that data in writing at the time of delivery of the contract work.

(g) Unless funding agency determines otherwise, the Seller agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by funding agency.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Seller's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Seller agree to take the necessary actions to provide, through funding agency, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Seller also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by funding agency.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Seller agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until funding agency is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Seller's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Seller agrees to take the necessary

actions to provide, through funding agency, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

- (3) The Seller also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by funding agency.

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

### **49 CFR Part 26**

#### **Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*.
- b. The Seller shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Seller shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Seller to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the transit authority and the funding agency deems appropriate. Each subcontract the Seller signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. The Seller will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The Seller is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Seller's receipt of payment for that work from the Purchaser. In addition, the Seller may not hold retainage from its subcontractors.
- e. The Seller must promptly notify the Purchaser, transit authority, and the funding agency whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Seller may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the transit authority or funding agency.

## **20. INCORPORATION OF FEDERAL TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or a similar publication by the funding agency, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all funding agency mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Seller shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the funding agency terms and conditions.

## **21. DRUG AND ALCOHOL TESTING**

The Seller agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Seller agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before

March 15) to (insert title and address of person responsible for receiving information). To certify compliance the Seller shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **22. PROPOSAL AND CONTRACT REQUIREMENTS**

Federal funds will be used for this Purchase Order. Accordingly, all applicable federal requirements will apply. Prospective sellers are expected to become familiar with these requirements, and should not accept a Purchase Order if unable to execute a contract containing such provisions. Federal requirements are subject to change; the Seller is responsible for complying with the most current regulations. The Seller agrees that the most recent of such Federal requirements will govern the administration of any Purchase Order at any particular time during the performance of a Purchase Order, unless Purchaser issues a written determination otherwise. Seller further agrees to carry out the Purchase Order in a sound, economical, and efficient manner, and in accordance with the provisions of the funding agency's cooperative grant agreements, this Agreement, the application, approved project budget, project schedules, and all applicable laws, regulations, and public policies of funding agency.

## **23. PRECEDENCE OF TERMS**

These federal requirements shall take precedence over any term to the contrary.

## **24. AVAILABILITY OF FUNDS**

The Seller agrees that if federal or state funds directly or indirectly related to this Purchase Order are reduced or eliminated, this Purchase Order can be terminated by the Purchaser without penalty if its contract with its customer is terminated. If the Purchaser is not paid for its work due to the fact that the ultimate end customer is only bound to the prime contract to the extent of the funds appropriated for the purpose of the ultimate prime contract, then the Seller agrees and acknowledges that the Purchaser is likewise not bound to make payment to the Seller for its work under this Purchase Order.

## **25. TESTING/INSPECTION/REVIEW OF WORK**

Authorized representatives or agents of the transit authority, the applicable state and/or the funding agency may, at any time, review and inspect the project activities, data, reports/studies, drawings, specifications, estimates, maps computations and financial records of the Seller or its suppliers and subcontractors.

## **26. CONFLICTS OF INTEREST**

### **a.) General.**

1. No board member, officer or employee of the transit authority or other unit of local government, who exercises any functions or responsibilities in connection with the carrying out the work or the carrying out of the work to which these terms and conditions pertains, may have any personal interest, direct or indirect, in the Purchase Order or the proceeds thereof.

2. In accordance with 41 USC § 22, the Seller agrees that no member of or Delegate to the Congress of the United States, or to the state assembly, and no members of the transit authority's board or its employees, may be admitted to any share or part of the Purchase Order or to any private financial interest, profit, or benefit arising therefrom.

b. Codes of Conduct. Seller agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents. The code or standards shall provide that Seller's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or sub-Grantees. Seller may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by Seller's officers, employees, board members, or agents, or by contractors or sub-Grantees or their agents.

Seller's code or standards must provide that no employee, officer, board member, or agent of Seller may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- a. The employee, officer, board member, or agent;
- b. Any member of his or her immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ, any of the above.

Seller's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

## **27. EQUAL OPPORTUNITY**

**The Equal Opportunity Clause set forth in 41 CFR 60-1.4(a) is hereby incorporated by reference. The Seller and its subcontractor(s) shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

## **28. CONVICT LABOR**

In connection with the performance of work under the Purchase Order, the Seller agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1985.

## **29. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting a proposal, the Seller certifies that it does not and will not, during the performance of the Purchase Order, employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

## **30. ETHICS IN PUBLIC CONTRACTING**

By submitting its quote or accepting the Purchase Order, the Seller certifies that its quote is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer or subcontractor in connection with their quote, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

## **31. DEBARMENT STATUS**

By submitting a quote or accepting a Purchase Order, the Seller certifies that it is not debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracts with the federal government, and that it will refrain from awarding any subcontract to a debarred or suspended subcontractor. In addition, prospective contractors agree to comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 USC Section §6101 note; and U.S. DOT regulations, "Government Debarment and Suspension (Non-procurement)," within 49 CFR Part 29. Sellers debarred by the Federal Government shall be ineligible to submit a quote to or accept a Purchase Order from the Purchaser.

## **32. ANTI-DISCRIMINATION:**

During the performance of the Purchase Order, the Seller agrees as follows:

- a. The Seller will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. The Seller agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Seller also agrees to comply with any implementing requirements funding agency may issue.
- b. The Seller, in all solicitations or advertisements for employees placed by or on behalf of the prospective contractor, will state that such Seller is an equal opportunity employer.
- c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- d. The Seller will comply with all applicable requirements of Title IX of Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with 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, and with any implementing directives that U.S. DOT or funding agency may promulgate, which prohibit discrimination on the basis of sex.
- e. The Seller will comply with applicable federal guidance issued in compliance with Executive Order Number 13166, "improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January, 22, 2001.
- f. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Seller agrees to comply, and assures the compliance of each subcontractor at any tier with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Purchase Order Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Purchase Order.
- g. The Seller agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 41 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- h. The Seller agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.
- i. The Seller agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321.
- j. The Seller agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

### **33. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The Seller agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Seller also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, 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 persons with disabilities, including any subsequent amendments to that Act, and 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 persons with disabilities, including any subsequent amendments to that Act. In addition, the Seller agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- 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;
- U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
- Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- General Services Administration regulations, "Construction and Alteration of Public Buildings, "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;
- Equal Employment Opportunity (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act," 29 C.F.R. Part 1630
- Federal Communications regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 47 C.F.R. Part 64, Subpart F;
- FTA regulations, "Transportation for Elderly and Handicapped Persons", C.F.R. Part 609;
- Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
- Any implementing requirements funding agency may issue. Any and all materials, drawings or plans produced for the Purchaser shall reflect the requirements of the codes and regulations listed above.

#### **34. DRUG OR ALCOHOL ABUSE- CONFIDENTIALITY AND OTHER CIVIL RIGHTS PROTECTIONS**

The Seller agrees to comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

#### **35. METRIC SYSTEM**

The Seller acknowledges that the federal funding agency may impose specific metric requirements for this Purchase Order.

#### **36. PLANNING**

Purchase Orders financed with Federal assistance must be implemented in a manner consistent with the plans developed in compliance with the applicable planning and private enterprise provisions of 49 U.S.C. §5303 through 5306 and 5323(1) and with the joint Federal Highway Administration (FHWA)/FTA regulations, "Planning Assistance and Standards," at 23 C.F.R. Part 450 and 49 C.F.R. Part 613 and, when promulgated, with FHWA/FTA regulations, "Metropolitan and Statewide Planning," 23 C.F.R. Part 1410 and 49 C.F.R. Part 621; and to the extent applicable, with FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611.

#### **37. SUPPORT OF EXCLUSIONARY OF DISCRIMINATORY SPECIFICATIONS**

Apart from inconsistent requirements by Federal statute or regulations, the Purchaser complies with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance for procurements with exclusionary or discriminatory specifications.

#### **38. GEOGRAPHIC RESTRICTIONS**

The Seller agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute, and as permitted by funding agency, such as for professional services in areas where such a restriction does not unduly limit competition.

#### **39. ACQUISITION OF MANAGEMENT, ARCHITECTURAL, AND ENGINEERING SERVICES**

In acquiring management, architectural, and engineering services, the Seller shall comply with the requirements of 49 U.S.C. Section 5325(b), either by negotiating for those services in the same manner as a contract for architectural

and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or by using an equivalent qualifications-based requirement of the state. Provided that a sufficient number of qualified firms are eligible to compete for the subcontract, the Seller's geographic location may be a selection criterion. In addition, when awarding contracts for architectural, engineering, or related services, the Seller agrees to accept undisputed audits conducted by other governmental agencies, in accordance with 23 U.S.C. § 112(b)(2) (C) through (F). To the extent the Seller qualifies for an exception in accordance with 49 U.S.C. § 5325(b), however, this Subsection 15.1 of this clause does not apply.

#### **40. ELECTRONIC AND INFORMATION TECHNOLOGY**

To the extent required by law, the Seller agrees that any electronic and information technology financed with Federal assistance awarded for the Purchase Order will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, by 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

#### **41. PROTECTION OF SENSITIVE SECURITY INFORMATION**

To the extent applicable, the Seller shall comply with Section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. §4019(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

#### **42. FEDERAL CHANGES**

(a) Federal Laws, Regulations, and Directives. The Seller understands and agrees that Federal laws, regulations, and directives applicable to the Project and to any related Grant Agreement may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the transit authority executes the underlying Grant Agreement for the Project, and might apply to that Agreement. The most recent of Federal laws, regulations, and directives will apply to the Purchase Order at any specific time, except as the funding agency determines otherwise in writing.

(b) The Seller shall at all times comply with all applicable funding agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the transit authority and the funding agency, as they may be amended or promulgated from time to time during the term of this Purchase Order. The Seller's failure to so comply shall constitute a material breach of the Purchase Order.

#### **43. ALLOWABLE COSTS**

The Seller's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial Organizations", which are incorporated herein by reference. If any costs are disallowed, as determined by an audit by the transit authority, funding agency or the Federal Government, the Seller agrees to reimburse the Purchaser (or at the Purchaser's direction to the transit authority or funding agency directly) for such disallowed costs within sixty (60) days of advice to Seller of the determination of disallowance. Seller's expenditures will be reimbursed only if they meet all requirements set forth below:

- a) Conform with the Project description, the Statement of Work, and the Approved Project Budget and all other terms of the Cooperative/Grant agreement between the transit authority and the funding agency;
- b) Be necessary in order to accomplish the Project;
- c. Be reasonable for the goods or services purchased;
- d. Be actual net costs to Vendor (ie, the price paid minus any refunds, rebates, or other items of value received by Seller that have the effect of reducing the cost actually incurred);
- e. Be incurred (and be for work performed) after the effective date of this Agreement, unless specific authorization from funding agency to the contrary is received in writing;

f. Unless permitted otherwise by Federal status or regulation, conform with Federal guidelines or regulations and Federal cost principles including, but not limited to the standards of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments";

g. Be satisfactorily documented; and

h. Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by funding agency for the transit authority, and those approved or prescribed by the transit authority or the state for its Grantees.

#### **44. LABOR PROTECTIVE ARRANGEMENTS**

Seller shall comply with the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C.836, with respect to employees affected by actions taken in connection with the project financed in whole or in part under this arrangement (See 49 U.S.C. 24405(c).) Seller agrees to comply with the protective arrangements established by the Department of Labor under 45 U.S.C. 836, and to insure that the Seller agrees to those terms.

#### **45. WHISTLEBLOWER PROTECTION.**

An employee of Seller may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of employee's duties, to the Recovery Accountability and Transparency Board or similar entity of the funding agency, an Inspector General, the Comptroller General of the United States, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- a. Gross mismanagement of an agency contract or grant relating to federal funds;
- b. A gross waste of federal funds;
- c. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- d. An abuse of authority related to the implementation or use of federal funds; or
- e. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant awarded or issued relating to federal funds.

#### **46. FALSE CLAIMS ACT**

Seller shall promptly refer to the U.S. Department of Transportation Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal funds.

#### **47. PROHIBITED ACTIVITIES**

None of the funds provided through this Agreement may be used for any casino or other gaming establishment, aquarium, zoo, golf course or swimming pool.

#### **48. REPORTING REQUIREMENTS (If ARRA Funding is involved)**

a. Employment Report. In addition to any other reporting required by the Agreement, Seller shall provide to the Purchaser (or, if directed by the Purchaser, directly to the transit authority) an employment summary for all employees working on the Project from the Agreement execution date to the last full pay period each month for the duration of the Agreement. The report may include but is not limited to:

- 1. Total number of employees.
- 2. The total hours worked.
- 3. Total payroll.

4. the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under this Agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment.

The report shall be completed by Seller. Seller shall also report for each subcontractor. Employee hours worked from home office or other off-site office hours worked related directly to this Agreement shall be included. Engineering consulting firms performing material testing for Seller shall also be included. Hours worked for material suppliers, services provided by purchase orders, transit authority employees or consulting firms performing inspection or testing for the transit authority shall not be included in the report. Seller will supply the requested employment information for its own labor force and its subcontractors as part of the monthly billing process in accordance with its existing bill process procedures. Subcontractor employment information will be reported once the subcontractor's bill has been approved for payment by Seller. The report shall contain all hours worked under the Agreement from the start of the month to the last full pay period each month. The report shall be submitted electronically as directed by the Purchaser. Any costs associated with complying with this provision shall be considered as included in the contract unit prices bid for the various items of work involved and no additional compensation will be allowed.

b. Jobs Accountability Reports.

1. As required by section 1512(c) of ARRA, and consistent with OMB Guidance, dated June 22, 2009 and found at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf), Seller shall submit a jobs accountability report to the Purchaser (or, if directed by the Purchaser, directly to the transit authority), not later than ten (10) days after the end of each quarter. The report shall contain: (A) the total amount of ARRA funds received pursuant to this Agreement; (B) the amount of ARRA funds received that were expended or obligated to were expended or obligated, including:

- (i) the name of the project or activity;
- (ii) a description of the project or activity;
- (iii) an evaluation of the completion status of the project or activity;
- (iv) an estimate of the number of jobs created and the number of jobs retained the project or activity; and
- (v) detailed information on any subcontracts awarded by Seller to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.

2. Information from these reports will be made available to the public. The reporting responsibility should be passed down from Seller to any subcontractor or Seller, in order to ensure that the necessary information is provided to the State, which is ultimately responsible for reporting the required elements to the FRA. OMB may issue additional guidance on the preparation and submission of jobs accountability reports. Seller must also register with the Central Contractor Registration database (<http://www.ccr.gov>) or complete other registration requirements as determined by the Director of OMB. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration on the Central Contractor Registration.

**49. APPLICATION OF FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.**

- a) Federal Laws and Regulations. Seller understands that Federal laws and regulations related to this Agreement on the date the Agreement was executed may be modified from time to time. Seller agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, so long as consistent with the terms of this Agreement. Likewise, new Federal laws and regulations may be established after the date the Agreement has been executed and may apply, to the extent they are consistent with the terms of this Agreement. To achieve compliance with changing Federal requirements, Seller agrees to include in all sub-assistance agreements and third party contracts financed with funding agency assistance, specific notice that Federal requirements may change and the changed requirements will apply to the Project to the extent they are consistent with the terms of this Agreement. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

- b) State and Local Laws and Regulations. Except to the extent that a Federal statute or regulation preempts State law, nothing in this Agreement shall require Seller to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or local law; however, if any of the provisions of this Agreement violate any applicable State or local law, or if compliance with the provisions of this Agreement would require Seller to violate any applicable State or local law, Seller agrees to notify the State immediately in writing in order that the State, in consultation with funding agency, and Seller may make appropriate arrangements to proceed with the Project as soon as possible.

#### **50. NO FUNDING AGENCY OBLIGATIONS TO THIRD PARTIES.**

The State and Seller acknowledge and agree that, notwithstanding any concurrence by the funding agency in or approval of the Solicitation or award of the underlying contract, this Agreement, absent the express written consent by the funding agency, the funding agency is not a party to this Agreement and shall not be subject to any obligations or liabilities to the State or Seller, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement. Seller agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by funding agency. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

#### **51. ACCOUNTING RECORDS.**

a. Project Accounts. Seller agrees to establish and maintain for the Project either a separate account or set of accounts within the framework of an established accounting system, in a manner consistent with 49 C.F.R. § 18.20, as amended, whichever is applicable.

b. Documentation of Project Costs and Program Income. All costs charged to the Project, including any approved services contributed by Seller or others, shall be supported by properly executed pay rolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the implementation.

c. Checks, Orders, and Vouchers. Seller agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to the Project.

#### **50. PAYMENT BY funding agency**

Seller agrees to provide the transit authorities with information necessary for the transit authorities to complete and submit Standard Form 3881, "Payment Information Form - ACH Payment Seller Payment System," and to complete and submit Standard Form 270, "Request for Advance or Reimbursement".

#### **51. PROPERTY MANAGEMENT**

Seller agrees to comply with the property management standards of 49 C.F.R. §§ 18.31, 18.32, and 18.33, including any amendments thereto, and other applicable guidelines or regulations that are issued.

#### **52. FLOOD HAZARDS.**

Seller agrees to comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition Project.

#### **53. PROCUREMENT.**

a. Federal Standards. Seller agrees to comply with the Procurement Standards requirements of the state as set forth in 49 C.F.R. § 18.36 and with any applicable supplementary U.S. DOT or funding agency directives or regulations. If determined necessary for proper Project administration, the state and the funding agency reserve the right to review Seller's technical specifications and requirements.

#### **54. ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER.**

- a. If PRIIA funding is involved, an acknowledgment of FRA support and a disclaimer must appear in any Seller publication, whether copyrighted or not, based on or developed under this Agreement, in the following terms: "This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement dated [insert date of applicable cooperative agreement]."
- b. All Seller publications must also contain the following: "Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad Administration and/or U.S.DOT."

#### **55. SITE VISITS**

Seller understands that funding agency and the transit authority, through their authorized representatives, have the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and agrees to provide such technical assistance as may be required. Seller shall provide, and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the funding agency's and the transit authority's representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by Seller or subcontractor.

#### **56. SAFETY OVERSIGHT**

To the extent applicable, Seller agrees to comply with any Federal or State regulations, laws, or policy and other guidance that transit authority, the funding agency, or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.