

## SAN DIEGO METROPOLITAN TRANSIT SYSTEM PURCHASE ORDER TERMS AND CONDITIONS – GOODS

**1. Definition and Acceptance of Terms:** MTS shall collectively mean San Diego Metropolitan Transit System (MTS), San Diego Transit Corporation (SDTC), and San Diego Trolley, Inc. (SDTI). Contractor shall mean the person and/or company from whom the merchandise, goods, equipment (hereinafter "goods") are ordered as shown on the face hereof. This Purchase Order constitutes an offer by MTS to Contractor upon the terms and conditions stated herein and shall become a binding contract upon acceptance thereof either by acknowledgement or performance.

**2. Entire Agreement:** This agreement, which includes the Purchase Order, applicable terms and conditions, specifications, scope and any other included attachments, constitutes the entire agreement and understanding between MTS and Contractor. Any amendments to this agreement must be in writing and executed by both parties.

**3. Pricing:** The total price herein specified shall include all taxes which either party is required to pay with respect to the sale and delivery of the goods covered by this Agreement, including sales and use taxes, and shall include all charges for customs duties, freight charges and shipping unless specifically excluded. MTS is exempt from Federal Excise and Transportation Taxes. On out-of-state purchases, the Contractor must show their Use Tax Permit Number issued by the California State Board of Equalization, which authorizes them to charge and collect California sales tax. Fuel surcharges or charges for cartage, pallets, boxing or packaging shall not be allowed unless disclosed at the time the Contractor submits a response to a solicitation or a request for quote.

**4. Payment:** MTS will pay Contractor only upon satisfactory delivery or receipt of goods. MTS will review each payment request as soon as practicable after receipt. If any payment request is determined to be unsuitable for payment, MTS shall notify Contractor as soon as practicable. MTS shall not pay any interest charges for late payments of invoices unless permitted by law.

**5. Delivery:** Timely performance and deliveries are essential to this order. Contractor must immediately advise MTS if there is any delay or shortage in shipment or of a partial shipment and date full shipment will be delivered. All goods described herein must be delivered within the time specified on this Purchase Order, or the revised delivery schedule approved by MTS in writing. Delivery shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed to by MTS. Unless otherwise specified herein, all goods acquired under this Purchase Order are sold F.O.B. location specified by MTS. An original copy of the freight bill must be attached to the invoice. Contractor is not authorized to ship the goods under a reservation and no tender of a bill of lading shall operate as a tender of the goods. COD shipments are expressly prohibited. Shipment in greater or lesser quantity than ordered may be returned at Contractor's expense unless authorized by MTS.

**6. Excusable Delays / Force Majeure:** Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events which will be excusable for being beyond Contractor's reasonable control only upon fulfillment of the following conditions: (a) within seven (7) calendar days of the commencement of any excusable delay, Contractor shall provide MTS with written notice of the cause and extent thereof, as well as request for a schedule extension for the estimated duration thereof; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide MTS with written notice of the actual delay incurred, upon receipt of which the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.

**7. Inspection, Acceptance or Rejection of Goods:** Inspections and acceptance or rejection of the goods will be at the delivery location unless otherwise specified. MTS will inspect the goods and either accept or reject them within 30 calendar days from the date of delivery. If any specified inspection or testing is required to determine if the goods meets the specifications, Contractor shall perform or shall have performed such inspections and tests at Contractor's sole cost prior to the delivery of such goods to MTS. Any goods received damaged or not in accordance with the instructions or specifications on the Purchase Order will be rejected and returned to Contractor at Contractor's risk and expense. MTS will notify the Contractor in writing stating the reason(s) why the goods are deemed damaged or non-conforming. Contractor will have 10 business days or an otherwise agreed upon date to deliver conforming goods. MTS will hold the damaged or non-conforming goods for a reasonable time not to exceed 30 calendar days and Contractor must remove the rejected goods at Contractor's sole cost and expense.

**8. Risk of Loss:** Contractor will bear all costs, loss or damage and assume all risk and liability associated with manufacture or delivery of the goods regardless of the cause thereof until MTS accepts their delivery.

**9. Material Safety Data Sheet (MSDS):** It is mandatory for Contractor to supply an MSDS with the shipment of any goods that contains any hazardous material. At any time the content of an MSDS is revised, Contractor is required to provide the new information relevant to the specific hazardous material to MTS.

**10. Audit/Inspection of Records:** The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the Purchase Order, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Purchase Order for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to the performance of this Purchase Order as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**11. Prompt Progress Payments and Retention:** Contractor or Subcontractor shall pay any Subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS. No retainage will be held by MTS from progress payments due to the Contractor. Any retainage kept by the Contractor or by a Subcontractor must be paid in full to the Subcontractor in seven (7) business days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of a progress payment or retainage to the Subcontractor over 30 calendar days may take place only for good cause and with MTS's prior written approval. Failure to comply with this provision will constitute noncompliance, which may result in the application of legal and contract remedies, including, but not limited to, a penalty of two percent (2%) of the invoice amount due for every invoice that full payment is not made. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late or nonpayment by the Contractor, deficient Subcontractor performance or noncompliance by a Subcontractor. Prime Contractor must submit the MTS Prompt Payment Certification Form to the MTS Contracts Administrator if any Subcontractors. The form is available for download at <https://www.sdmts.com/business-center/procurement>. The form certifies that all Subcontractors were paid within seven (7) business days of receiving payment from MTS for work performed during the previous month. The Prime Contractor must submit the completed certification, as required on the form, and the month following final acceptance of the project. In addition, seven (7) business day prompt payment requirement prevails over contract language between a Prime Contractor and a Subcontractor.

**12. Changes:** MTS may at any time by written order make changes within the general scope of this Purchase Order in any of the following ways: 1) drawings, designs or specifications; 2) method of shipping or packing; 3) place of delivery; or 4) delivery schedule. Should any such change increase or decrease the cost or time required

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for performance of this Purchase Order, proper adjustments shall be made in price and/or delivery schedule as the case may be. The Contractor must assert its right to an adjustment under this clause within 30 calendar days from the date of receipt of the written order. If the Contractor requests a change to the Purchase Order, the change must be authorized by MTS in writing and the Contractor must provide notice to MTS prior to the time Contractor shall have delivered the goods if based on an act or failure to act by MTS or in all other cases within 15 calendar days after the happening of the event, thing, occurrence or other cause giving rise to the potential change.

**13. Termination for Convenience:** Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise: (1) immediately discontinue performance on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and (4) assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement. If claimed in writing within 30 calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item): (1) all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice; (2) a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock; (3) costs of settling and paying supplier's claim arising out of the canceled orders; and (4) a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included. The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

**14. Termination for Default:** In case of Contractor breach or failure to perform, MTS reserves the right to terminate the Purchase Order for default. MTS may award the contract to the next lowest responsive, responsible bidder, solicit new bids or pursue any other remedy authorized by law. In addition to any remedy authorized by law, money due to the Contractor under and by virtue of purchase order, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following: 1) MTS will give the Contractor 10 business days' notice of its intention to retain funds from any partial payment which may become due to the Contractor prior to acceptance by MTS of the purchase order. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor; 2) No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments; and 3) If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention. MTS may terminate the purchase order by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default and provide the Contractor with 10 business days' time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this purchase order should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the purchase order shall be deemed terminated. The Contractor shall only be paid the Purchase Order price for goods received and accepted in accordance with the manner set forth in the purchase order. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood or other events which are not the fault of or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the purchase order for convenience.

**15. Insurance:** Contractor will include the Purchase Order/contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best. MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS's choosing. **A. COVERAGE REQUIRED - ALL CONTRACTS:** (1) Liability: (a) Commercial General Liability: At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work. All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. (b) Automobile Liability: At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles. (c) Workers' Compensation/Employer Liability: At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.  
B. ADDITIONAL COVERAGES MAY BE REQUESTED BY MTS BASED ON PROJECT PURCHASE REQUIREMENTS.

**16. Indemnification:** As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall defend, indemnify and hold harmless, MTS, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or Subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

**17. Warranties:** By accepting this offer, Contractor warrants that: 1) all goods delivered under this Purchase Order will be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code and free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Contractor); 2) the goods will be manufactured and delivered strictly in accordance with MTS's specifications, drawings, and approved sample, if any; and 3) the goods will be free from defects in design. Contractor agrees that the goods furnished under this Purchase Order will be covered by the most favorable commercial warranties the Contractor gives to any customer for the same goods. Contractor also warrants and agrees that title to all goods furnished under this Purchase Order and accepted by MTS will pass to MTS free and clear of all liens, claims, security interests or encumbrances. MTS's rights and remedies as set out herein are in addition to and not limited by any rights MTS may have under any other term of this Purchase Order or provision of law.

**18. Governing Law:** Contractors quote, the resulting Purchase Order and the work performed under it shall be governed by these Terms and Conditions and the laws of the State of California. Contractor warrants that in the performance of this agreement it shall comply with all applicable federal, state and local laws, ordinances,

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orders, rules and regulations thereunder. Any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the courts located in San Diego County, California.

**19. Disputes Claims and Resolution:** MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within 15 business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration. Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of Cal. Gov. Code, 900 *et seq.* The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

**20. Survival:** Notwithstanding MTS's acceptance of the services and payment thereof, Contractor shall remain obligated under all clauses of this Purchase Order which expressly, or by their nature, extend beyond and survive such acceptance and payment.

**21. Severability:** If any term, provision, or condition of this Purchase Order is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, or condition of this Purchase Order shall be valid and enforceable to the fullest extent permitted by law.

**22. Independent Contractor:** In the performance of any delivery of goods to be provided hereunder, Contractor's relationship to MTS shall be that of an independent Contractor and not an employee, agent or other representative of MTS.

**23. Assignments:** Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by MTS or applicable law, all terms, conditions, and provisions of this contract shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties.

**24. Third Party Beneficiaries:** No provisions of the Purchase Order shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the Purchase Order or of any one or more of the terms and conditions of the Purchase Order or otherwise give rise to any cause of action in any person not a party to the Purchase Order, except as expressly provided elsewhere in the Purchase Order.

**25. Subcontractors:** Contractor agrees to bind every subcontractor to the terms of the Agreement as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to MTS for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and MTS. MTS reserves the right to approve all subcontractors. MTS's approval of any subcontractor under this Agreement shall not in any way relieve Contractor of its obligations under this Agreement.

**26. Equal Employment Opportunity Program:** A. MTS's Equal Employment Opportunity Program. MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS' Clerk of the Board). B. Contractor's Equal Employment Opportunity Plan. Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. 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. C. Regulations. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

**FEDERAL CLAUSES - The following clauses apply only for Purchase Orders over \$3,500 that are assisted with Federal Funds unless otherwise stated.**

**27. Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. 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 MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

**28. Federal Changes:** 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 FTA Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this purchase order. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

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**29. No Federal Government Obligations to Third Parties:** 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 shall not be subject to any obligations or liabilities to any third-party Contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this purchase order. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party purchase order, the federal government continues to have no obligations or liabilities to any party, including the third-party Contractor. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**30. Program Fraud or False or Fraudulent Statements and Related Acts:** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801, *et seq.*, and 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 Purchase Order, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the underlying purchase order or the FTA assisted project for which this Purchase Order work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government under a purchase order connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula project financed with federal assistance authorized by 49 U.S.C., Section 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C., Section 1001 and 49 U.S.C., Section 5307(n)(1), to the extent the federal government deems appropriate. The Contractor agrees to include this provision in each subcontract financed in whole or in part with Federal assistance from the FTA.

**31. Fly America:** The Contractor 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 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. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**32. Cargo Preference:** **[Applicable to all purchase orders for goods which may be transported by ocean vessels]** 46 U.S.C. 55305 and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement. The Contractor shall utilize privately owned U.S.-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 purchase order to the extent such vessels are available at fair and reasonable rates for U.S.-Flag commercial vessels. The Contractor shall furnish within 20 working days following the date of loading for shipments originating within the U.S. or within 30 working days following the date of loading for shipments originating outside the U.S., 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, 400 Seventh Street, S.W., Washington, DC 20590, and to MTS (through the Contractor in the case of a Subcontractor's bill-of-lading.) marked with the appropriate identification. The Contractor shall include these requirements in all subcontracts issued pursuant to this purchase order when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**33. Energy Conservation:** The Contractor and any Subcontractor agree to comply with mandatory energy efficiency 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, 42 U.S.C. §§ 6321 *et seq* and 49 C.F.R. part 622, subpart C.

**34. Recycled Products Requirements:** **[Applicable to all goods purchase orders involving items designated by the EPA, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000]** The Contractor and any Subcontractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the State Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**35. Disadvantaged Business Enterprise (DBE) Participation:** This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR Part 26), entitled "Participation by DBEs in DOT Financial Assistance Programs." MTS's DBE program has an aspirational goal of 6.3% participation by certified DBE's over FFY FFY 2021-2024 (October 1, 2021 – September 30, 2024). There is no specific DBE goal for this project. In order to help MTS achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of purchase orders financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs have an equal opportunity to receive and participate in MTS DOT-assisted purchase orders. It is also our policy to: 1) Ensure nondiscrimination in the award and administration of all MTS purchase orders and subcontracts; 2) Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted purchase orders; 3) Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*; 4) Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; 5) Help remove procurement and purchase ordering barriers, which impede DBE participation in MTS DOT-assisted purchase orders; 6) Monitor and enforce Contractors' compliance in meeting established goal objectives and program requirements; 7) Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program; 8) Ensure MTS Contractors and Subcontractors take all necessary and reasonable steps to comply with these policy objectives. To ascertain whether it's overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid purchase orders. MTS encourages the proposer to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The California Unified Certification Program DBE Directory can be found at: <http://californiaucp.org/>. If interested in learning about bonding or financial assistance that may be available, visit [www.sba.gov](http://www.sba.gov).

**36. Civil Rights:** A. **Subcontract.** The Contractor shall include these requirements in each subcontract entered into as part thereof. B. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal



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implementing regulations and other implementing requirements FTA may issue. C. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 Contractor agrees to comply with any implementing requirements FTA may issue. D. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., 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, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. E. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**37. Contractor Assurance:** The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this purchase order. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted purchase orders. Failure by the Contractor to carry out these requirements is a material breach of this purchase order which may result in the termination of this purchase order or other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph

**38. Debarment and Suspension** (Applicable to all purchase orders over \$25,000) The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the 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. Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be: a) Debarred from participation in any federally assisted Award; b) Suspended from participation in any federally assisted Award; c) Proposed for debarment from participation in any federally assisted Award; d) Declared ineligible to participate in any federally assisted Award; e) Voluntarily excluded from participation in any federally assisted Award; or f) Disqualified from participation in any federally assisted Award. The Contractor agrees to include a provision requiring compliance to this section in its lower tier covered transactions.

**39. Environmental Protections** A. General. Contractor agrees to comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance. B. National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Contractor agrees that it will: (1) Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (a) Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139, (b) The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500 – 1508, (c) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622, (d) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and (e) Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto. (2) Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (a) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews," January 14, 2013, (b) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 Fed. Reg. 66576, November 15, 2006, and (c) Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

C. Environmental Justice. Contractor agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, (2) U.S. DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance. D. Other Environmental Federal Laws. Contractor agrees that it will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management." E. Use of Certain Public Lands. Contractor agrees it will comply with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622. F. Historic Preservation. The Contractor agrees that it will: (1) Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places. (2) Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108. (3) Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 et seq. (4) Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800. (5) Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties. G. Indian Sacred Sites. The Contractor agrees that it will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.

**40. ADA Access** The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d), which prohibit 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

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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.

**41. Safe Operation of Motor Vehicles** A. Seat Belt Use. The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or MTS. B. Distracted Driving. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

**42. Domestic Preferences for Procurements** As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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