

PURCHASE ORDER TERMS AND CONDITIONS

Section 1:

1. **This Purchase Order is a Contract:** Unless otherwise set forth in a separate contract document, then this purchase order and incorporated general conditions constitute the written contract between the Vendor and the District. By acceptance of this purchase order, the Vendor agrees to be bound by the appropriate sections of the latest editions of the District's general conditions for the purchase of goods or services, depending on whether the product described on the Purchase Order is a good or a service respectively. The Vendor's representative acknowledges that the District has made available to the Vendor a complete copy of the relevant general conditions in advance of Vendor's acceptance of the purchase order.

2. **Contract Documents:** The terms and conditions incorporated into this contract include, and are not necessarily limited to, general conditions applicable to the following:

- a. The work generally.
- b. Employment of competent workers.
- c. Ineligible Vendors and subcontractors based upon suspension or debarment by the Comptroller General of the United States.
- d. Vendor representations concerning solvency, present responsibility, and lack of conflict of interest.
- e. Additional provisions identifying various federal and state statutory and regulatory requirements involving environmental protection, civil rights, equal employment opportunity, disadvantaged business enterprises, labor, patent, Buy America, restrictions on lobbying, energy conservation, recyclable materials, and other obligations as may be imposed from time to time by the Federal Transit Administration.

3. **Conflict of Interest.** In the event that the potential Vendor believes that it or any of its potential subcontractors may have an organizational conflict of interest (defined as a situation in which the potential Vendor may be perceived to enjoy an unfair competitive advantage or which may impair its objectivity in performing the contract work), the Vendor shall notify the District in writing, identifying the nature and circumstances of the perceived conflict and proposing appropriate measures to eliminate or mitigate the situation. The District will review the circumstances and the proposed mitigation and notify the potential contractor, determining that:

- a. no mitigation is required;
- b. the measures proposed by the potential contractor are acceptable;
- c. additional or alternate mitigation measures are recommended; or

- d. the conflict cannot be mitigated.

The failure of a potential Vendor to identify such perceived conflicts may result in the potential Vendor being disqualified from consideration, or any contract award being rescinded or terminated for default. Should a successful Vendor identify, after award of a contract, a conflict which it could not have reasonably anticipated prior to the award, it shall promptly notify the District, which shall consider steps to mitigate or eliminate the conflict. Should no such mitigation steps be feasible, the District may terminate the contract in accordance with the contractual provisions regarding termination for convenience.

4. **Insurance:** In the event the Vendor, its employees, agents or subcontractors enter premises occupied or under the control of the District in the performance of this Purchase Order, the Vendor agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain worker's compensation coverage (either by insurance or if qualified pursuant to law, through a self insurance program) covering all employees performing under this Purchase Order on the premises of the District.

5. **Insured:** As required by the state of Indiana, or as set forth in FTA Circular 4220.1F- Insured will be listed as the Northern Indiana Commuter Transportation District, the Chicago South Shore and South Bend Railroad Company, the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation, the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra, as additional insured and loss payees.

6. **Governing Law:** This Purchase Order shall be governed by and construed in accordance with the internal laws of the State of Indiana, irrespective of any otherwise applicable conflict of law statute, precedent, or agreement. The parties agree that the exclusive forums for the resolution of disputes arising out of this Purchase Order are the state court system of Indiana, the United States District Court for the Northern District of Indiana, or the federal appellate courts.

7. **Acknowledgment:** The Vendor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Purchase Order, absent the express written consent by the Federal Government, the Federal Government is not a party to this Purchase Order and shall not be subject to any obligation or liabilities of the District, Vendor, or any other party (whether or not a party to this Purchase Order) pertaining to any matter resulting from the underlying Purchase Order. The Vendor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. The Vendor also agrees that the clause shall not be modified, except to identify the sub-contractor subject to said provisions.

8. **Electronic Transmission:** If the District's Purchase Order is transmitted through e-mail, fax or other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Vendor.

9. **Payment Terms and Price:** A separate invoice shall be issued to the District for each shipment which is made by the Vendor. Unless otherwise specified in the Purchase Order, an invoice shall not be issued prior to the shipment of goods/services and payment will not be made prior to receipt of goods/services. Unless stated otherwise on the Purchase Order, the District's

payment terms are net 30 days. The Vendor shall be required to submit in writing any price increases or decreases prior to any deliveries under the new price. The District reserves the right to accept the new price or cancel the Purchase Order.

10. **Bid Protest Procedures:** Northern Indiana Commuter Transportation District’s “Bid Protest Procedure” is available at the following website: [http://www.mysouthshoreline.com/images/files/Proc%2010%20Bid%20Protest%20Procedure%20\(2016\).pdf](http://www.mysouthshoreline.com/images/files/Proc%2010%20Bid%20Protest%20Procedure%20(2016).pdf) or contact NICTD for a copy.

11. **Shipping Destination:** The FOB point of delivery is the receiving dock at: 601 N. Roeske Avenue, Michigan City, IN 46360. All pricing, labor, materials and services are to be delivered FOB to the receiving dock, unless otherwise specified on the Purchase Order.

Section 2: The District requires that Purchase Order holders review current Federal Transit Administration (FTA) clauses which are found in FTA Circular 4220.1F. The table below is a reference guide to assist with determining which FTA clauses apply.

Exhibit 1

TYPE OF PROCUREMENT						
FTA CLAUSE		Professional Services / A&E	Operations / Management	Rolling Stock Purchase	Construction	Materials & Supplies
1	No federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
2	Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
3	Access to records	All	All	All	All	All
4	Federal changes	All	All	All	All	All
5	Civil Rights (EEO, Title VI & ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
6	Incorporation of FTA Terms	All	All	All	All	All
7	Energy Conservation	All	All	All	All	All
8	Termination Provisions	All	All	All	All	All
9	Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
10	Buy America			>\$150,000	>\$150,000	>\$150,000
11	Provisions for resolution of disputes, breaches, or other litigation	All	All	All	All	All
12	Lobbying	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
13	Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
13	Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
14	Cargo Preference			Involves property transported by ocean vessel	Involves property transported by ocean vessel	Involves property transported by ocean vessel

15	Fly America	Involves foreign transport or travel by air	Involves foreign air transport or travel	Involves foreign transport or travel	Involves foreign transport or travel	Involves foreign air transport or travel
16	Davis Bacon Act				>\$2,000 (including ferry vessels)	
16	Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
17	Contract Work Hrs & SS Act		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	
18	Bonding				\$100,000	
19	Seismic Safety	A&E for New Buildings & Additions			A&E for New Buildings & Additions	
20	Transit Employee Protective Arrangements		Transit Operations			
21	Drug and Alcohol Testing - FRA		Transit Operations			
22	Patent Rights	Research & Development				
22	Rights in Data Copyrights Requirements	Research & Development				
23	Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
24	Prompt Payment	All	All	All	All	All
25	Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
26	ADA Access	A&E	All	All	All	All
27	Special Notification Requirements for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
28	APTA Standards					
29	Veterans Employment				All	

1. **Third Party Benefits:** Nothing expressed or implied in the Purchase Order is intended or shall be construed to confer upon any person, firm or corporation, other than the parties thereto and their successors and assigns, any right, remedy, claim or benefit under or by reason of the Purchase Order or of any term, covenant or condition hereof.

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

a. The Vendor 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Vendor 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 Purchase Order or the FTA assisted project for which this procurement is being performed. In addition to other penalties that may be applicable, the Vendor 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 Vendor to the extent the Federal Government deems appropriate.

b. The Vendor 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 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. §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 Vendor, to the extent the Federal Government deems appropriate.

c. The Vendor agrees to include the above two clauses in each sub contract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Sub Contractor who will be subject to the provisions.

3. **Audit, Inspection, and Retention of Records:**

a. The Vendor agrees to provide the District, the United States Department of Transportation, the Federal Transit Administration, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, to include electronic files and records of the Vendor which are directly pertinent to this Purchase Order for the purposes of making audits, examinations, excerpts and transcriptions. The Vendor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Oversight (PMO) Contractor access to the Vendor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

b. The Vendor agrees to maintain all books, records, accounts and reports required under this Purchase Order for a period of not less than three years after the date of termination or expiration of this Purchase Order, except in the event of litigation or settlement of claim arising from the performance of this Purchase Order, in which case the Vendor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all

such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

c. The Vendor agrees to permit the District's Secretary and the Comptroller General of the United States, or their authorized representatives, to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Vendor and its sub-contractors pertaining to this Purchase Order. The Vendor agrees to require each third party Vendor whose contract award is not based on the competitive bidding procedures to permit the Secretary of Transportation, the District, and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving said Purchase Order, and to audit the books, records, and accounts involving said Purchase Order as it affects this contract.

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

4. **Notice of Federal Requirements:**

a. Federal Laws and Regulations. The Vendor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Purchase Order on the date this Purchase Order was executed may be modified from time to time. The Vendor agrees that the most recent of such Federal requirements will govern the administration of this Purchase Order at any particular time, except if there is sufficient evidence in this Purchase Order of a contrary intent. Such contrary intent might be evidenced by express language in other portions of this Purchase Order, or a letter signed by the Federal Transit Administrator the language of which modifies or otherwise conditions the text of a particular provision of this Purchase Order or its funding source terms and conditions. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date this Purchase Order has been executed and may apply to this Purchase Order. To achieve compliance with changing Federal requirements, the Vendor agrees to include in all subcontractors specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All limits or standards set forth in this Purchase Order to be observed in the performance of this Purchase Order are minimum requirements.

b. State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Purchase Order shall require the Vendor 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 territorial law; however, if any of the provisions of this Purchase Order violate any applicable State or territorial law, or if compliance with the provisions of this Purchase Order would require the Vendor to violate any applicable State or territorial law, the Vendor agrees to notify the District immediately in writing in order that the District and the Vendor may make appropriate arrangements to proceed with this Purchase Order as soon as possible.

c. Incorporation of Terms. The provisions of this Purchase Order include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Purchase Order provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Purchase Order consistent with regulatory deferral to state law. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any District requests, which would cause the District to be in violation of the FTA terms and conditions.

5. **Civil Rights Obligations:** The following requirements apply to the underlying Purchase Order:

a. 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 Vendor 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 Vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Purchase Order:

(1) 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 Vendor 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 CFR 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 Vendor 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 Vendor agrees to comply with any implementing requirements FTA may issue.

(2) 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 Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

(3) **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Vendor 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

c. **Disadvantaged Business Enterprise**. The Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Purchase Order. The requirements of 49 CFR Part 26 and the District's approved Disadvantaged Business Enterprise (DBE) program are incorporated in this Purchase Order by reference. Failure by the Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this Purchase Order or such other remedy as the District deems appropriate.

d. The Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. **Incorporation of FTA Terms**: The provisions of this Purchase Order include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Purchase Order provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Purchase Order consistent with regulatory deferral to state law. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any District requests, which would cause the District to be in violation of the FTA terms and conditions.

7. **Energy Conservation**: To the extent applicable to this Purchase Order and the associated operations, the Vendor shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable federal and state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

8. **Termination Provisions**: The District may, at its sole discretion, terminate this Agreement, in whole or in part, at any time by giving written notice to the Vendor. The Vendor shall be paid only its costs, including any agreed upon close-out costs, and a reasonable profit on goods provided up to the time of termination with respect to the manufacturing of the materials. The final determination concerning what constitutes proper close-out costs and a reasonable profit shall be determined by the District by utilizing FAR Part 49.113, in its sole discretion, which determination shall be final and conclusive upon the parties to this Agreement. The Vendor shall

promptly submit its proposed termination claim to the District. If the Vendor has any property in its possession paid for by or belonging to the District, the Vendor will account for the same, and dispose of it in the manner the District directs. Termination settlements are to be found in FAR Part 52.

Termination for Default:

a. If Vendor does not perform in accordance with all terms of this Purchase Order, or any part thereof, including in accordance with any schedule or any extension thereof or, in the absence of such a schedule in a timely manner; or if the Vendor shall become insolvent, bankrupt or make an assignment for the benefit of creditors, or if its property or affairs shall be put in the hands of a receiver; or if the Vendor fails to comply with any other provision of the Purchase Order, or so fails to make progress as to endanger performance of the Purchase Order in accordance with its terms, and in either of these two latter circumstances does not cure such failure within a period of ten (10) calendar days after receipt of notice from the District specifying such failure, the District shall have the following rights and remedies in addition to any others provided by law:

(1) If the Vendor refuses or fails to prosecute the material or any separable part, with the diligence that will insure its completion within the time specified in this Purchase Order or any extension or fails to complete the material within this time, or if the Vendor fails to comply with any other provisions of this Purchase Order, the District may terminate this Purchase Order for default. The District shall terminate by delivering to the Vendor a Notice of Termination specifying the nature of the default.

In this event, the District may take over the manufacturing of the materials and complete it by Purchase Order or otherwise, and may take possession of and use any materials, appliances and plant on the work site necessary for completing the Work. The Vendor and its sureties shall be liable for any damage to the District resulting from the Vendor's refusal or failure to complete the manufacturing of the Goods within specified time, whether or not the Vendor's right to proceed with the production of the Goods is terminated. These costs include any increased expenses incurred by the District over the Purchase Order amount in order to have the Work completed.

In the event of Default the Vendor will return all progress, partial, or advance payments to the District.

Additionally, the Vendor shall pay to the District any and all attorney's fees incurred by the District pertaining to Vendor's default, whether or not litigations ensues, and all costs of the District's paid staff incurred in order to remedy the default and/or complete the Work Contracted for.

(2) The right to declare the Vendor in default and to terminate the Purchase Order as to any part of the Work not yet accepted herein; in any event reserving to

the District its rights to actual damages, liquidated or otherwise arising out of any such takeover or default.

b. If, after notice of termination of the Purchase Order, it is determined for any reason that the Vendor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to Section 32 (Termination For Convenience).

9. **Debarred and Suspension:** The Vendor agrees, that as a condition to current eligibility and present responsibility for this Purchase Order, as well as continuing eligibility and present responsibility, that it is not now listed and will remain unlisted in any federal or state contractor debarment or suspension list. In the event that the Vendor is placed on such a list during the pendency of this Purchase Order, the Vendor agrees to provide the District with timely notice of said listing. Vendors must also list their sub-contractors when the value of their sub-contractor's work exceeds Twenty-Five Thousand Dollars (\$25,000.00).

Ineligible Vendors and Subcontractors:

a. Any firm, person, or other entity appearing upon the list of ineligible Vendors for Federally financed and assisted construction of the Comptroller General of the United States shall not be eligible to act as a Sub-contractor for the Vendor, pursuant to this Purchase Order or any other agreement associated with this project.

b. In the event the Vendor is placed on the Comptroller General's list of ineligible Vendors for Federally financed or assisted construction prior to or during performance of this Purchase Order, this Purchase Order may be canceled, terminated or suspended by the District.

10. **Buy America:** Unless otherwise exempt by federal law, the Vendor shall submit to the District, on the form provided, certification of compliance or non-compliance with the Buy America provisions. Vendor agrees to comply with the obligations set forth at 49 U.S.C. 5323(j) and 49 CFR Part 661, consistent with the type or goods procured by this Purchase Order.

11. **Provisions for Resolutions of Disputes, Breaches, or Other Litigation:**

a. Except for the other rights and remedies reserved to the District elsewhere within this Purchase Order, any dispute or question arising under this Purchase Order, which is not disposed of, shall be decided by the Project Engineer or Contract Officer, who shall reduce his decision to writing and forward by certified mail, a copy thereof to the Vendor. The Vendor shall abide by the decision of the Project Engineer or Contract Officer.

b. Pending final disposition of a dispute hereunder, the Vendor shall carry on the production schedule and continue to maintain all progress schedules unless otherwise agreed to by the Project Engineer or Contract Officer and the Vendor in writing.

c. Notification of current or prospective legal matters that may affect the Federal Government. The Vendor acknowledges that the provisions of the FTA Mater Agreement, Section 39 (b), apply to its actions pertaining to this project. Upon execution of the underlying contract, the Vendor certifies or affirms that if a current or prospective legal matter that may affect the Federal Government emerges, the Vendor must notify NICTD. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The Vendor agrees to include the above clause or similar clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

12. **Lobbying:** The Vendor, its subcontractors, and other lower tier entities who receive or expect to receive One Hundred Thousand Dollars (\$100,000.00) or more in compensation from the Vendor or the District, who apply or bid for an award of One Hundred Thousand Dollars (\$100,000.00) or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The Vendor, its sub-contractors, and other lower tier entities, if any, certify that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. The Vendor, its sub-contractors, and other lower tier entities, if applicable, shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from and through each contracting tier up to the District.

13. **Environmental Requirements:** The Vendor recognizes that many Federal and State statutes imposing environmental, resource conservation, and energy requirements may apply to this Purchase Order. Accordingly, the Vendor agrees to adhere to, and impose on its Sub-contractors, any such Federal requirements, as the Government may now or in the future promulgate. Listed below are requirements of particular concern to the District. The Vendor expressly understands that this list does not constitute the Vendor's entire obligation to meet Federal requirements.

a. Environmental Protection. To the extent applicable, the Vendor agrees to comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.; Section 14 of the Federal Transit Act, as amended, 49 U.S.C. app. §§ 1610; the Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and the joint FHWA/FTA regulations, "Environmental Impact and related Procedures," at 23 CFR Part 771 and 49 CFR Part 622.

- b. Air Pollution. The Vendor agrees to comply with the joint FHWA/FTA regulations, “Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway”, 49 CFR Part 623. The Vendor agrees to obtain satisfactory assurances that any facilities or equipment acquired, constructed, or improved as a part of this Purchase Order are or will be designed and equipped to limit air pollution as provided in accordance with the following EPA regulations: “Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines,” 40 CFR Part 85; “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures,” with applicable Federally-approved State Implementation Plan(s) (in particular, the of Transportation Control Measures); and in accordance with applicable Federal regulations, directives and other standards.
- c. Use of Public Lands. No publicly owned land from a park, recreation 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 a historic site national, State, or local significance may be used for this Purchase Order unless specific findings required by 49 U.S.C. § 303 are made by the U.S. DOT.
- d. Historic Preservation. The Vendor agrees to assist the Government to comply with Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation by:
- (1) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation regulations, “Protection of Historic and Cultural Properties,” 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by this Purchase Order, and notifying the Government (FTA) of the existence of any such properties; and
 - (2) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.
- e. Mitigation of Adverse Environmental Effects. Should the Vendor or Sub-contractors cause adverse environmental effect in the performance of this Purchase Order, the Vendor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Vendor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreements, and statements required by 49 U.S.C. § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Purchase Order by reference. If some or all mitigation measures are deferred, as soon as the Government and the Vendor agree on those measures, those agreed-upon measures will be incorporated into this Purchase Order. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government or the District.
- f. Recovered Materials. The Vendor 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 regulator 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.

- g. The Vendor agrees to report any violations to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate regional office. The Vendor also agrees to include these requirements in each subcontract exceeding One Hundred Thousand Dollars (\$100,000.00) financed in whole or in part with federal assistance provided by FTA.

14. **Cargo Preference:** The Vendor agrees, in those circumstances where equipment, materials, or commodities may be transported by ocean vessel in carrying out this Purchase Order:

- a. To utilize privately owned United States flag commercial vehicles to ship at least fifty (50) percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Purchase Order to the extent such vessels are available at fair and reasonable rates for United States flag commercial carriers.

- b. To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside of the United States, a legible copy of a rated "on-board" commercial bill of lading in English for each shipment of cargo described in paragraph "a" above to the District (through the prime Vendor in the case of Subcontractor bills of lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, DC 20590, marked with appropriate identification of this Purchase Order.

- c. To insert the requirements of this Section in all subcontracts issued pursuant to this Purchase Order when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. **Fly America:** To the extent that this Purchase Order involves the international transportation of goods, equipment, or personnel by air, the Vendor will use, to the extent that service is available, U.S. flag air carriers, consistent with the requirements set forth at 49 USC 40118 and 4 CFR Part 52.

16. **Labor Provisions.**

- A. **Minimum Wages**

- (1) 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 the 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 Vendor 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 29 CFR § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs that 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 at 29 CFR

§ 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 classification and wage rates conformed under 29 CFR § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Vendor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) a) The Contract Officer shall require that any class of laborers or mechanics, including helpers, that is not listed in the wage determination and that is to be employed under the Purchase Order shall be classified in conformance with the wage determination. The Contract Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

i) Except with respect to helpers as defined in 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

ii) The classification is utilized in the area by the construction industry; and

iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

iv) 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) The Vendor is required to follow the rules and regulations established as part of the Davis-Bacon Act. It is the responsibility of the

Vendor to periodically review these wage determinations to assure that the Vendor is using the most recent updates from the United States Department of Labor (DOL). The Vendor has the responsibility to obtain and use the latest updates of these wage determinations. The Vendor may access these wage determinations through the following .sam.gov website. Go to:

<https://beta.sam.gov/search?index=wd&keywords=&sort=-modifiedDate&wdType=dbra&page=1>

Select State: Indiana (or appropriate state) Select County: (LaPorte or appropriate county) Select Construction Type: Heavy

This will bring up the current prevailing wages required, which can be downloaded or printed."

c) If the Vendor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contract 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 Contract Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 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 Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

d) In the event the Vendor, the laborers or mechanics to be employed in the classification or their representatives, and the Contract Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contract Officer shall refer the questions including the views of all interested parties and the recommendation of the Contract 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 Contract Officer or will notify the Contract Officer within the thirty (30) day period that additional time is necessary.

e) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR § 5.5(a)(i)(1)(B) or 29 CFR § 5.5(a)(i)(1)(C), shall be paid to all workers performing work in the classification under this Purchase Order from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Purchase Order for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Vendor 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.

(4) If the Vendor does not make payments to a trustee or other third person, the Vendor 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 Vendor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Vendor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding. The District 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 Vendor, under this Purchase Order or any other federal contract with the same recipient or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Vendor, 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 Vendor or any sub-contractor the full amount of wages required by the Purchase Order. 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 Purchase Order, the District may, after written notice to the Vendor, 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.

C. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Vendor 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 Vendor 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 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 costs incurred in providing such benefits. Vendors 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.

- (2) a) The Vendor shall submit weekly for each week in which any Work is performed a copy of all payrolls to the District for transmission to the FTA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR §5.5(a)(3)(i). 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 No. 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Vendor 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 Vendor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Purchase Order and shall certify the following:
- i) That the payroll for the payroll period contains the information required to be maintained under 29 CFR §5.5(a)(3)(i) and that such information is correct and complete;
 - ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 at 29 CFR Part 3;
 - iii) 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 Purchase Order.
- 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 29 CFR §5.5(a)(3)(ii)(B).
- d) The falsification of any of the above certifications may subject the Vendor or subcontractor to civil or criminal prosecution under 18 U.S.C. §1001 and 31 U.S.C. §231.
- (3) The Vendor or subcontractor shall make the records required under 29 CFR §5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Vendor or subcontractor fails to submit the required records or make them available, the FTA may, after written notice to the Vendor, or the District, 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 make such records available may be grounds for debarment action pursuant to 29 CFR §5.12. Additionally, the Vendor must provide any union agreement to substantiate the wages they are paying their employees and subcontractors. This documentation shall include the one hundred (100) percent rate as well as any apprentice rates.

D. Apprentices and Trainees

(1) 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 ninety (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 Vendor 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 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 the Vendor is performing construction on a project in a locality other than that in which its program is registered, the ratio and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Vendor'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 journeyman 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits 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 Vendor 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.

(2) 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 that 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 Vendor 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.

(3) Equal Employment Opportunities. The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the Equal Employment Opportunity requirements of Executive Order No. 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements. The Vendor shall comply with the requirements of 29 CFR Part 3, which are incorporated herein by reference.

F. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR §5.5. may be grounds for termination of the Purchase Order, and for debarment as a Vendor and a subcontractor as provided in CFR § 5.12.

G. 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 incorporated herein by reference.

H. Disputes Concerning Labor Standards. Disputes arising out of the Labor Standards provisions of this Purchase Order shall not be subject to Section 50 (Disputes). 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 Vendor (or any of its subcontractors) and the contract ordering agency, the U. S. Department of Labor, or the employees or their representatives.

I. Certification of Eligibility.

(1) By entering into this contract, the Vendor certifies that neither it (nor he nor she) nor any person or firm that has an interest in the Vendor'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).

(2) No part of this Purchase Order shall be subcontracted out to any person or firm ineligible for award of a government Purchase Order by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR §5.12(a)(1).

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

J. Overtime Requirements. No Vendor or subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such Work to work in excess of forty (40) hours in such work week 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 (40) hours in such work week.

K. Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the requirements of 29 CFR §5.5(b)(1), the Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Vendor and subcontractor shall be liable to the United States (in the case of work done under Contract for the District of Columbia or a territory, to such district or to such territory) 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 29 CFR §5.5(b)(1) in the sum of Ten Dollars (\$10.00) for each calendar day on which such individual was required or permitted to work in payment of the overtime wages required by 29 CFR §5.5(b)(1).

L. Withholding for Unpaid Wages and Liquidated Damages. The FTA or the District 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 Vendor or subcontractor under any such contract or any other Federal Contract with the same prime Vendor or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clauses set forth at 29 CFR §5.5(b)(2).

M. Changes in Wage Rates. As wage rates are periodically changed/updated by the U.S. Department of Labor, it is the Vendor's responsibility to keep informed of and to pay

the most current wage rate in effect for each job classification throughout the entire construction period.

N. Subcontracts. The Vendor or subcontractor shall insert in all subcontracts the clauses set forth in Subsections “A” through “N” of this section, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Subsections “A” through “N” of this section.

17. Contract Work Hours and Safety Standards Act:

A. The Vendor agrees to comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 333, and applicable DOL regulations, Safety and Health Regulations for Construction: 29 CFR Part 1926. Among other things, the Vendor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

B. Subcontracts - The Vendor also agrees to include the requirements of this section in each subcontract. The term “subcontract” under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a Purchase Order for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a “subcontractor” under this section if the work in question involves the performance of construction work and is to be performed:

(1) directly on or near the construction site, or

(2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a “subcontractor” if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a “subcontractor.” The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

18. Bonding: To secure payment for labor and materials and full performance of the Work, the Vendor shall furnish bonds in the following type and amount:

A. Bid Bond in the amount of five percent (5%) of the bid must accompany each bid in accordance with the Invitation for Bids. Bid security shall be a certified check or bid bond and shall be the Bidder’s guarantee that said bidder will, if the contract is awarded to said bidder, execute within ten (10) days of acceptance of this bid, a contract for the work bid upon. All bid bonds shall be made payable to the Northern Indiana Commuter Transportation District, and be executed by a surety company authorized to do business in the State of Indiana; and

B. The successful Bidder shall furnish a Performance Bond in an amount equal to the contract Sum as security for the faithful performance of the contract. The Performance Bond must specify that:

1. a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
2. a defect in the public work contract; or
3. a defect in the proceedings preliminary to the letting and awarding of the public contract;

does not discharge the surety.

C. The successful Bidder shall also furnish a Payment Bond in an amount equal to the Contract Sum as security for the payment of all indebtedness for labor and service performed, material furnished, or services rendered. The Payment Bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services. The Payment Bond must specify that:

1. a modification, omission, or addition to the terms and conditions of the public work contact, plans, specifications, drawings or profile;
2. a defect in the public work contract; or
3. a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety.

The surety of the Payment Bond may not be released until one (1) year after the District's final settlement with the Vendor.

Should the Vendor's bonding company default, the Vendor will be responsible for securing a new bond within fourteen (14) calendar days. Bonds shall be in full force and effect for a period of at least twelve (12) months after the date of final completion.

C. The Bonds shall be executed by a surety company licensed to do business in the State of Indiana and listed in the U.S. Treasury Department Circular 570 as of the date of receipt of bids.

D. Provisions of the Bonds shall not limit any liability of the Vendor to the District.

E. The Bonds shall continue in full force and effect until receipt by the District of Vendor affidavits of payments, debts, claims and until final Acceptance of the Work.

F. All alterations, extensions of time, extra and additional work, and other changes authorized by the contract documents may be made without securing the consent of the Surety.

19. **Seismic Safety**. The Vendor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Vendor also agrees to ensure that all work performed under this Purchase Order including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

20. **Safety and Security**. Vendor shall at all times be responsible to enforce strict discipline and good order among its employees and provide such items as flagmen, barricades, danger signs etc., as are necessary for the protection of the property, its owner and employees, other Vendors, the District and the general public and insure compliance with all safety codes, laws and standards.

A. Safety Precautions and Programs. The Vendor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

B. Safety of Persons and Property. The Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(1) All employees on the Work and all other persons who may be affected thereby.

(2) All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Vendor.

(3) Other property at the site or adjacent thereto.

C. The Vendor shall give all notices to employees required by federal or state law.

D. Emergencies. In an emergency affecting the safety of persons or property, the Vendor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Vendor on account of emergency work shall be determined as provided in Section 20 (Changes).

21. **Drug and Alcohol Testing**: The use or possession of alcoholic beverages while on duty or on company property is prohibited. Employees must not have any measurable alcohol in their bodily fluids when reporting for duty, while on duty, or while on company property.

The use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely affect safe performance is prohibited while on duty or on company property, except medication that is permitted by a medical practitioner and used as prescribed. Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on company property.

Vendors are governed by FRA regulations and the District's Policy Number 16; Employee Relations as it pertains to providing materials and services to the District.

Vendors completing business transactions with the District are expected to have a Drug and Alcohol Policy in place.

22. **Patent, Copyright and Other Rights:**

a. If, in accordance with this Purchase Order, the Vendor furnishes research or development services in connection with the manufacture or delivery of the Goods and if, in the course of such research or development, patentable subject matter is produced by the Vendor, its officers, agents, employees, subcontractors or suppliers, then subject to the last sentence of this paragraph, the District shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or themselves or by anyone on its or their behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the District. Promptly upon request by the District, the Vendor shall furnish or obtain from the appropriate person a form of license satisfactory to the District, but as between Vendor and the District the license herein provided for shall nevertheless arise for the benefit of the District immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. In any case, however, if any patentable subject matter referred to in the first sentence of the paragraph is produced by a subcontractor or supplier, and, if, after the exercise of its best efforts to have such subcontractor or supplier furnish the form of license provided for in the second sentence of this paragraph, the Vendor is unable to have such subcontractor or supplier do so, then the license referred to in the first sentence of this paragraph shall not be deemed to have arisen with respect to such subcontractor or supplier, and the Vendor shall have no further obligation to procure the form of license referred to in the second sentence of this paragraph.

b. The right to use all patented material, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction as part of the Goods shall be obtained by the Vendor without separate or additional compensation, whether the same is patented before, during or after the manufacture and delivery of the Goods.

c. Subject to the provisions set forth below in this paragraph, the Vendor shall indemnify the District, its directors, officers, agents and employees against and save them harmless from all loss and expense incurred in the defense, settlement or satisfaction of

any claims in the nature of patent infringement arising out of or in connection with the use, in accordance with the preceding two paragraphs, of such patentable subject matter or patented material, compositions of matter, manufacturers, apparatus, appliances, processes of manufacture or types of construction; provided, however, that nothing in this Purchase Order shall be construed to require the Vendor to procure a patent license for or indemnify the aforementioned parties against patent claims arising out of or in connection with any patentable subject matter or patented material, compositions of matter, manufacturers, apparatus, appliances, processes or manufacture or types of construction, if the complete details of the patented or patentable aspects thereof are contained in the Purchase Order Documents in their present form to be of such manufacture, and, if there is a patent infringement and if Vendor notifies the District of such probability within ten (10) days after such order, then if the District does not cancel such order, it shall not be entitled, with respect to such item, to the indemnity provided for in the first sentence of the paragraph and the District shall indemnify the Vendor against and save it harmless from all loss and expense incurred by Vendor in the defense, settlement or satisfaction of any claims in the nature of patent infringement arising out of or in connection with the use of such item in the Goods provided that (1) the District is afforded the opportunity before any action is taken by Vendor to contest said claim in the manner and to the extent that the District may choose and to settle or satisfy said claim, and such attorney as the District may designate is authorized to act for the purpose of contesting, settling and satisfying said claim and (2) the Vendor gives immediate notice to the District of any such claim, cooperates with the District and its designated attorney in contesting said claim and furnishes promptly to the District and said attorney all information and documents necessary or convenient for contesting said claim, said information and documents to be preserved for six (6) years after the date of payment for the last unit of Goods delivered or longer if such a claim is pending or threatened at the end of such six (6) years. If the District elects to contest any such claim, it will bear the expense of such contest. If requested by the District and if notified promptly in writing of any claim as to which the Vendor shall conduct all negotiations with respect to, and defend, such claim without expense to the District. If the District is enjoined from using the equipment or any portion thereof as to which the Vendor is to indemnify the District against patent claims, the District may, at its option, and without thereby limiting any other right it may have hereunder at law or in equity, require the Vendor to supply at its own expense, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, and if the Vendor fails to do so, the Vendor shall, at its expense, remove all such facilities and refund the costs of the offending equipment to the District or take such steps as may be necessary to insure compliance by the District with such injunction, to the satisfaction of the District.

d. All drawings, parts, lists, data and other papers, to include electronic files, of any type whatsoever, whether in the form of writing, figures of delineations, which have been or may be received by from the Vendor, at any time either prior to or subsequent to the execution of this Purchase Order and which are prepared in connection with the Purchase Order and submitted to the District shall become the property of the District. Except to the extent that rights are reserved to others under existing valid patents and are not given to the District under this paragraph, the District shall have the right to use or permit the use of all such drawings, data, and other papers, and also any oral information of any nature

whatsoever received by the District, and any ideas or methods represented by such papers and information, for any purposes and at any time without other compensation than that specifically provided herein, and no such papers or information shall be deemed to have been given in confidence and any statement or legend to the contrary on any of said drawings, data, or other papers shall be void and of no effect.

23. **Disadvantaged Business Enterprise**: The DBE goal for this Purchase Order is ten and 56/100 (10.56) percent of the Purchase Order Price. The Vendor shall make good faith efforts to ensure that this goal is met and report DBE percentage to the District.

24. **Prompt Payment**: The Vendor also agrees to adhere to 49 CFR 26.29 which requires the prime Vendor to pay subcontractors for satisfactory performance of their contract no later than 30 days from receipt of each payment that the grantee makes to the prime Vendor. This clause must also require the prompt return of retainage payments from the prime Vendor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

25. **Recycled Products**: The Vendor 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.

26. **ADA Access**: Vendors must comply applicable requirements of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973, and USDOT/FTA implementing regulations.

27. **Special Notification for States**: Section 38 of FTA's Master Agreement provides: "To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided."

28. **APTA Standards**: The standards set-forth by the American Public Transportation Association also apply to Purchase Orders. For a complete list of recommended practices, see the APTA's *Process of Transit Procurement* at: <http://www.apta.com/resources/standards/Documents/APTA-PS-PP-RP-007-13.pdf>.

29. **Veterans Employment**. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that is Subrecipients:

a. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53 and;

b. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Revised: April 15, 2021