SUNLINE TRANSIT AGENCY
PURCHASE ORDER SOFTWARE & HARDWARE GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE OF PURCHASE ORDER (P.O.). These terms and conditions are made part of and govern the Purchase Order (P.O.). This P.O. Software and Hardware General Terms and Conditions constitutes an offer by the SunLine Transit Agency (SunLine) to the seller named in this P.O. (Vendor) subject to these terms and conditions. These terms and conditions will be a binding contract between SunLine and Vendor upon Vendor's acceptance of these terms and conditions either by acknowledgement or performance. SunLine shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.

2. INVOICES AND PAYMENT. The Vendor will perform all of the services described in the P.O. for the total amount listed in the P.O. The total all-inclusive sum will include all labor, materials, taxes, profit, overhead, insurance, subconsultant costs, licensing, warranty period commencing upon SunLine's issuance of final acceptance, hosting, support, maintenance, transition requirements and all other costs and expenses incurred by the Vendor. The Vendor will submit invoices monthly, unless specified otherwise in the P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. SunLine will pay for the software, hardware, and/or services within 30 calendar days of SunLine's approval of an invoice, as determined in its sole discretion.

3. INSTALLATION. Vendor will be responsible for installing the software on SunLine's system, ensuring compatibility with SunLine's IT system, and confirming that the software is functioning as intended.

4. INSPECTION AND ACCEPTANCE. All software, hardware, and related services are subject to SunLine's inspection and approval within a reasonable time after installation. If specifications are not met, the software, hardware, or services may be returned to Vendor at Vendor's expense. Vendor will pay all costs to re-deliver the software, hardware, or services that have been rejected by SunLine.

5. DELIVERY, TITLE, AND RISK OF LOSS. Unless otherwise indicated on the face of the P.O., delivery of any hardware shall be F.O.B. destination. COD shipments will not be accepted. Unless otherwise provided in the P.O., Vendor shall have title to and bear the risk of any loss or damage to the hardware ordered until they are delivered in conformity with the P.O. at the specified F.O.B. point. Upon such delivery, title shall pass from Vendor to SunLine and Vendor's responsibility for losses or damage shall cease, except for loss or damage occurring prior to or upon delivery, or loss or damage resulting from Vendor's negligence or intentional acts. Passing of title upon such delivery shall not constitute acceptance of the hardware and services by SunLine.

6. OWNERSHIP OF WORK. All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by Vendor will be and are the property of SunLine. Any such materials remaining in the hands of Vendor or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to SunLine. The Vendor may retain a copy of all material produced under this P.O. for its use in its general business activities. Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this P.O. are hereby assigned to SunLine. Vendor agrees to execute any additional documents that may be necessary to evidence such assignment. Vendor represents and warrants that all materials prepared under this P.O. are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this P.O. do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual property or proprietary right of any third party.

7. INTELLECTUAL PROPERTY PROVISIONS.

i. <u>Definitions</u>.

The term "Vendor Software" means any software reasonably necessary to operate or maintain any portions of the system that is a product or application of Vendor that pre-existed the execution of this P.O.

The term "Vendor Software Customizations" means any software reasonably necessary to operate or maintain any portions of the system that is a customization, modification, or other change or addition of or to Vendor Software made under this P.O.

The term "Third Party Software" means any software reasonably necessary to operate or maintain any portions of the system that does not constitute Vendor Software or Vendor Software Customizations.

The term "Materials" means any recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the P.O.—with examples including, but not be limited to: computer software documentation; changelogs; engineering drawings; specifications; standards; process sheets; manuals; technical reports; catalog item identifications; and related information—and for clarity, excluding financial, administrative, and cost and pricing information incidental to the work.

ii. <u>Grant of License</u>.

Vendor grants to SunLine a perpetual, unlimited, royalty-free, non-exclusive and irrevocable license for SunLine (including without limitation its officers, directors, employees, and agents) to install, use, copy, modify, and maintain the Vendor Software and the Vendor Software Customizations, with no limitation on the number of sites or users.

In providing the Software, Vendor will use only that Third-Party Software that has been expressly approved in writing by SunLine. Vendor will procure, maintain, and otherwise be responsible for all licenses for SunLine, in SunLine's name, for any such Third Party Software reasonably necessary to operate or maintain the Software. Vendor will provide to SunLine copies of such licenses, along with any related software or license documentation.

To the extent that any other licenses or permissions are reasonably desirable or necessary for SunLine to operate or maintain the software, Vendor hereby grants to SunLine to the maximum extent within its rights—or will procure for SunLine, in SunLine's name, to the maximum extent reasonably negotiable—any such licenses and permissions.

All rights and licenses granted under or pursuant to this P.O. are and will be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to "intellectual property," as defined under Section 101 of the U.S. Bankruptcy Code. The parties agree that SunLine, as a licensee of such rights under this P.O., will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing herein will be deemed to constitute a present exercise of such rights and elections.

iii. Patent and Copyright Warranties.

Vendor represents and warrants that any use of the software (or any portion of the software) by SunLine (or its officers, directors, agents, employees, or transit users) will not infringe or violate the patent, copyright, trade secret, or other intellectual property or proprietary rights of any third party.

Vendor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade secret, or other intellectual property or proprietary rights needed for the performance of its obligations under this P.O.—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by SunLine used on or incorporated in the work under this P.O. Vendor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

In case any such software, materials, equipment, devices, processes, or other materials are held to constitute an infringement and their use enjoined, the Vendor, at Vendor's sole cost and expense will: (a) secure for SunLine the right to continue using the materials, software, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses, or (b) replace such materials, equipment, devices, or processes with non-infringing materials, software, devices, or processes, or (c) modify them so that they become non-infringing or remove the enjoined materials, software, devices or processes and refund the sums paid for them without prejudice to any other rights of SunLine. If the amount of time necessary to proceed with one of these options is deemed excessive by SunLine, SunLine may direct Vendor to select another option or risk default.

iv. Patent Rights.

If any invention, improvement, or discovery of Vendor is conceived or first actually reduced to practice in the course of or under this P.O., which invention, improvement, or discovery may be patentable under the Patent Laws of the United States or any foreign country, Vendor will immediately notify SunLine and provide a detailed report. The rights and responsibilities of SunLine, Vendor, and the federal government (if federally-funded) with respect to such invention will be determined in accordance with applicable federal laws, regulations, policies and any waivers thereof.

v. Precedence.

In the event of any conflict between the provisions of this Section and the provisions of any separate software license, escrow, or otherwise related agreement, this Section will take precedence.

8. DATA PRIVACY. Vendor may have access to Personally Identifiable Information ("PII") in connection with the performance of the P.O. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, payment card information, ridership and travel pattern data. SunLine Personally Identifiable Information, or SunLine PII, means any PII relating to the SunLine's customers. Vendor must ensure and maintain the confidentiality, security, safety, and integrity of all SunLine PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of SunLine PII used or acquired in the performance of this P.O. Notwithstanding the generality of the foregoing requirements, Vendor will adhere to the following requirements concerning SunLine PII:

A. Vendor may not, except as authorized or required by law, reveal or divulge to any person or entity any SunLine PII that becomes known to it during the term of this P.O. Vendor may not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to SunLine.

B. Vendor must maintain policies and programs that prohibit unauthorized disclosure of SunLine PII and promote training and awareness of information security policies and practices. Vendor must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as SunLine may make to promote the safeguarding or confidentiality of SunLine PII.

C. Vendor must conduct background checks for employees or subcontractors that have access to SunLine PII or host SunLine PII.

D. Vendor must limit access to computers and networks that host SunLine PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection software.

E. Vendor agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code Sections 1798 et. seq.) and Civil Code Section 1798.81.5(b) by entering into this P.O. with SunLine. In addition, Vendor warrants and certifies that in the performance of this P.O., it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of SunLine PII, including the terms and conditions contained in this Section.

This Section will survive termination or expiration of this P.O.

9. DATA SECURITY. Vendor must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of SunLine PII pursuant to the minimum standards of care recommended by the California Attorney General in her February 2016 report (See https://oag.ca.gov/breachreport2016). In particular:

A. Vendor agrees to properly secure and maintain any computer, hardware and software applications, or electronic media that it will use in the performance of this P.O. This includes ensuring all security patches, upgrades, and anti-virus updates are applied to secure SunLine PII that may be used, transmitted, or stored on such software in the performance of this P.O.

B. Vendor, its employees, agents, Subcontractors, and consultants may not download or otherwise store any SunLine PII onto any Vendor computer, desktop, laptop, thumb drives, disks, or other portable memory device without such data being encrypted.

C. Vendor represents that its hosting environment is built upon a secure infrastructure, which undergoes examinations from an independent auditor in accordance with the minimum standards of care recommended by the California Attorney General in her February 2016 report (see above). For added security, Vendor will use multi-factor authentication when accessing the infrastructure. In addition to the independent audit, SunLine will have the right at any time, upon reasonable notice, to audit and inspect: (i) Vendor's facilities where the SunLine PII is stored or maintained; (ii) any computerized software used to share, disseminate or otherwise exchange SunLine PII; and (iii) Vendor's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures related to software where the SunLine PII is shared, disseminated or otherwise exchanged. The audit and inspection rights hereunder will be for the purpose of verifying Vendor's compliance with this P.O., and all applicable laws.

D. Vendor must process and store all SunLine PII in a single-tenant environment and at no time will SunLine PII be commingled with data of independent third-party users of Vendor's services.

E. Vendor must have vulnerability management programs to identify and minimize threats and risks on any software used to store or transmit SunLine PII.

F. Vendor represents that Vendor's management access to the hosting infrastructure is limited to authorized support staff. The security architecture has been designed to control appropriate logical access to the infrastructure to meet industry standards that meet or exceed the Trust Services Criteria and Principles for Security, Availability, Integrity, and Confidentiality established by the AICPA.

G. Notwithstanding anything to the contrary in this P.O., Vendor agrees to retain SunLine PII for no longer than three days after the completion date of this P.O. and the SunLine's confirmation that Vendor may proceed with such deletion. At the conclusion of this retention period, Vendor agrees to use U.S. Department of Defense ("DoD") –approved method and removal of SunLine PII from any files, with said service being included in the total cost of this P.O. Discarded SunLine PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips ("Storage Media"). Vendor agrees to destroy hard-copy documents containing SunLine PII by means of a cross-cut shredding machine. Vendor also agrees to use DoD—approved methods, or an alternate SunLine-approved method, to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this P.O., Vendor will submit a certification to the SunLine's Project Manager that all electronic or hard-copy format SunLine PII has been destroyed in accordance with the P.O.

This Section will survive termination or expiration of this P.O.

10. NOTICE OF SECURITY BREACH. Vendor must immediately notify the SunLine when it discovers that there may have been a data security incident that has or may have resulted in compromise to SunLine PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. Vendor must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert the SunLine of any such circumstances, including information sufficient for the SunLine to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of SunLine PII, Vendor will be liable for paying for the following costs to remediate any such unauthorized disclosure:

A. The reasonable cost of providing notice of the breach to individuals affected by such breach;

B. The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;

C. The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and

D. Any other service required by applicable law.

Vendor must provide any information and/or support to the SunLine in issuing the actual notification and, at the SunLine's sole discretion, Vendor must itself provide actual notification if the SunLine desires.

This Section will survive termination or expiration of this P.O.

11. SERVICE LEVEL AGREEMENT. The following additional requirements apply the software solution:

Application Availability. Vendor must provide 99.99% application availability and maintain logs establishing uptime and downtime for the duration of the P.O.

Actual Application Availability % = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100) and divided by Monthly Minutes (MM), but not including Excluded Events

Service Credit Calculation: An Outage will be deemed to commence when the Applications are unavailable to SunLine and end when Vendor has restored availability of the services. Failure to meet the 99.99% Application Availability, other than for reasons due to an Excluded Event, will entitle SunLine to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to the SunLine's monthly invoice for the affected month
<99.99% to 99.9%	10%
<99.9% to 99.75%	15%
<99.75% to 98.75%	25%
<98.75 to 97.75%	35%
<97.75%	50%

"Outage" means the accumulated time, measured in minutes, during which SunLine is unable to access the Applications for reasons other than an Excluded Event.

"Excluded Event" means any event that results in an Outage and is caused by (a) the acts or omissions of SunLine, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Vendor or its subconsultants; (c) Force Majeure events, excluding acts resulting in a breach of Confidential Information or Personally Identifiable Information; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the services in accordance with the terms of the Contract; (f) the unavailability of required SunLine personnel, including as a result of failure to provide Vendor with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

"Maintenance Period" means scheduled maintenance periods mutually agreed upon by SunLine and Vendor to maintain and update the services, when necessary. During these Maintenance Periods, the Services are available to Vendor to perform periodic maintenance services, which include vital software updates. Vendor will use its commercially reasonable efforts during the Maintenance Period to make the services available to SunLine; however, some changes will require downtime. Vendor will provide notice for planned downtime via an email notice to the primary SunLine contact at least one day in advance of any known downtime so planning can be facilitated by SunLine.

"Monthly Minutes (MM)" means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.

"Total Minutes Not Available (TM)" means the total number of minutes during the calendar month that the services are unavailable as the result of an Outage.

12. **TRANSITION**. Upon the termination or expiration of this P.O., Vendor must cooperate fully with the SunLine, and any successor consultant to provide to the SunLine, and any successor consultant, electronic copies of all branding materials, logos, reports, designs, drawings, plans, specifications, schedules, information, payment history, payment records, and other materials prepared, or in the process of being prepared for the services to be performed by Vendor ("Work Product") to ensure a smooth transition to a new software solution. All SunLine PII must be protected, kept secure, and transmitted securely at all times in accordance with the terms of this P.O.. All Work Product must be provided in a format that is usable by the successor consultant, such as latest version of Microsoft WORD and/or EXCEL. If the SunLine terminates the P.O., Vendor must begin preparing all Work Product to allow for a smooth transition to a successor consultant or to permit the SunLine to operate a similar software solution in the future. Within 30 calendar days of the SunLine's termination of the P.O., Vendor must transfer all other Work Product, including written reports, data, and other relevant information, to the SunLine and the successor consultant. SunLine will withhold payment of Vendor's final invoice until Vendor has ensured a smooth transition to the successor consultant or transmitted all required documents for SunLine's records, as determined by SunLine in its sole discretion. Upon expiration of this P.O., Vendor must transfer all other Work Product, including written reports, data, and other relevant information, to SunLine and the successor consultant (if applicable). The SunLine will withhold payment of Vendor's final invoice until Vendor has ensured a smooth transition to the successor consultant or transmitted all required documents for SunLine's records, as determined by the SunLine in its sole discretion.

13. **CONFIDENTIALITY**. Any SunLine materials that Vendor has access to or materials prepared by Vendor during the course of this P.O. ("confidential information") will be held in confidence by Vendor, which will exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of Vendor as necessary to accomplish the rendition of services set forth in the P.O. Vendor, its employees, subcontractors, subconsultants and agents, will not release any reports, information, or other materials prepared in connection with this P.O., whether deemed confidential or not, without the approval of SunLine.'s General Manager/CEO or designee.

14. **SOFTWARE WARRANTY**. Vendor warrants for the duration of the services, the unmodified software will substantially conform to the software documentation under normal use and service. If the software does not meet this warranty standard, Vendor will, at SunLine's option: (1) replace any defective products at no additional charge to SunLine; (2) repair, correct, or provide a workaround for the applicable products or services at no additional charge to SunLine; or (3) refund the fees paid by SunLine for products or services that do not meet the warranty standard, provided that SunLine uninstalls, removes, and destroys all copies of software or documentation and ceases using the software or services. The rights and remedies of SunLine provided herein will not be exclusive and are in addition to any other rights and remedies provided by law or under the P.O..

15. **HARDWARE WARRANTY**. Vendor warrants that all hardware provided and/or work performed under the P.O. (i) comply with all specifications and conditions of SunLine and the manufacturer's warranty and (ii) are free from patent and latent defects in design, materials, and workmanship. Work shall comply with nationally recognized codes and established industry standards. Hardware shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of the hardware and/or work. Vendor agrees to remedy by replacing or repairing any hardware that is damaged or defective during normal usage within the warranty period, at no additional cost to SunLine. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of SunLine. Vendor agrees that by acceptance of this warranty and acceptance of the hardware provided by Vendor, SunLine does not waive any warranty, either expressed or implied in Sections 2312-2317, inclusive, of the Commercial Code of the State of California or of the United States.

16. **FEDERAL, STATE AND LOCAL LAWS**. All software, hardware, and services furnished pursuant to the P.O. shall comply with all applicable federal, state and local laws and regulations.

17. **FTA TERMS AND CONDITIONS**. Appendix A, Federal Transit Administration Clauses, of these Terms and Conditions is hereby incorporated by this reference.

18. **GOVERNING LAW**. The P.O. is made in the State of California and shall in all respects be construed and governed by the laws of that state.

17. **INDEMNIFICATION**. To the fullest extent allowed by law, Vendor shall indemnify, keep and save harmless SunLine and its directors, employees, officials and agents from any and all suits, claims, actions, losses, damages, and/or liability arising out of any of the following: (i) any injury to or death of any person or any damage to property that may occur, or that may be alleged to have occurred, arising from Vendor's performance of the P.O., caused by a negligent act or omission or willful misconduct of Vendor or its employees, subcontractors or agents and not caused by SunLine's sole negligence; (ii) any allegation that software, materials, or services provided by Vendor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual property or proprietary right of any third party; or (iii) any disclosure or allegation thereof of SunLine PII. Vendor will defend any and all such actions, suits or claims, with counsel acceptable to SunLine in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against SunLine, or any of the other individuals enumerated above in any such action, Vendor will, at its expense, satisfy and discharge the same. This indemnification shall survive termination, cancellation or expiration of the P.O.

18. **INSURANCE**. Vendor shall maintain workers' compensation insurance in accordance with state requirements. Vendor shall also maintain professional liability, including network security, privacy, and media insurance, and commercial general liability insurance, including automobile liability insurance, in the amount of at least $2,000,000 per claim. SunLine reserves the right to require submittal of a certificate of insurance naming the SunLine, its directors, officers, employees and agents as additional insureds. In addition, Vendor shall maintain professional liability insurance if applicable.

19. **CHANGES**. SunLine may suspend the P.O. or make changes in any terms and conditions governing the P.O. at any time. If any change causes a change in the price or in the time required for its performance, Vendor shall promptly submit its claim for adjustment in writing to SunLine. All changes shall be by confirmed written amendment issued by SunLine. Nothing in this clause excuses Vendor from proceeding immediately with the P.O. as changed.

20. **TERMINATION**. SunLine may terminate the P.O. in whole or in part for SunLine's convenience or for cause if Vendor fails to fulfill its contractual obligations. SunLine will specify the nature, extent, and effective date of the termination. Upon receipt of the notice, Vendor shall: (a) immediately discontinue all services affected, and (b) deliver to SunLine all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. SunLine will have all remedies as may be available whether or not it terminates the P.O., including, but not limited to, the payment by Vendor to SunLine of any expenses incurred by SunLine in reprocuring from another source the same or similar software or services that Vendor failed to furnish satisfactorily. SunLine will only pay for those services performed satisfactorily up to the date of termination

21. **ASSIGNMENTS AND SUBCONTRACTING**. Neither this P.O. nor any interest nor claim hereunder may be assigned or subcontracted by Vendor either voluntarily or by operation of law, without the prior consent of SunLine. Consent shall not be deemed to relieve Vendor of its obligations to comply fully with the requirements thereof.

22. **WAIVER**. The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

23. **PRECEDENCE**. In the event of conflict between these Terms and Conditions and the terms contained in any other agreements, proposals, or attachments relating to this P.O., these Terms and Conditions will govern.

24. **QUESTIONS**. Questions regarding the Terms and Conditions herein are to be directed to: Ray Stevens, Deputy Chief of General Services (760) 343-3456 x1521 or rstevens@sunline.org

Appendix A: Federal Transit Administration Clauses

In its performance of the Agreement, Vendor/Contractor/Consultant will comply with all of the applicable Federal Transit Administration (FTA) clauses:

DEFINITIONS. The following definitions apply to these federal terms and conditions:

a. "Agency" means the SunLine Transit Agency.
b. "Agreement" means the agreement to which these Federal Terms and Conditions apply.
c. "Bid" means bid, proposal, or offer.
d. "Bidder" means bidder, proposer, or offeror.
e. "Contractor/Consultant" means the person or entity named in the Purchase Order (Vendor), Bid, Proposal or Agreement to which these Federal Terms and Conditions apply.
f. "FTA" means the Federal Transit Administration.
g. "U.S. DOT" means United States Department of Transportation.

CLAUSES

1. **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.** - The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

2. **ACCESS TO RECORDS AND REPORTS**. The following access to records requirements apply to this Agreement:
   a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
   b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract 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 Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337
   c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
   d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

3. **CIVIL RIGHTS REQUIREMENTS.** Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.
   a. *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, disability, or age. In addition, the Contractor 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 Agreement:
      i. 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.
      ii. 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. Further, Contractor shall not discriminate on the basis of age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
      iii. 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. § 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.
      iv. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
   c. During the performance of this contract, the Contractor agrees as follows:
      i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
      ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
      iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
      iv. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
      v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
      vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
      vii. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
      viii. The contractor will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. **DISADVANTAGED BUSINESS ENTERPRISES.**
   a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, as amended.

b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Agency 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 (see 49 CFR 26.13(b)).

c. Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance of this Agreement.

d. Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Agency. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Agency and Contractor's receipt of the partial retainage payment related to the subcontractor's work. These prompt payment and return of retainage requirements also apply to all subcontractors and all tiers.

e. For contracts in which there is a DBE contract goal, the Contractor must promptly notify Agency whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Agency.

5. **ENERGY CONSERVATION.** - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act(42 U.S.C.§ 6201).

6. **FEDERAL CHANGES.** – Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Agreement.

7. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

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

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

8. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the Agreement, the Contractor 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 Agreement or the FTA assisted project for which the Services are being performed. In addition to other penalties that may be applicable, the Contractor 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 Contractor to the extent the Federal Government deems appropriate.

b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by 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 Contractor, to the extent the Federal Government deems appropriate.

c. The Contractor agrees to include the above two clauses in each subcontract 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 subcontractor who will be subject to the provisions.

9. **NOTICE TO THIRD PARTY PARTICIPANTS** - Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

10. **NOTIFICATION TO FTA** - If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify the Agency, which must then promptly notify the FTA Chief Counsel and FTA Regional Counsel for Region 9. Contractor must include an equivalent provision in its sub agreements at every tier for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

a. Types of Legal Matters Requiring Notification. 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.

b. Matters Affecting the Federal Government. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the Contract, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

c. Additional Notice to U.S. DOT Inspector General. Contractor must promptly notify the SunLine, which must then promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for Region 9 if Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Contract or another agreement between the SunLine and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the SunLine. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision also applies to all divisions of the SunLine, including divisions tasked with law enforcement or investigatory functions.

11. **DISPUTES** - Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide be the decision.

12. **TRAFFICKING IN PERSONS** - The contractor agrees that it and its employees that participate in the Recipient's Award, may not: Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect; Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.

13. **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS** – By submitting a bid or proposal, the Contractor certifies that it (1) does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and (2) has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months. The Contractor must flow this requirement down to subcontractors and vendors at all lower tiers.

14. **SAFE OPERATION OF MOTOR VEHICLES** – 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 Contractor or Agency. Contractor shall 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 shall insert the substance of this clause, including this paragraph, in all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

15. **PROMPT PAYMENT** - The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

16. **AMERICANS WITH DISABILITIES ACT (ADA)** - The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

17. **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 and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The 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.

18. **PATENT AND RIGHTS IN DATA**

a *Rights in Data*

i. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

ii. The following restrictions apply to all subject data first produced in the performance of the Agreement:

1. Except for its own internal use, the Agency or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Agency or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
2. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
   a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
   b. Any rights of copyright purchased by the Agency or Contractor using Federal assistance in whole or in part provided by FTA.
3. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Agency and the Contractor performing experimental, developmental, or research work required by the Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Agreement, is not completed for any reason whatsoever, all data developed under the Agreement shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for the Agency or Contractor’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
4. Unless prohibited by state law, upon request by the Federal Government, the Agency and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Agency or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Agency nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
5. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. Data developed by the Agency or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the Agreement is exempt from the requirements of subsections (2), (3), and (4) of this clause, provided that the Agency or Contractor identifies that data in writing at the time of delivery of the contract work.
7. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

iv. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

b. *Patent Rights*

i. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Agency and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

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

iii. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

19. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION - The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Non-procurement 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 Governmentwide Debarment and Suspension (Non-procurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the 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 ay federally assisted Award. By signing this agreement or by signing and submitting its bid or proposal, the Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by the Agency. If it is later determined by the Agency that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

20. CLEAN AIR - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

21. CLEAN WATER - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

22. LOBBYING – Contractor shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Agency.

23. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE –Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

24. RECYCLED PRODUCTS AND SOLID WASTES - Contractor shall 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 Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 CFR part 247. The requirements of Section 6002 include: (A) 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; (B) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (C) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

25. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT - The Agency is prohibited from obligating or expending loan or grant funds to: procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Contractor shall not provide covered telecommunications equipment or services in the performance of the Contract. As described in Public Law 115-232, section 889, covered telecommunications equipment is: (A) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (B) video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes; (C) Telecommunications or video surveillance services provided by such entities or using such equipment; and (D) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country

26. **SECTION 508 OF THE REHABILITATION ACT** - Section 508 of the Rehabilitation Act (Section 508) requires that all Information and Communication Technology (ICT) be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. The Contractor will ensure that all ICT meets the requirements of Section 508, as amended, 36 CFR Part 1194, and current website accessibility standards. As defined in Appendix A, E103.4, of 36 CFR Part 1194, ICT is "[i]nformation technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and, electronic documents."

27. **CARGO PREFERENCE** - Contractor shall:

a. Use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;

b. Furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.)

c. Include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.