



## STANDARD TERMS AND CONDITIONS

"Contractor" as used in these Standard Terms and Conditions means the third-party contracting with the Sonoma-Marín Area Rail Transit District (hereinafter "SMART") to provide Goods and/or Services to SMART. The Purchase Order (hereinafter "PO"), these Standard Terms and Conditions and any other terms, conditions, standards, drawings, schedules, or other documents identified in the PO form the "Agreement" related to the applicable PO. The terms "Goods" and "Services" are intended to have their broadest meanings. "Goods" includes any equipment, parts, materials, supplies, project deliverables, and work product supplied by Contractor in accordance with the PO. "Services" includes labor, professional services, and any manual, technical, and other human resources provided in the fulfillment of the PO, including those specified in the PO and any additional Services incidental to the furnishing of Goods.

**1. AGREEMENT:** SMART has contracted with Contractor to provide goods and/or services via a PO. The terms in this document, the aforementioned PO, Contractor's bid or proposal, and, if applicable, any SMART solicitation documents, shall be referred to in total as the Agreement.

**2. DELIVERY:** Delivery of all goods and services constitutes acceptance of these terms. Deliveries shall be F.O.B. Destination, transportation and handling charges paid by Contractor, unless stated otherwise in this PO. Responsibility for loss or damage remains with Contractor until after final inspection and acceptance, at which time responsibility shall pass to SMART except as to latent defects, fraud, and Contractor's warranty obligations. SMART reserves the right to reject C.O.D. shipments.

**3. INSPECTION & ACCEPTANCE:** All goods furnished under this PO are subject to final inspection and acceptance by SMART at the destination identified in SMART's PO notwithstanding any payment or prior inspection at Contractor's facilities. Final inspection will be made within a reasonable time after receipt of goods hereunder. If SMART reasonably finds that goods are incomplete or not in compliance with specifications, SMART may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price. If Contractor is unable or refuses to cure any defects within a reasonable time, SMART may reject the goods and cancel the P.O. in whole or part.

**4. WARRANTIES:** Unless otherwise stated, all goods shall be new and current model and shall carry all manufacturer warranties. Contractor warrants all goods to be free from defects in labor, materials and manufacture and to be in compliance with the PO specifications. SMART may return any goods or materials which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods and materials shall, unless used by SMART, remain the property of Contractor and may be returned at Contractor's risk and expense. Contractor shall reimburse SMART for all prior payments therefor and/or costs incurred in connection with delivery or return of such goods or materials.

**5. VARIATION IN QUANTITY OR QUALITY:** SMART will not accept variations in the quantity or quality of any good or service required under the Purchase Order. Goods, which are not provided in accordance and conformity with the specifications or guidelines of a Purchase Order, will be deemed rejected immediately upon delivery with no additional action required by SMART, and Contractor at its sole cost and expense will promptly remove these rejected goods from SMART's premises.

**6. CHANGES:** The terms of this PO shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of SMART.

**7. USE OF RECYCLED PAPER:** SMART requires that all printing jobs produced under this Agreement be printed on recycled-content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent post-consumer fiber by weight.

**8. SALES AND USE TAX:** Unless otherwise specified on the PO, Contractor acknowledges that prices stated in the order portion of this Agreement include sales or use tax.

**9. MATERIAL SAFETY DATA SHEET (MSDS):** It is mandatory for Contractor to supply an MSDS with the first shipment of any merchandise that contains hazardous material.

**10. STATE, AND LOCAL LAWS:** Contractor warrants that in the performance of this Agreement, it shall comply with all State of California and local laws, ordinances, and regulations.

**11. CONFORMITY TO LEGAL REQUIREMENTS:** Contractor shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local. Contractor represents and warrants to SMART that it has all necessary licenses, permits, qualifications, and approvals, of whatever nature, that are legally required for Contractor to practice its profession.

**12. ENVIRONMENTAL COMPLIANCE:** Contractor will comply with all applicable environmental statutes, regulations, and guidelines, including hazardous waste disposal laws and regulations. Contractor will bear full and exclusive responsibility for all claims and expenses associated with the transport, disposal or removal or remediation of any release of hazardous or non-hazardous substances when performing all work under this Agreement. Contractor will hold harmless, indemnify, and defend SMART from any claims, suits, or actions arising from such disposal or release.

**13. INDEMNIFICATION:** Contractor shall indemnify, defend, and save harmless SMART from and against any loss, damage, claim, or harm for bodily injuries, including death, or damage to property caused by Contractor or its employees, subcontractors, or suppliers in connection with the performance of this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Contractor's performance or obligations under this Agreement.

**14. INFRINGEMENT INDEMNITY:** In lieu of any other warranty by SMART or Contractor against infringement, statutory or otherwise, it is agreed that Contractor shall defend at its expense, any suit against SMART based on a claim that any item furnished under this Agreement or the normal use or sale thereof infringes any United States Letters Patent or copyright and shall pay cost and damages finally awarded in any such suit, provided that Contractor is notified in writing of the suit and given authority, information, assistance at Contractor's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Contractor, at no expense to SMART shall obtain for Contractor the right to use and sell said item or shall substitute an equivalent item acceptable to SMART and extend this patent indemnity hereto.

**15. STANDARD OF CARE:** Contractor's services shall be performed in acceptance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

**16. PAYMENT TERMS:** Payment shall be made Net 30 unless otherwise stated on the Purchase Order. Payments may be withheld if Contractor is not performing work in accordance with the applicable provisions of the Agreement. The time for payment of invoices shall run only from the date of receipt of correct invoices. Contractor must submit its invoice within thirty (30) days of completing the order or performance of work.

**17. PROMPT PAYMENT:** Not later than ten (10) days after receipt of each progress payment from SMART, the Contractor shall pay to any subcontractor performing under this Agreement, the respective amounts owed to the subcontractor for its work in accordance with California Public Contract Code Section 7101, unless otherwise agreed to in writing.

**18. PRICES:** Notwithstanding the prices set forth in this Purchase Order, SMART shall receive the benefit of any general reduction in the price of any item(s) listed herein.

**19. FORCE MAJEURE:** Neither party shall be held liable for failure or delay caused by wildfire, flood, earthquake, hurricane, or tornado.

**20. INDEPENDENT CONTRACTOR:** Contractor hereby declares that it is an independent business and agrees that in the performance of this Agreement it shall act as an independent Contractor and not as an employee of SMART. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

**21. ASSIGNMENTS AND SUBCONTRACTORS:** Neither this Agreement nor any interest herein nor claim hereunder may be assigned by Contractor either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by Contractor without the prior written consent of SMART. No consent shall be deemed to relieve Contractor of its obligations to comply fully with the requirements hereof.

**22. PREVAILING WAGE:** If the Purchase Order requires services that are subject to prevailing wage requirements pursuant to California Labor Code §1720 et seq. ("covered work"), Contractor and its subcontractors shall pay no less than the prevailing wage rates to all workers. These prevailing wage rates are available online at <https://www.dir.ca.gov/DLSR>. The work will be subject to compliance monitoring and enforcement by the DIR, pursuant to Labor Code §1771.4.

**23. CONFLICT OF INTEREST:** Contractor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of California to any employee, officer, or agent of SMART to secure favorable treatment with respect to being awarded the Agreement.

**24. EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant because of race, religion, color, gender, marital status, disability, national origin, or any other persons on the basis of characteristics prohibited by applicable federal or California law. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to any such characteristics. Covered actions shall include, but not be limited to the following:

employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

**25. SYSTEM AND DATA SECURITY:** For purposes of this Agreement, SMART Data means: All information, data, and other content, including Sensitive Information and other information, whether or not made available by SMART or SMART agents, representatives or users, to Contractor or its employees, agents, representatives, or subcontractors, and any information, data, and content directly derived from the foregoing, including data reflecting user access or use. SMART Data is at all times exclusively owned by SMART and shall not be reused, sold, transferred or provided to anyone for any reason without SMART's permission. Contractor shall immediately inform SMART in the event of improper release of SMART Data. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other personally identifiable information protected by California law. Contractor shall bear full responsibility for ensuring that any product or service provided does not introduce, via any means, any spyware, adware, ransomware, rootkit, keylogger, virus, trojan, work, or any other malicious code or mechanism designed to permit unauthorized access or recording of SMART Data, or which may restrict any authorized user's access to or use of SMART Data. Contractor shall not use for financial gain, disclose, or make other improper use of SMART Data or Sensitive Information that is acquired in connection with the Agreement. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out the Agreement, shall be protected by the receiving party from unauthorized use and disclosure.

**26. OWNERSHIP OF WORK PRODUCT:** All work product of the Contractor specifically created for SMART under this Agreement (the "Work Product") is the exclusive property of SMART. SMART and the Contractor agree that such Work Product is "work made for hire" of which SMART is deemed to be the author. If for any reason the Work Product is not deemed "work made for hire," the Contractor hereby irrevocably assigns to SMART all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Contractor shall execute such further documents and instruments as SMART, or both, may reasonably request in order to fully vest such rights in SMART. SMART is a third-party beneficiary under this Paragraph.

**27. AUDIT AND INSPECTION OF RECORDS:** Contractor shall provide SMART such access to Contractor's books, records, and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. Contractor shall maintain such books, records, data, documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during Contractor's performance hereunder and for a period of four (4) years from the date of final payment by SMART hereunder.

**28. ECONOMIC SANCTIONS:** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. Government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. SMART is prohibited from contracting with individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should SMART determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement.

**29. PUBLIC DISCLOSURE:** SMART is subject to the California Public Records Act. Contractor acknowledges that the Agreement and related materials (invoices, orders, deliverables, etc.) will be public documents as required by the Public Records Act.

**30. WAIVER:** SMART's failure to enforce any provision of this PO shall not constitute a waiver or relinquishment of SMART's right to such performance, nor of its right to enforce any other provision of the PO.

**31. APPLICABLE LAW AND FORUM:** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Sonoma.

**32. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS:** This Agreement constitutes the entire agreement and understanding between SMART and Contractor, and supersedes all offers, negotiations and other Agreements concerning the subject matter contained herein. There are no third-party beneficiaries and there are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement must be in writing and SMART Standard Terms and Conditions

executed by both parties hereto. SMART shall not be bound by any conflicting terms in Contractor's invoices or emails.

## **REQUIRED CLAUSES FOR FEDERAL FUNDS**

SMART is a direct grantee of the Federal Transit Administration ("FTA") and the Federal Railroad Administration ("FRA") which funds SMART's purchases of goods, equipment, services, and construction projects. It is the responsibility of the Contractor to ensure that all clauses applicable to the work are adhered to by the Contractor and its subcontractors when applicable. It is the responsibility of the Contractor to ensure that all clauses applicable to the work of the Agreement are passed through by the Contractor to its subcontractors in their contracts when applicable.

*In the event that any of the terms and conditions included in this section, "Required Clauses for Federal Funds", conflict with any of the previous terms and conditions, the terms and conditions in this section, "Required Clauses for Federal Funds", shall prevail.*

### **33. GENERAL**

In performance of its obligations pursuant to this Purchase Order, the Contractor agrees to comply with all applicable provisions of federal, state and local law, regulations, and FTA and FRA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA or FRA directives, and amendments to the grant or cooperative agreement providing funding for this Purchase Order that may be subsequently adopted, are applicable to the Purchase Order to the maximum extent feasible, unless the FTA or FRA provides otherwise in writing. The Federal or State regulations set forth in this Purchase Order are subject to change, and such changed requirements will apply to this Purchase Order as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this document. Contractor's failure to comply with these requirements shall constitute a material breach of this Purchase Order and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

### **34. ACCESS TO RECORDS AND REPORTS**

**Applicability:** Applicable to all contracts.

The Contractor shall comply with the following requirements:

(a) **Record Retention.** 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 Purchase Order, including, but not limited to, data, documents, reports, statistics, sub-Contracts, 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. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Purchase Order for a period of at not less than three (3) years after the date of termination or expiration of this Purchase Order, except in the event of litigation or settlement of claims arising from the performance of this Purchase Order, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) **Access to Records.** The Contractor agrees to provide access to the FTA and FRA and its contractors to inspect and audit records and information related to performance of this Purchase Order as reasonably may be required. Contractor shall also permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Purchase Order. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Purchase Order.

(d) **Access to the Site of Performance.** The Contractor agrees to permit FTA, FRA, and its Contractor's access to the sites of performance under this Purchase Order as reasonably may be required.

(e) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Purchase Order at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Purchase Order, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine, inspect, make copies, or excerpts of all work, documents, papers, materials, payrolls, books and accounts, and data pertaining to this Purchase Order and to inspect and re-examine said work, documents, papers, materials, payrolls, books, records, accounts and data during the life of the Purchase Order and for the three (3) year period following the final payment under this Purchase Order, and Contractor and its subcontractors shall in no event dispose of, destroy, alter or mutilate said work, documents, papers, materials, payrolls, books, records, accounts and data in any manner whatsoever for three (3) years after final payment under this Purchase Order and all pending matters are closed.

Any costs for which Contractor and its subcontractors have received payment that are determined by subsequent audit to be unallowable under the terms of this Purchase Order may be required to be repaid to SMART by the Contractor and its subcontractors. Should Contractor and its subcontractors fail to reimburse money due SMART within 30 days of demand, or within such other period as may be agreed between the parties hereto, SMART is authorized to withhold future payments due Contractor and its subcontractors from any source.

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Purchase Order shall contain all the provisions of this section.

### 35. ADA ACCESS

**Applicability:** Applicable to all construction, architecture & engineering, operations management, and rolling stock contracts.

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

### 36. BUY AMERICA

**Applicability:** Applicable to all rollingstock purchases, materials and supplies contracts, and construction contracts in excess of \$150,000.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR §200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA or FRA funded projects are produced in the United States, unless a waiver has been granted by FTA or FRA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements. The bidder or offeror must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

#### Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- 1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- 2) all manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- 3) all construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

#### **Waivers:**

When necessary, recipients may apply for, and the Agency may grant, a waiver from these requirements. The Agency should notify the recipient for information on the process for requesting a waiver from these requirements.

- a) When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:
  - 1) applying the domestic content procurement preference would be inconsistent with the public interest;
  - 2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
  - 3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver.

#### Definitions:

"Construction materials" includes an article, material, or supply--other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives--that is or consists primarily of:

- Non-ferrous metals;
- Plastic and Polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall

"Domestic content procurement preference" means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

"Infrastructure" includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

"Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States.

### 37. LOBBYING

**Applicability:** Applicable to all contracts in excess of \$100,000.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal 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 certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. 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 SMART.

### 38. CARGO PREFERENCE

**Applicability:** Applicable to all rolling stock purchases, materials & supplies, and Construction contracts which require transportation by ocean vessels.

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

### 39. CHARTER SERVICE

**Applicability:** Applicable to all Operations & Management Contracts

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA or FRA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental", i.e., it must not interfere with or detract from the provision of mass transportation.

### 40. CIVIL RIGHTS

**Applicability:** Applies to all Contracts.

The following Federal Civil Rights laws and regulations apply to this Purchase:

- 1. Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2. Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3. Nondiscrimination 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.
- 4. Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party Contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### Civil Rights and Equal Opportunity

The Sonoma-Marina Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, SMART agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA or FRA to support procurements using exclusionary or discriminatory specifications. Under this Purchase, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 1. 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 or FRA may issue.
- 2. 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 or FRA may issue.
- 3. 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 or FRA may issue.
- 4. 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 or FRA may issue.
- 5. 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.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA or FRA.

### 41. CLEAN AIR ACT

**Applicability:** Applicable to all Contracts in excess of \$150,000.

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. §§ 7401-7671(q) et seq. The Contractor agrees to report each violation to SMART, the FTA or FRA, and the Regional Office of the Environmental Protection Agency. 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 the FTA or FRA.

### 42. CLEAN WATER ACT

**Applicability:** The Clean Water requirements apply to each contract and subcontract that exceeds \$150,000.

- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 - 1377 et seq.
- (2) The Contractor agrees to report each violation to the SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the FTA or FRA, and the appropriate Environmental Protection Agency Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368.
- (3) The Contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C.

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- (4) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA or FRA."

#### 43. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

**Applicability:** Applicable to all ITS Contracts

Intelligent Transportation Systems (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects", 66FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA or FRA may issue. 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.

#### 44. DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT

**Applicability:** Applicable to all Construction Contracts

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to SMART's construction contracts and subcontracts that "at least partly are financed by a loan of grant from the Federal Government". 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. Construction for purposes of the Acts, include "actual construction, alteration, and/or repair, including painting and decorating" as defined by 29 CFR 5.5(a).

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act 40 USC 3141, et seq and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction" 29 CFR Part 5.

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

SMART has attached to the Agreement a copy of the current prevailing wage determination issued by the Department of Labor which must be adhered to by the Contractor and all subcontractors. Contractor shall report all suspected or reported violations to the SMART who will intern report all violations to the Federal awarding agency.

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA or FRA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### 45. SUSPENSION AND DEBARMENT

**Applicability:** Applicable to all contracts in excess of \$25,000.

This purchase is a covered transaction for purposes of 49 CFR Part 18. As such the Contractor is required to verify that the Contractor, nor its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).

C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

By accepting the Purchase Order, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the SMART. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to SMART, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 CFR 180 throughout the period of this Purchase Order.

#### 46. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

**Applicability:** Applicable to all Contracts

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Purchase Order. The Contractor shall carry out applicable requirements of 49 C.F.R. 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 Purchase Order, which may result in the termination of this Purchase Order or such other remedy as SMART 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. 49 C.F.R. § 26.13(b).
- (5) Termination of the Purchase Order

The Contractor shall report its DBE participation obtained through race-neutral means through the period of performance with all invoices submitted.

The Contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The Contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the Contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of the Purchase Order, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the Contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the Contractor determines the work of the subcontractors to be unsatisfactory, the Contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the Contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the Purchase Order.

Should SMART make incremental inspections and, upon approval of the Contractor's work at various stages of the Purchase Order, pay a portion of the retainage, the Contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance.

The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Purchase Order 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 SMART. In this situation, the Contractor shall provide copies of new or amended subcontracts, or documentation of good faith efforts. If the Contractor fails or refuses to comply in the time period specified, SMART will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the Contractor still fails to comply, SMART may issue a termination for default proceeding.

It is the policy of SMART and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

#### 47. DHS SEAL, LOGO, AND FLAGS

**Applicability:** Applicable to all Contracts.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA or FRA pre-approval.

#### 48. ENERGY CONSERVATION

**Applicability:** Applicable to all Contracts

The Consultant 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. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

#### 49. FEDERAL CHANGES

**Applicability:** Applicable to all Contracts.

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

#### 50. FLY AMERICA

**Applicability:** Applicable to all Contracts.

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. If a foreign air carrier is used, the Contractor shall submit 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.

#### 51. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) or FEDERAL RAILROAD ADMINISTRATION (FRA) TERMS

**Applicability:** Applicable to all Contracts.

Incorporation of Federal Transit Administration (FTA) or Federal Railroad Administration (FRA) Terms - The provisions within 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 the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA or FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Purchase Order. 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 or FRA terms and conditions.

#### 52. NO OBLIGATION BY THE FEDERAL GOVERNMENT

**Applicability:** Applicable to all Contracts.

(a) SMART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the 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 obligations or liabilities to SMART, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Purchase Order. (b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA or FRA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### 53. NOTICE OF LEGAL MATTERS

**Applicability:** Applicable to all Contracts in excess of \$25,000.

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA or FRA Chief Counsel and FTA or FRA Regional Counsel for the Region in which the SMART is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (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.
- (3) Additional Notice to the U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient 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, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Purchase Order or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. 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 the Recipient.

#### 54. PATENT RIGHTS AND RIGHTS IN DATA AND COPYRIGHTS REQUIREMENTS

**Applicability:** Applicable to all Research Project Contracts.

##### Intellectual Property Rights

This Project is funded through a Federal award with FTA or FRA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Sonoma-Marín Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA, FRA, or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA or FRA, until such time as FTA or FRA 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.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. 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 below. 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 the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA or FRA.
2. Unless FTA or FRA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA or FRA to make available to the public, either FTA's or FRA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees 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 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. 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.
4. 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.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. 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.

#### 55. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

**Applicability:** Applicable to all rolling stock/turnkey acquisition contracts.

A Buy America certification under this part shall be issued in addition to any certification which may be required by 49 CFR Part 661. Nothing in this part precludes the FTA or FRA from conducting a Buy America investigation under part 661 of this title "Pre-Award and Post-Delivery Audit Requirements".

The Contractor agrees to comply with "Buy America Requirements-Surface Transportation Assistance Act of 1982, as amended by 49 CFR 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements – The Contractor agrees to comply with 49 U.S.C. 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

- 1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the firm certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the solicitation specifications.
- 3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit a) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or b) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

#### 56. RECYCLED PRODUCTS

**Applicability:** Applicable to all Contracts in excess of \$10,000.

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by 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. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 CFR Part 247.

#### 57. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**Applicability:** Applicable to all Contracts

- (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 Purchase Order. Upon execution of the Purchase Order, 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 underlying Purchase Order or the FTA assisted project for which this Purchase Order work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, 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 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 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 or FRA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 58. PROMPT PAYMENT

**Applicability to Contracts:** Applicable to all Contracts.

The Contractor is required to pay its subcontractors performing work related to this Purchase Order 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 Purchase Order is satisfactorily completed. The Contractor must promptly notify SMART, whenever a DBE subcontractor performing work related to this Purchase Order 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 SMART.

#### 59. SAFE OPERATION OF MOTOR VEHICLES

**Applicability to Contracts:** Applicable to all Contracts.

- (a) Seat Belt Use. Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. §402 note. (62 Fed Reg. 19217), by:  
  
Adopting and promoting 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.
- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," 23 U.S.C. §402, U.S. DOT Order 3902.10, "Text Messaging While Driving", and U.S. DOT Special Provision pertaining to Distracted Driving:
  - a. Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Purchase Order, or when performing any work for or on behalf of SMART.
  - b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

#### 60. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

**Applicability:** Applicable to all Transit Operations Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA or FRA to be a transit operator.

- A. General Transit Employee Protective Requirements – To the extent that FTA or FRA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. The requirements of this subsection however do not apply to any contract financed with Federal assistance provided by FTA or FRA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. 5311. Alternate provisions for those projects are set forth in subsections (B) and (C) of this clause.

- B. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5310(a)(2) for Elderly Individuals and Individuals with Disabilities – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. 5333(b) are necessary or appropriate for the state and SMART for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.
- C. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- D. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance by FTA or FRA.

## 61. SPECIAL DOL EEO CLAUSE

**Applicability:** All Construction Contracts in Excess of \$10,000.

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

## 62. DRUG AND ALCOHOL TESTING

**Applicability:** All Transit Operations Service Contracts

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or the Sonoma-Marín Area Rail Transit District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before June 30 and to submit the Management Information System (MIS) reports to the Sonoma-Marín Area Rail Transit District. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements", which is published annually in the Federal Registrar.

## 63. TERMINATION PROVISIONS

**Applicability:** Applicable to all Contracts.

- (a) Mutual Termination. This Agreement may be terminated by mutual Agreement by both SMART and Contractor. Any other act of termination shall be in accordance with section titled "Termination for Convenience" or Termination for Cause" of this Agreement.
- (b) Termination for Convenience. SMART may terminate this Purchase Order, in whole or in part, at any time by written notice to the Contractor when it is in SMART's best interest. The Contractor shall be paid its costs, including Purchase Order close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid to the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.
- (c) Termination for Cause. If the Contractor fails to deliver supplies or to perform the services within the time specified in this Purchase Order or any extension, or if the Contractor fails to comply with any other provisions of this Purchase Order, the

SMART may terminate this Purchase Order for cause. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the Purchase Order price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this Purchase Order. If, after termination for failure to fulfill the Purchase Order obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

- (d) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Purchase Order within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Purchase Order without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- (e) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Purchase Order, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Purchase Order.

## 64. VETERANS HIRING PREFERENCE

**Applicability:** Applicable to all Contracts

As provided in 49 U.S.C. §5325(k), the Contractor, to the extent practicable, agrees and assures that each subcontractor:

1. 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 the Purchase Order in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
2. 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.

## 65. VIOLATION AND BREACH OF CONTRACT

**Applicability to Contracts:** Applicable to all Contracts.

### Rights and Remedies of SMART

The duties and obligations imposed by the Purchase Order and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Purchase Order, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Purchase Order, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Purchase Order, entitling Contractor to cancel or rescind the Purchase Order (unless SMART directs Contractor to do so) or to suspend or abandon performance.

### Remedies

Unless this Purchase Order provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Purchase Order or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

### Disputes

SMART and Contractor shall attempt to informally resolve all claims, counterclaims and disputes. No party may bring a legal action to enforce any term of this Agreement without first having exhausted such process. If the dispute cannot be resolved informally, either party may request mediation. The mediation shall be non-binding. The mediator shall determine the logistics, format, and other aspects of the actual mediation. If mediation is not successful in resolving the dispute, either SMART or the Contractor may commence legal action in accordance with the applicable law and forum provision of this Agreement.

### Performance during Dispute

Unless otherwise directed by SMART, Contractor shall continue performance under this Purchase Order while matters in dispute are being resolved.



## Claims for Damages

"Claim" means any disputes between SMART and the Contractor arising out of or relating to the performance of work under this Agreement. Claims must be made by written notice to SMART. The responsibility to substantiate claims rests with the party making the claim. Unless otherwise directed by SMART in writing, Contractor shall proceed diligently with the obligations under this Agreement pending final resolution of a Claim, including litigation. SMART shall continue to pay any undisputed payments related to such Claim.

## 66. GEOGRAPHIC RESTRICTIONS

**Applicability:** Applicable to all Contracts.

Contractor shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute.

## 67. METRIC SYSTEM

**Applicability:** Applicable to all Contracts.

To the extent required by U.S. DOT, FTA, or FRA, Contractor shall use the metric system of measurement, as may be required by 49 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage In Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT, FTA, or FRA. To the extent practicable and feasible, Contractor shall accept products and services with dimensions expressed in the metric system of measurement.

## 68. ENVIRONMENTAL PROTECTIONS

**Applicability:** Applicable to all Contracts.

Contractor shall comply with the following requirements:

- (a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- (b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.
- (c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any work activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

## 69. PRIVACY ACT

**Applicability:** Applicable to all Contracts.

Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Purchase Order.

## 70. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

**Applicability:** Applicable to all contracts.

- A. Contractor certifies that it 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 it is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Contractor certifies that it was not convicted of felony criminal violation under any Federal law within the preceding twenty-four (24) months.

## 71. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

**Applicability:** Applicable to all research and development contracts.

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by SMART.

## 72. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

**Applicability:** Applicable to all Contracts.

Contractor certifies and confirms that no services provided or supplies installed or utilized under this Purchase Order constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Purchase Order, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

## 73. DOMESTIC PREFERENCES FOR PROCUREMENTS

**Applicability:** Applicable to all Contracts.

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## 74. TRAFFICKING IN PERSONS

**Applicability:** Applicable to all Contracts

The Contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect.
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## 75. SEVERABILITY

**Applicability:** Applicable to all Contracts.

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal, state, and local laws, regulations, requirements, and guidance will continue in effect.