

## NEW JERSEY TRANSIT TERMS AND CONDITIONS

### 1. PRICES

NJ TRANSIT shall not be billed at prices higher than those stated on the Purchase Order. Unless otherwise specified the price stated includes all charges for materials, services, labor, packing, hauling, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge NJ TRANSIT has agreed to pay. Seller agrees that any price reduction made with respect to the items covered by this order subsequent to its placement but prior to shipment will be applicable to this order.

### 2. PAYMENT

NJ TRANSIT agrees to pay the Seller within 30 days after receipt of proper invoices for the quantities of goods or services ordered, delivered and accepted by NJ TRANSIT. A separate invoice shall be issued for each shipment. Credit and discount periods shall be computed from the date of receipt of the correct invoice to the date NJ TRANSIT's check is mailed.

### 3. DELIVERY

Deliveries to be made both in quantities and at times specified herein. Time is of the essence. If Seller's deliveries fail to meet this schedule, NJ TRANSIT, without limiting its other rights or remedies, may direct expedited routing and any excess costs incurred thereby shall be debited to Seller's account. NJ TRANSIT shall not be liable for Seller's commitments or production arrangements in excess of the amount or in advance of the time necessary to meet NJ TRANSIT's delivery schedule. Goods, (including without limitation, raw materials, components, services, intermediate assemblies, constructions and products, computer software and data) which are delivered in advance of schedule may at NJ TRANSIT's option, either (i) be returned at Seller's expense for proper delivery, (ii) have payment therefore withheld by NJ TRANSIT until the date goods are actually scheduled for delivery, or (iii) be placed in storage for Seller's account until delivery date specified herein.

### 4. INSPECTION/REJECTION

(a) All goods shall be subject to inspection and test by NJ TRANSIT to the extent practicable at all times and places including the period and place of manufacture and in any event prior to acceptance.

(b) In case any goods or lots of goods are defective in material or workmanship or otherwise not in conformity with the requirements of this Order, NJ TRANSIT shall have the right either to reject them, with or without instruction as to their disposition, to require their correction, or to require their replacement. Goods, or lots of goods, which have been rejected or required to be corrected shall be removed or, if permitted or required by NJ TRANSIT, corrected in place by and at the expense of the Seller promptly after notice. If Seller fails to remove goods or lots of goods, NJ TRANSIT either (1) may by separate contract or otherwise replace or correct such goods and charge to the Seller the additional cost incurred by NJ TRANSIT thereby, or (2) may cancel this Order for default as provided in Article 15 "Termination for Default". Unless Seller corrects or replaces such goods within the delivery schedule, NJ TRANSIT either (1) may pay for such items at a reduced price which is equitable under the circumstances, or (2) may cancel this Order for default as provided in Article 15 "Termination for Default".

(c) If any inspection or test is made by NJ TRANSIT, the Seller without additional charge shall provide all reasonable facilities and

assistance for the safety and convenience of NJ TRANSIT 's inspectors in the performance of their duties. All inspections and tests by NJ TRANSIT shall be performed in such a manner as not to unduly delay the work. NJ TRANSIT reserves the right to charge to Seller any additional cost of inspection and test when goods are not ready at the time such inspection and test is scheduled by the parties or when reinspection or retest is necessitated by prior rejection.

(d) The Seller shall provide and maintain an inspection system acceptable to NJ TRANSIT covering the items hereunder. Records of all inspection work by Seller shall be kept complete and available to NJ TRANSIT during performance of this Order and for such longer period as may be specified elsewhere in this Order.

(e) Unless otherwise provided herein, final inspection and acceptance shall be after delivery to NJ TRANSIT 's facility. Acceptance or rejection of goods shall be made as promptly as practicable after delivery, but failure to inspect and accept or reject goods shall neither relieve Seller from responsibility for such goods that are not in accordance with the requirements of this Order nor impose liability on NJ TRANSIT therefor.

(f) The inspection and test by NJ TRANSIT of any goods or lots thereof does not relieve Seller of responsibility for defects or other failures to meet Order requirements which may be discovered prior to acceptance or during the warranty period set forth in Article 6, or for latent defects.

(g) If at any time during the performance of this Order, or during the warranty period, it was known, or should have been known, by NJ TRANSIT that said goods did not conform to any or all of the requirements of this Order, final acceptance or notice or particulars notwithstanding, the failure of NJ TRANSIT to inform the Seller of such non-conformance shall not be construed as a waiver of any rights NJ TRANSIT may have with respect to items purchased under this Order.

### 5. ACCEPTANCE

The attached Acknowledgment Copy must be signed and returned by Seller within ten (10) days after it is received by the Seller. The receipt by NJ TRANSIT of the signed Acceptance Copy or the initiation of performance under this Order shall constitute acceptance of the Order by Seller, including all of the terms and conditions therein. This Order expressly limits acceptance to the terms stated herein. Any terms proposed by Seller are rejected unless expressly agreed to in writing by an authorized representative of NJ TRANSIT 's Procurement Division.

### 6. CHANGES

NJ TRANSIT may, at any time, make changes within the general scope of the Order. If such changes cause an increase or decrease in the cost of this Order or the time required to perform, an equitable adjustment shall be made and the Order modified in writing accordingly. Any claim hereunder must be asserted in writing within ten (10) days from the date the change is ordered. Nothing contained herein shall excuse Seller from proceeding without delay with the Order as changed including failure of the parties to agree upon any adjustment to be made under this Article. Changes shall not be binding upon NJ TRANSIT except when confirmed in writing by a member of NJ TRANSIT's Procurement Division. The issuance of information, advice, approvals or instructions by NJ TRANSIT 's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect NJ TRANSIT's and Seller's rights and obligations hereunder, unless the same is in writing signed by

authorized representative of the NJ TRANSIT 's Procurement Division and which expressly states that it constitutes an amendment to this Order.

### 7. WARRANTIES

Seller warrants that the goods or services covered hereunder shall conform to applicable specifications, instructions, drawings, date, and samples shall be merchantable, shall be of good material and workmanship, shall be free from defects, and shall be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. These warranties shall run for a minimum of one year from time of acceptance of the goods or services by NJ TRANSIT. Receipt of, inspection of, or payment for goods or services shall not constitute a waiver of any breach of warranty.

### 8. APPLICABLE LAWS AND TAXES

This Order shall be governed by and construed in accordance with the laws of the State of New Jersey. Seller agrees to comply with all federal, state and local laws, rules and regulations. Seller also agrees that any taxes to be paid as a result of this Order will be paid by Seller and that NJ TRANSIT 's obligation is limited to payment for the goods or services in accordance with the unit prices stated herein. NJ TRANSIT is exempt from State use and sales taxes and Federal excise taxes. They must not be included in Seller's price quotations or invoices. The State of New Jersey's Federal Excise Tax Exemption Number is 22-75-0050K NJ State Exemption Number is 21-60000928.

### 9. SELLER'S STATUS

In supplying good or services under this Order, Seller shall operate as and have the status of an independent contractor and shall not act as, or be an employee or agent of NJ TRANSIT.

### 10. ASSIGNMENT AND SUBCONTRACTING

This Order shall not be assigned or subcontracted by the Seller without the written consent of NJ TRANSIT. Utilization of independent delivery services and similar activities are acceptable. Such consent, if granted, shall not relieve Seller of any responsibilities under this Order.

### 11. SUCCESSION

This Order shall be binding upon the successors and assigns of NJ TRANSIT and Seller.

### 12. DELAYS AND NOTICE OF LABOR DISPUTES

If delivery under this Contract should be unavoidably delayed, NJ TRANSIT shall extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during Seller's performance was not caused directly or substantially by the acts, omissions, negligence or mistakes of Seller, Seller's supplies or their agents was substantial and in fact caused Seller to miss delivery dates, and could not adequately have been guarded against by contractual or legal means. When any delays in delivery occur, Seller shall immediately notify NJ TRANSIT 's Procurement Division within five (5) days.

Seller shall confirm such notice in writing furnishing as much detail as is available. Whenever an actual or potential labor dispute is delaying or threatening to delay the performance of the Order, Seller shall immediately give written notice thereof to NJ TRANSIT.

Failure of Seller to so notify NJ TRANSIT shall result in a waiver of any rights that Seller may have for an extension of time under this Contract. It is expressly understood and agreed that the Seller shall not be entitled to damages or compensation for, and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

### 13. INDEMNIFICATION

The Seller shall defend, indemnify, protect and save harmless the State of New Jersey, NJ TRANSIT Corporation and its subsidiaries, and their officers, employees and their agents from and against all suits, claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages, and expenses of every character whatsoever including, but not limited to, expenditures for and costs of investigations, hiring of expert witnesses, court costs, and counsel fees for injury (including death) sustained by the officers and employees and agents of NJ TRANSIT and its subsidiaries, the State of New Jersey, the officers, employees and agents of Seller, and all other persons whomsoever, and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the performance of this Contract, and whether or not such injury (including death) or such damage to or loss or destruction of property are due to or chargeable to, in whole or in part, any alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation by the State, NJ TRANSIT, its subsidiaries, or their officers, employees and agents. NJ TRANSIT and its subsidiaries shall, as soon as practicable after claim has been made against one of them, give written notice thereof to Seller along with full and complete particulars of the claim. If a suit is brought against one of them, it shall promptly forward to Seller every demand, complaint, notice, summons, pleading or other process received by it and Seller shall assume the defense of any such claim.

### 14. TERMINATION FOR CONVENIENCE

(a) NJ TRANSIT shall have the right to terminate this Order in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by Seller of such notice, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with NJ TRANSIT's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the Parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for such goods. Seller shall advise NJ TRANSIT in writing, of Seller's claim, if any, for termination costs within twenty (20) days after receipt of the notice of termination. Termination in accordance with this Article shall not affect NJ TRANSIT's obligation to pay for goods accepted by NJ TRANSIT prior to such termination.

(b) Nothing contained in paragraph (a) hereof shall limit or affect NJ TRANSIT's right to terminate this Order for Seller's breach.

(c) Any settlement will be in accordance with FAR 52.249.2

### 15. TERMINATION FOR DEFAULT

(a) NJ TRANSIT may cancel this Order in whole or in part by written or telegraphic notice: (1) If the Seller fails to make delivery of goods or to perform the services within the time specified in this Order or any increments thereof or extensions thereto or (2) if the Seller fails to perform its obligations under any of the other Articles of this Order, provided that the Seller shall fail to remedy any such condition with ten (10) days from the date or receipt of a notice from NJ TRANSIT concerning the existence of the condition.

(b) In the event NJ TRANSIT cancels this Order in whole or in part as provided in paragraph (a) of this Article, NJ TRANSIT may procure upon such terms and in such manner as NJ TRANSIT may deem appropriate, goods or services similar to those canceled, and the Seller shall be liable to NJ TRANSIT for any excess costs of such similar items or services. The Seller shall continue the performance of this Order to the extent not canceled under the provisions of this Article.

(c) After receipt of notice of such cancellation, the Seller shall transfer title and deliver to NJ TRANSIT satisfactorily complete work and such work in progress as may be directed by NJ TRANSIT.

(d) The rights and remedies of NJ TRANSIT provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Order.

(e) If, after notice of cancellation of this Order under the provisions of this Article, it is determined that the Seller was not in default under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to Article 14 "Termination for Convenience."

### 16. RELEASE OF CLAIMS

It is agreed that Seller's acceptance of final payment from NJ TRANSIT shall release in full all claims against NJ TRANSIT under this Order.

### 17. NO WAIVER

No omission or delay by the NJ TRANSIT at any time to enforce any right or remedy reserved to it or to require performance of any of the terms of this Order shall be a waiver of any such right or remedy to which it is entitled, nor shall it in any way affect the right of NJ TRANSIT to enforce such provisions thereafter.

### 18. MAINTENANCE OF RECORDS AND AUDIT

During the term of this Order and for three years after final payment is made to Seller, Seller shall maintain and make available for audit by NJ TRANSIT or its designee all books, records, receipts, documents, papers and any other data or information relevant to and related to this Order.

### 19. COMMUNICATIONS

Communications shall be in writing and shall be delivered to the NJ TRANSIT Procurement Division and to Seller's officer designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing under letterhead, telex, Mailgram or other modern printing devices acceptable to NJ TRANSIT. Communications shall be considered received at the time actually received by the addressee or designated agent.

### 20. EQUAL EMPLOYMENT OPPORTUNITY

The provisions of N.J.S.A 10 5-31 et seq., as amended and supplemented and the rules and regulations promulgated pursuant thereto are made a part of this Order.

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

(a) The Seller or subcontractor, where applicable, will not discriminate against employees or applicants for employment because of age, race, creed, color, national origin, ancestry, marital status or sex. The Seller will take affirmative action to ensure that such applicants are recruited and employed and that employees are treated during employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex. 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 Seller agrees to post in conspicuous places available to employees and applicants for employment, notices by NJ TRANSIT setting forth provisions of this non-discriminating clause.

(b) The Seller or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex.

(c) The Seller or subcontractor, where applicable, 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 NJ TRANSIT, advising the labor union or worker's representative of the Seller's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

### 21. RESTRICTION OF GIFTS

Seller, its officers, employees, representatives, agents and subcontractors agree(s) not to give any present or gift of money or any other gift or gratuity in any form whatsoever to any employee of NJ TRANSIT or his or her relatives or agents.

## 22. INSURANCE

The Seller shall maintain the following minimum insurance during this Contract and shall provide NJ TRANSIT with proof thereof, as requested.

Comprehensive General Liability	\$2,500,000 per occurrence for bodily injury and property damage
Comprehensive Automobile	\$2,500,000 per occurrence for bodily injury and property damage
Worker's Compensation	As required by law

## 23. CORPORATE AUTHORITY

It is required that the Seller be authorized to do business in the State of New Jersey. If Seller is incorporated outside of New Jersey, it must file with the Secretary of State as required by law.

## 24. USE OF INFORMATION

Seller agrees that all information heretofore or hereafter furnished or disclosed to NJ TRANSIT by Seller in connection with the placing or filing of this Order is furnished or disclosed as a part of the consideration for this Order, that such information is not, unless otherwise agreed to by NJ TRANSIT in writing, to be treated as confidential or proprietary and that the Seller shall assert no claims by reason of the use or disclosure of such information by NJ TRANSIT or its assigns.

## 25. SUSPENSION OF WORK

(a) NJ TRANSIT shall have the right to direct the Seller in writing to suspend all or any part of the work for a period of time not to exceed twenty-five (25) days.

(b) If work is suspended, an adjustment shall be made for any increase in the time and cost, exclusive of profit, of performing this Order necessarily caused by such suspension, and this Order shall be modified in writing accordingly.

(c) No claims shall be allowed under this Article unless the claim, in an amount stated, is asserted in writing within twenty (20) days after the termination of the suspension. When the suspension has been terminated, the Seller shall immediately commence performance, notwithstanding the fact that there is no agreement as to the amount of the adjustment in the price of the Order.

## 26. TOOLS, MATERIALS AND INFORMATION

If any designs, sketches, drawings, blueprints, patents, dies, molds, masks, software, models, tools, gauges, equipment or special appliances should be made or procured by Seller especially for producing the items covered by this Order, then immediately upon manufacture or procurement they shall become the property of NJ TRANSIT. Seller shall maintain current inventory list of the foregoing. Any such item or any materials or any engineering data or other technical or proprietary information furnished by or paid for by NJ TRANSIT shall: (a) become and shall be identified as property of NJ TRANSIT, (b) be held by Seller on consignment at Seller's risk, (c) be used exclusively in the production for NJ TRANSIT of items required by this Order, (d) be subject to disposition by NJ TRANSIT at any and all times and upon demand they shall be returned to NJ TRANSIT. The Seller

shall establish procedures for the adequate storage, maintenance and inspection of the foregoing and shall maintain inspection and inventory records therefore which shall be available to NJ TRANSIT upon request.

## 27. PACKING

Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing which shall conform to the requirements of carrier's tariffs. Seller shall separately number all cases, packages, etc., showing the correspondence numbers on the invoices. An itemized packing slip, bearing this Order number, shall be placed in each container. No extra charge shall be made for packaging or packing materials.

## 28. PRODUCT SUPPORT

(a) The Seller warrants that the items purchased under this Order, including sub-assemblies, service, and spare parts shall be available to NJ TRANSIT during the operational life of the goods purchased or a reasonable time after the date of final shipment under this Order, whichever is later.

(b) In the event the Seller discontinues service or manufacture of the aforementioned goods, sub-assemblies or spare parts therefore and does not provide for another qualified source, the Seller shall make available to NJ TRANSIT all drawings, specifications, data and know-how which will enable NJ TRANSIT to service, manufacture, or procure said goods, sub-assemblies and spare parts under a royalty-free license which is hereby granted. Seller shall give NJ TRANSIT timely written notice of such discontinuance.

## 29. AIR POLLUTION

The contractors and suppliers must submit evidence to NJ TRANSIT that the governing air pollution criteria will be met. This evidence and related documents will be retained by NJ TRANSIT for on-site examination by the Federal Transit Administration.

## 30. LABOR DISPUTES

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information to NJ TRANSIT.

## 31. TITLE VI COMPLIANCE

During the performance of the contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(1) Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractor and shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when contract covers a program set for in Appendix B of the Regulation.

(3) Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NJ TRANSIT or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions.

Where any information is required or a contractor is in the exclusive possession of another who fails or refused to furnish this information, the contractor shall so certify to NJ TRANSIT or the Federal Transit Administration as appropriate and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NJ TRANSIT shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of provisions: The contractor shall include the provisions of paragraph (1) through (6) of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such actions with respect to any subcontract or procurement as NJ TRANSIT or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved or is threatened with litigation with subcontractor or supplier as a result of such direction, the contractor may request NJ TRANSIT to enter into such litigation to protect the interests of the United States.

## 32. THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq., which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to NJ TRANSIT must be labeled by the contractor in compliance with the provisions of the Act.

## **NOTICE OF NEW JERSEY EXECUTIVE ORDER 125 AND RECORDS RETENTION REQUIREMENTS**

### **A. Executive Order 125**

Pursuant to Executive Order No. 125, signed by Governor Christie on February 8, 2013, the Office of the State Comptroller (“OSC”) is required to make all approved State contracts for the allocation and expenditure of federal reconstruction resources available to the public by posting such contracts on an appropriate State website. Such contracts are posted on the New Jersey Sandy Transparency website located at: <http://nj.gov/comptroller/sandytransparency/contracts/sandy/>

The Contract resulting from this acquisition is subject to the requirements of Executive Order No. 125. Accordingly, the OSC will post a copy of the Contract, including the contract documents, bidder’s proposal and other related contract documents for the above contract on the Sandy Transparency website.

In submitting its proposal, a prospective vendor may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal and/ or factual basis to assert that such designated portions of its proposal (i) are proprietary and confidential financial or commercial information or trade secrets or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided.

### **B. Records Retention Requirements**

Notwithstanding any provision to the contrary contained within any other of the contract documents, the vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

**FEDERALLY FUNDED CONTRACT RIDER  
ADDITIONAL FEDERALLY FUNDED AGREEMENT PROVISIONS**

**A TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART,  
BY FEDERAL FUNDS**

The provisions set forth in this Federally Funded Contract Rider apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317, and are in addition to those in the Agreement.

**A.1 PROCUREMENT OF RECOVERED MATERIALS**

To the extent that any other requirement in the contract requires the contractor to provide any of the following items, this Section A.1 of the Federally Funded Contract Rider modifies the terms of the other contract requirements.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
  - 1. Paper and paper products listed in 40 CFR 247.10;
  - 2. Certain vehicular products as listed in 40 CFR 247.11;
  - 3. Certain construction products listed in 40 CFR 247.12;
  - 4. Certain transportation products listed in 40 CFR 247.13;
  - 5. Certain park and recreation products, 40 CFR 247.14;
  - 6. Certain landscaping products listed in 40 CFR 247.15;
  - 7. Certain non-paper office products listed in 40 CFR 247.16; and
  - 8. Other miscellaneous products listed in 40 CFR 247.17.
- B. As defined in 40 CFR 247.3, “recovered material” means:
  - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
  - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
    - a. Postconsumer materials such as --
      - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old

- newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
- ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
- b. Manufacturing, forest residues, and other wastes such as --
  - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
  - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
  - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
  - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
  - v. Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

## **A.2 EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- (1) 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 setting forth the provisions of this nondiscrimination clause.

- (2) 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.
- (3) 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.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) 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.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction 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.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **A.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). 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. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C.



3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The provisions of 29 C.F.R. 3.1 to 3.11 are incorporated into this contract as if set forth at length herein.

#### **A.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

#### **A.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR 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 the awarding agency.

#### **A.6 CLEAN AIR ACT, 42 U.S.C. 7401-7671q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **A.7 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### **A.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### **A.9 TERMINATION**

This contract may be terminated by the State/Company: a) upon material breach of the Agreement by Provider upon five days written notice during which five days the Provider shall have the opportunity to cure the material breach, or b) for convenience on 30 days notice by the State/Company.

#### **A.10 RECORDS RETENTION AND AUDIT**

Provider shall maintain all records related to the Agreement and any goods or services provided hereunder for five years after the State make the final payment on the final invoice pursuant to the Agreement. Provider shall make all records related to the Agreement available to the State or federal Government and to any person(s) authorized by the State or federal government to review or audit such records.

#### **A.11. SEALS**

Provider shall not use the State or federal seals, logos, crests or reproductions of flags without written approval of the State or federal government, as applicable.

#### **A.12 ASSURANCES.**

During the term of or the performance of the work required under this Agreement, Provider shall comply all applicable State and federal laws with regard to this Agreement.

#### **A.13 CERTIFICATION OF NO FELONY/FEDERAL TAX LIABILITY**

As a condition of any contract award, a private corporation, partnership, trust, joint-stock company, sole proprietorship, or any other business association, including each participant in a joint venture, must certify, under penalty of perjury, that it has no unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

As a condition of any contract award, any such entity must also certify that it has not been convicted of any felony criminal violation under any federal law within the 24 months preceding the date of contract award.

Furthermore, any such entity awarded a contract by NJ TRANSIT is responsible for flowing down the requirements of the above two paragraphs to all lower tier subcontractors or subconsultants (including sub-subcontractors and sub-subconsultants, etc.), without regard to the value of any such subagreement (or sub-subagreement, etc.).

The Certification required hereunder is applicable and continues through and until the date of any contract award. If any of the conditions stated herein change prior to the date of contract award, for the prospective awardee or for any subcontractor or subconsultant (or sub-subcontractor or sub-subconsultant, etc.), the prospective awardee shall immediately notify the NJ TRANSIT contracting officer.

#### **A.14 BUY AMERICA**

##### **(1) Surface Transportation Assistance Act Requirements**

Pursuant to 49 U.S.C. § 5323(j) and the regulations found at 49 C.F.R. Part 661 et seq., the Contractor agrees that all iron, steel and manufactured products purchased or used as a result of this Contract shall be of domestic manufacture or origin unless a waiver of these provisions is granted by the U.S. Secretary of Transportation.

There are four exceptions to this requirement:

- (a) That its application would be inconsistent with the public interest.
- (b) That such materials or products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
- (c) With respect to rolling stock only, but including train control, communications, traction power equipment, and rolling stock prototypes, if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, provided that final assembly of such products takes place in the United States.
- (d) That inclusion of domestic material will increase the cost of the overall Contract by more than 25 percent.

With respect to rolling stock only, but including train control, communications, traction power equipment, and rolling stock prototypes, less than 30 percent may be non-domestic manufacture, but final assembly of such products must take place in the United States.

##### **(2) Domestic Preferences for Procurements**

- (a) In accordance with 2 C.F.R. 200.322, the Contractor is notified of NJ TRANSIT's preference, to the greatest extent practicable, 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).
- (b) For 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 nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**A.15 FEDERAL PROVISIONS RELATED TO CERTAIN TELECOMMUNICATIONS  
AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The Contractor shall abide by 2 C.F.R. 200.216 as applied to the goods, materials and/or services hereunder, and extend this application to its subcontractors.