

## PURCHASE ORDER INSTRUCTIONS

ALL PACKAGES MUST BE ACCOMPANIED BY A PACKING SLIP.  
 REFERENCE PURCHASE ORDER NUMBER, PURCHASE ORDER LINE NUMBER, AND NJT CATALOG NUMBER ON ALL INVOICES, PACKING SLIPS AND BILLS OF LADING.  
 INVOICES WITHOUT PURCHASE ORDER NUMBERS WILL BE RETURNED. VENDOR MUST SUPPLY ORIGINAL NON CONSTRUCTION INVOICE AND ANY FREIGHT BILLS IN EXCESS OF \$100 TO:  
 E-MAIL: [INVOICES@NJTRANSIT.COM](mailto:INVOICES@NJTRANSIT.COM) OR FAX: 973-833-8132  
**IMPORTANT - ONE INVOICE AND ALL OF ITS SUPPORTING DOCUMENTS MUST BE INCLUDED IN A FILE USING THE FILE NAMING FORMAT: PURCHASE ORDER NUMBER -INVOICE NUMBER. MULTIPLE FILES MAY BE INCLUDED IN ONE E-MAIL.**  
 CONSTRUCTION INVOICES SHOULD CONTINUE TO BE SENT TO THE CONSTRUCTION MANAGER.  
 VENDOR MUST ALSO SUPPLY A COPY OF INVOICE(S) TO CONSIGNEE.  
 VENDOR: IF PRICE ON PO DOES NOT MATCH, DO NOT SHIP MATERIAL, CONTACT BUYER.

PURCHASE ORDER NO <b>220006145</b>	REV NO 0
VENDOR NO [REDACTED]	ISSUE DATE 09/03/21
DATE CHANGED	PAGE NO 1

HOW TO CONTACT ACCOUNTS PAYABLE CUSTOMER CARE (APCC)  
 E-MAIL: [APCC@NJTRANSIT.COM](mailto:APCC@NJTRANSIT.COM)  
 VOICE [REDACTED]

<b>SUPPLIER:</b> Paul Carpenter Associates Inc 7 COLUMBIA TURNPIKE, SUITE 101 FLORHAM PARK, NJ, 07932	<b>SHIP TO:</b> NEWARK HEADQUARTERS NJ TRANSIT HEADQUARTERS ONE PENN PLAZA EAST NEWARK, NJ 07105-2246	<b>BILL TO:</b> NEWARK HEADQUARTERS NJ TRANSIT HEADQUARTERS ONE PENN PLAZA EAST NEWARK, NJ 07105-2246
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BUYER: [REDACTED]	NJ TRANSIT IS EXEMPT FROM NJ SALES & USE TAXES PURSUANT TO SECT 9(A)(1), OF NJSA 54:32B-1 ET SEQ. FEDERAL T.I.N.: [REDACTED] TAX EXEMPT #'S [REDACTED]		
TERMS NET 45	FREIGHT TERMS 100	FOB DESTINATION	QUOTATION NO

**NJ TRANSIT ETHICS CODE:** NJ TRANSIT IS AN INSTRUMENTALITY OF THE STATE OF NEW JERSEY AND ITS EMPLOYEES AND OFFICERS AND MEMBERS OF THE NJ TRANSIT BOARD OF DIRECTORS ARE PUBLIC SERVANTS AND ARE GOVERNED BY CIVIL AND CRIMINAL LAWS THAT CONTROL HOW NJ TRANSIT AND ITS PERSONNEL CONDUCT BUSINESS WITH VENDORS, CONTRACTORS AND CONSULTANTS. THESE PROVISIONS INCLUDE THE CONFLICTS OF INTEREST LAW, NJSA 52:13D-12; THE GIFTS TO PUBLIC SERVANTS LAW, NJSA 2C:27-6; AND THE COMPENSATION FOR PAST OFFICIAL BEHAVIOR LAW, NJSA 2C:27-4. THESE PROVISIONS CONTAIN UNEQUIVOCAL AND STRINGENT RESTRICTIONS RELATING TO GIFTS AND GRATUITIES BY ANY NJ TRANSIT EMPLOYEE OR ANY PERSON, COMPANY OR ENTITY DOING BUSINESS WITH OR WANTING TO DO BUSINESS WITH NJ TRANSIT. THE TERM "GIFT" INCLUDES ALL THINGS AND OBJECTS, TANGIBLE OR INTANGIBLE INCLUDING SERVICES, GRATUITIES, MEALS, ENTERTAINMENT, EVENT TICKETS, MEMBERSHIP CLUB ACCESS, TRAVEL COSTS AND LODGING. ALSO, NJ TRANSIT'S CODE OF ETHICS AND CODE OF CONTRACTORS AND CONSULTANTS FROM OFFERING ANY GIFTS TO ANY NJ TRANSIT EMPLOYEE. DO NOT, UNDER ANY CIRCUMSTANCES, TEMPT OR PUT AN NJ TRANSIT EMPLOYEE IN THE AWKWARD POSITION OF HAVING TO REFUSE A GIFT OR RETURN A GIFT NO MATTER HOW WELL INTENTIONED OR INNOCUOUS THE GIFT MAY BE.

LINE NUMBER	ITEM NUMBER/ MPN/MFR /DESCRIPTION	DELIVERY DATE	QUANTITY	UOM	UNIT PRICE	AMOUNT
	CONTRACT #: SOURCE DOCUMENT:  NJ TRANSIT Hoboken Yard Construction• Related Vibration Assessment  PCA shall perform all the tasks associated with a General Vibration Assessment as per FTA's Noise and Vibration Assessment regarding Hoboken Rail Yard.  The total expenditure amount for this line shall not exceed \$1,363.05.  The following shall govern this Purchase Order and are incorporated herein by reference: 1. Proposal entitled: NJ TRANSIT Hoboken Yard Construction• Related Vibration Assessment dated April 14, 2021. 2. Scope of Work 3. Terms and Conditions on the reverse side of this Purchase Order  Payable within forty-five (45) days for each line					

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PURCHASE ORDER NO 220006145		REV NO 0
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HOW TO CONTACT ACCOUNTS PAYABLE CUSTOMER CARE (APCC)  
 E-MAIL: [APCC@NJTRANSIT.COM](mailto:APCC@NJTRANSIT.COM)  
 VOICE: [REDACTED]

<b>SUPPLIER:</b> Paul Carpenter Associates Inc 7 COLUMBIA TURNPIKE, SUITE 101 FLORHAM PARK, NJ, 07932	<b>SHIP TO:</b> NEWARK HEADQUARTERS NJ TRANSIT HEADQUARTERS ONE PENN PLAZA EAST NEWARK, NJ 07105-2246	<b>BILL TO:</b> NEWARK HEADQUARTERS NJ TRANSIT HEADQUARTERS ONE PENN PLAZA EAST NEWARK, NJ 07105-2246
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<b>TERMS</b> NET 45	<b>FREIGHT TERMS</b> 100	<b>FOB</b> DESTINATION	<b>QUOTATION NO</b>

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LINE NUMBER	ITEM NUMBER/ MPN/MFR /DESCRIPTION	DELIVERY DATE	QUANTITY	UOM	UNIT PRICE	AMOUNT
1	item after receipt of proper and applicable invoice(s) with required supporting documentation.  MR #500000507576 GL #1.8840.50371.SEZ0230.C.000.00000.00000  Hoboken Yard Signal Yard Power Construction Related Vibration Assessment	07/14/21	1363.05	\$	1	1,363.05
** TOTAL:						\$ 1,363.05

<input type="checkbox"/>	WHEN THIS BOX IS CHECKED, THE TERMS AND CONDITIONS OF THE ATTACHED CONTRACT REPLACES THOSE SHOWN ON THE REVERSE SIDE OF THIS PURCHASE ORDER.	Authorized NJ Transit Signature / Date  <i>Raven Coats</i>
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## NEW JERSEY TRANSIT TERMS AND CONDITIONS

The following terms and conditions shall apply to all Purchase Orders (Contracts) made with NJ TRANSIT, unless the Contractor is specifically instructed otherwise, in writing. The terms "Purchase Order" and "Contract" shall be used interchangeably; references to the designations "Seller," "Vendor," "Provider" and "Contractor," shall also be used interchangeably as each applies in context to the Sale of goods, or the provision of Services. **BY PERFORMING THE WORK OR PROVIDING THE GOODS CONTEMPLATED, VENDOR EXPRESSLY AGREES TO ALL APPLICABLE TERMS AND CONDITIONS STATED HEREIN. IF THE VENDOR HAS ANY QUESTIONS ABOUT THESE TERMS AND CONDITIONS, PLEASE IMMEDIATELY CONTACT NJ TRANSIT'S PROCUREMENT DEPARTMENT.**

### 1. STATE LAWS REQUIRING COMPLIANCE BY ALL CONTRACTORS

#### 1.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, NJ TRANSIT is prohibited from entering into a contract with an entity unless such entity and each subcontractor named in the bid or proposal have a valid Business Registration Certificate on file with the Division of Revenue. A Business Registration Certificate may be obtained filing a Form NJ-REG online at <http://www.state.nj.us/treasury/revenue/busegcert.shtml>.

#### 1.2 USE TAX

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act" N.J.S.A. 54:32B-1 et seq. on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609) 292-6400.

#### 1.3 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through -4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through -38, and all applicable rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through -38 include those provisions indicated for Goods, Professional Service and General Service Contracts and Construction Contracts, as appropriate.

#### 1.4 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. § 12101, et seq.

#### 1.5 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), specifically N.J.S.A. 19:44A-20.21, if payment hereunder is in excess of \$17,500, it is a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

#### 1.6 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if a filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling (888) 313-3532 or on the web at <http://www.elec.state.nj.us/>.

#### 1.7 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 and abide by the provisions of the NJ TRANSIT CODE OF ETHICS, available at <https://www.njtransit.com/njt-code-vendor-ethics>.

#### 1.8 NOTICE TO ALL CONTRACTORS: SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer or Provider, and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to N.J.S.A. 52:32-32 et seq., to the taxpayer or Provider shall be stayed.

#### 1.9 COMPLIANCE-LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

#### 1.10 APPLICABILITY OF STATE LAW

It is agreed and understood that the rights and obligations of the parties under this Contract shall be determined in accordance with the laws of the State of New Jersey.

#### 1.11 OWNERSHIP DISCLOSURE FORM

All vendors shall provide to NJ TRANSIT prior to commencing any work, or have on file, a current Ownership Disclosure Form, <https://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf> pursuant to N.J.S.A. 52:25-24.2.

#### 1.12 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 New Jersey Division of Revenue and Enterprise Services, as required by law.

### 2. STATE LAW REQUIRING MANDATORY COMPLIANCE UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON TYPE OF CONTRACT

#### 2.1 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 to be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51, prior to submitting any bid. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

#### 2.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. is hereby made part of every contract, except those contracts which are not within the contemplation of the Act. Acceptance of the work contemplated hereunder is its guarantee that neither it, nor any subcontractors it might employ to perform the work covered hereunder, has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Act; the contractor's acceptance of the work is also its guarantee that it, and any subcontractors it might employ to perform the work covered by the scope of work, shall comply with the provisions of the Prevailing Wage Act and Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., where required.

#### 2.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day

during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

#### 2.4 BUILDING SERVICES

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, employees of the contractor or subcontractors shall be paid prevailing wage for building services. The prevailing wage shall be adjusted annually during the term of the contract.

#### 2.5 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. Seller shall comply with the Occupational Health and Safety Act of 1970, as amended, 29 U.S.C. § 651 et seq.

#### 2.6 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States. The contractor must certify that all service will be performed within the United States or provide such explanation why such services cannot be performed in the United States. Any services not performed within the United States are subject to waiver by the President & CEO of NJ TRANSIT if such explanation, in NJ TRANSIT's sole discretion, meets the qualifications for such waiver under N.J.S.A. 52:34-13.2. A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 4.7 of these Terms and Conditions.

#### 2.7 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

#### 2.8 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14, a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates, see <https://nj.gov/labor/equalpay/equalpay.html>.

#### 2.9 DISCLOSURE OF INVESTMENT IN IRAN FORM

Prior to the time of contract award, each Seller of Goods and Provider of Services, shall provide a satisfactory Disclosure of Investment Activities In Iran form, available at <https://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>, in accordance with N.J.S.A. 52:32-58.

#### 2.10 CHAPTER 51/EO 117 & DISCLOSURE OF POLITICAL CONTRIBUTIONS

Sellers of Goods and Providers of Services totaling \$17,500.00 and above, must provide or have on file with NJ TRANSIT a current and accurate Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, approved within the last two (2) years. The form is available at <https://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>. Under N.J.S.A. 19:44A-20.26, for any contract not awarded pursuant to an open and competitive public advertisement, vendors shall also provide or have on file with NJ TRANSIT, a valid and accurate Vendor/Bidder Certification and Political Contribution Disclosure Ch. 271 form, current within the last twelve (12) months. See <https://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>.

#### 2.11 COOPERATIVE PURCHASING

If this contract has been procured through the use of cooperative purchasing, then this Purchase Order shall be deemed a participating addendum to the master agreement between the Vendor and the responsible agency. The terms and conditions of the master agreement between the Vendor and responsible agency shall apply, unless modifications have been made and accepted, in writing, by NJ TRANSIT. In the event any terms and conditions in the master agreement between the Vendor and agency conflict with applicable state or federal law, such terms shall not apply.

### 3.0 INDEMNIFICATION AND INSURANCE

#### 3.1 INDEMNIFICATION

To the fullest extent permitted by Law, the Seller/Vendor shall defend, indemnify, protect and save harmless the State of New Jersey, NJ TRANSIT Corporation and its subsidiaries, their officers, directors, successors, assignees, employees, servant and agents (the "Indemnified Parties), irrespective of their negligence or fault, from and against all suits, claims, liabilities, demands, actions at law or equity, judgments, settlements, losses, damages, and expenses of every character whatsoever, including, personal injury, death, or occupational disease of any person, including any Vendor's, Seller's, Contractor's or Subcontractor's employees, or its agents, and 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, and all other persons whomsoever, which any or all of them may hereafter incur, be responsible for, or pay as a result of injury, death, disease, or occupational disease to any person, for damage (including environmental contamination and loss of use) to or loss of any property, including property of Railroad, or losses of any kind whatsoever, that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with in any degree directly or indirectly caused by or resulting from activities of or work performed by Seller/Vendor, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Seller/Vendor. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller/Vendor or any contractor or subcontractor, and shall survive the termination of this Agreement for any reason, 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 Agreement, 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/Vendor along with complete particulars of the claim. If a suit is brought against one of them, it shall promptly forward to Seller/Vendor every demand, complaint, notice, summons, pleading or other process received by it and Seller/Vendor shall assume the defense of any such claim, including claims made under FELA. Neither NJ TRANSIT nor any of the Indemnified Parties would be subjected to any Claims under the Federal Employers' Liability Act ("FELA") based on the allegations of any type whatsoever, and Seller, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Seller/Vendor will promptly pick up the defense of NJ Transit and any of the Indemnified Parties should any claim be reported under FELA.

### **3.2 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	\$5,000,000 per occurrence and per project annual aggregate
If Applicable, Contractor's Pollution Legal Insurance	\$2,500,000 per occurrence to covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the Contractor's operations and completed operations. This insurance shall be maintained for no less than six (6) years after final completion
Comprehensive Automobile	\$2,500,000 per occurrence for bodily injury and property damage
If applicable, Products Liability Insurance	\$2,500,000 per occurrence
Worker's Compensation and Employer's Liability Insurance	\$1,000,000 each accident, \$1,000,000 each employee disease, or occupational disease, \$1,000,000 policy limit – disease, or occupational disease
If applicable, Federal Employer's Liability Act (FELA) Insurance	\$2,500,000 per claim

If Applicable, Railroad Protective Liability Insurance: Seller/Contractor shall furnish evidence in the form of a certified copy of the Railroad Protective Liability Insurance Policy that, with respect to the operations it, its contractors, or any of its subcontractors perform, it has provided Railroad Protective Liability Insurance (AAR-AASHO form) in the name of NJ TRANSIT, NJ TRANSIT Rail Operations, NJ TRANSIT's contract operator, and other operating railroad providing for a limit of not less than \$2,000,000 single limit bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence. Reference: "Standard Provisions for General Liability Policies" as contained in U.S. Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 6, Section 2, Subsection 2, Attachment 1, as amended.

The liability insurance policies shall be written on ISO Form CG 20 10 01, for ongoing Operations Work, and ISO Form CG 20 37 10 01, for completed operations work, or its equivalent, and endorsed to name NJ TRANSIT, State of New Jersey, and any other entity that from time to time may be required, as additional insureds, and shall not include any exclusions for "action over claims" (insured vs. insured). The policy shall provide that there shall be no coverage exceptions for properties containing or adjacent to railroad facilities, and Vendor/Seller, or any of its contracting parties, shall provide the policy endorsement evidencing the contractual exclusion

related to construction activity, or any access whatsoever, within fifty (50) feet of the railroad has been deleted.

Furthermore, all insurance policies shall contain a waiver of subrogation endorsement in the benefit of the additional insureds and shall be primary and non-contributory.

Any insurance or self-insurance maintained by the additional insureds shall not contribute to any loss. If the Vendor/Seller/Contractor carry higher limits those shall be made available to pay claims and to provide defense.

Any excess or umbrella policies shall be no less that a follow form of the liability, contractor's pollution, auto, and employer's liability policies, and shall have a liberalization clause with a drop-down provision.

All insurance policies shall be written with companies authorized to do business in the State of New Jersey, and with a financial strength rating of A-X or better by A.M. Best.

Vendor/Seller or any of its contracting parties shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing any work, and 30 days' notice prior to the cancellation, renewal, or expiration of any insurance policy specified above.

NJ TRANSIT reserves the right to request additional limits or coverages as it deems required.

### **4. TERMS GOVERNING ALL CONTRACTS**

#### **4.1 SELLER'S STATUS**

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

#### **4.2 ASSIGNMENT AND SUBCONTRACTING**

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

#### **4.3 APPLICABLE LAWS AND TAXES**

This Contract 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 Contract 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.

#### **4.4 SUCCESSION**

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

#### **4.5 DELAYS AND NOTICE OF 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. 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.

If delivery under this Contract should be unavoidably delayed, NJ TRANSIT will 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 suppliers 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 delay in delivery or performance occurs, Seller shall notify NJ TRANSIT's Procurement Division within five (5) calendar days of the delay. Seller shall promptly confirm such notice in writing furnishing as much detail as is available.

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.

#### **4.6 TERMINATION FOR CONVENIENCE**

A. NJ TRANSIT shall have the right to terminate this Contract in whole or in part at any time, and from time to time, by written or electronic 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 Contract. 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 Contract is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for any goods. Seller shall advise NJ TRANSIT in writing, of Seller's claim, if any, for termination costs within twenty (20) calendar 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 Contract for Seller's breach. 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, in equity or under this Contract.
- C. Any settlement will be in accordance with FAR 52.249-2.

#### **4.7 TERMINATION FOR DEFAULT**

- A. NJ TRANSIT may cancel this Contract in whole or in part by written or electronic written notice: (1) If the Seller fails to make delivery of goods or to perform the services within the time specified in this Contract 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 Contract, provided that the Seller shall fail to remedy any such condition with ten (10) calendar 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 Contract 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 Contract 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, in equity or under this Contract.
- E. If, after notice of cancellation of this Contract 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 4.6 Termination for Convenience.

#### **4.8 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) calendar days.
- B. If work is suspended, an adjustment may, in the sole reasonable discretion of NJ TRANSIT, be made for any increase in the time and cost, exclusive of profit, of performing this Contract necessarily caused by such suspension, and this Contract 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) calendar 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 Contract or a final determination as to a pending claim.

#### **4.9 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 Contract.

#### **4.10 NO WAIVER**

No omission or delay by 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 Contract 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.

#### **4.11 MAINTENANCE OF RECORDS AND AUDIT**

During the term of this Contract and for five (5) years after final payment is made, Contractor shall maintain and make available for audit by NJ TRANSIT or its designee, or the Office of the State Comptroller, all books, records, receipts, documents, papers and any other data or information relevant to and related to this Contract.

#### **4.12 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, by e-mail or other such formal written instruments. Communications shall be considered received at the time actually received by the addressee or designated agent.

#### **4.13 DELIVERY**

Deliveries must be made both in quantities and at times specified herein, or as may be instructed by NJ TRANSIT, in writing. TIME IS OF THE ESSENCE. If Seller's deliveries fail to meet the 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 therefor withheld by NJ TRANSIT until the date goods are actually scheduled for delivery, or (iii) be placed in storage for Seller's account until the specified delivery date.

#### **4.14 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 Contract, 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 Contract for default as provided in Article 4.7 " 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 Contract for default as provided in Article 4.7.
- 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 will 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 re-inspection 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 Contract and for such longer period as may be specified elsewhere in this Contract.
- 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 Contract 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 Contract requirements which may be discovered prior to acceptance or during any warranty period, or for latent defects.
- G. If at any time during the performance of this Contract, 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 Contract, 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 Contract.

#### **4.15 ACCEPTANCE**

The initiation of performance under this Contract shall constitute acceptance of the Contract by Seller, including all of the terms and conditions therein. This Contract expressly limits acceptance to the terms stated herein. Any terms proposed by Seller, including but not limited to, additional or differing terms are rejected and deemed a material alteration hereof, unless expressly agreed to in writing by an authorized representative of NJ TRANSIT's Procurement Division. For the sale of goods only, title to the goods (if any) passes to NJ TRANSIT upon delivery of the goods to the delivery location. Delivery is not complete until such goods have actually been received and accepted by an authorized representative of NJ TRANSIT. Seller bears all risk of loss or damage to the goods until delivery of the goods to the delivery location.

#### **4.16 CHANGES**

NJ TRANSIT may, at any time, make changes within the general scope of the Contract. If such changes cause an increase or decrease in the cost of this Contract or the time required to perform, an equitable adjustment shall be made, and the Contract modified in writing accordingly. Any claim hereunder must be asserted in writing within ten (10) calendar days from the date the change is ordered. Nothing contained herein shall excuse Seller from proceeding without delay with the Contract 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 an authorized representative of NJ TRANSIT's Procurement Division and which expressly states that it constitutes an amendment to this Contract.

#### **4.17 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(s) intended. Seller warrants that all goods shall be free and clear from all liens, encumbrances or security interests and shall not infringe or misappropriate any letters patent, trademarks copyright, intellectual property rights or on the potential rights of any company or

persons. 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.

#### **4.18 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 Contract, then immediately upon manufacture or procurement they shall become the property of NJ TRANSIT. Seller shall maintain current inventory list(s) 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 Contract, (d) be subject to disposition by NJ TRANSIT at any and all times and upon demand they shall be returned to NJ TRANSIT, and (e) not, if proprietary or deliberative in nature, be disclosed to any third party without the prior written consent of 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.

#### **4.19 PACKING**

Unless otherwise specified in this Contract, Seller shall be responsible for safe and adequate packing which shall conform to the requirements of carrier's tariffs and any specification(s) by NJ TRANSIT, as appropriate to the nature of the items provided. Seller shall separately number all cases, packages, etc., showing the correspondence numbers on the invoices. An itemized packing slip, bearing this Contract number, shall be placed in each container. No extra charge shall be made for packaging or packing materials. Any costs for the return of packing materials shall be at Seller's expense and only upon written request to NJ TRANSIT prior to delivery and agreement by an authorized representative of NJ TRANSIT.

#### **4.20 PRODUCT SUPPORT**

- A. The Seller warrants that the items purchased under this Contract, 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 Contract, 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.

#### **4.21 USE OF INFORMATION; EQUAL EMPLOYMENT OPPORTUNITY**

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 Contract is furnished or disclosed as a part of the consideration for this Contract, 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.

As set forth in N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-3.5-3.6, during the performance of this Contract, the Seller agrees as follows:

- A. The Seller/Contractor 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 affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality 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-discrimination clause.
- B. The Seller/Contractor 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- C. The Seller/Contractor 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.
- D. The Seller/Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

#### **4.22 MANDATORY GOOD FAITH EFFORTS TOWARD EEO**

A. As set forth in N.J.A.C. 17:27-3.7, vendors providing goods or services shall abide by the following:

- (1) The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (2) The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- (3) The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (4) In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

B. As set forth in N.J.A.C. 17:27-3.8, vendors performing construction work shall abide by the provisions set forth in the referenced regulation. As set forth in N.J.A.C. 17:27-11.1, for vendors (and subcontractors) performing construction on public works, the contractor and its subcontractor(s) shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of the regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

#### **5.0 TERMS RELATING TO PRICE AND PAYMENT**

##### **5.1 PRICES**

NJ TRANSIT shall not be billed at prices higher than those stated on the Purchase Order (Contract). 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 Contract subsequent to its placement but prior to shipment will be applicable to this Contract.

##### **5.2 PAYMENT**

NJ TRANSIT agrees to pay the Seller after receipt of properly executed invoices for the quantities of goods ordered, delivered and accepted by NJ TRANSIT, or all services satisfactorily completed as set forth in this Contract. Payment will only be rendered after Vendor satisfies all required compliance obligations. 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.

##### **5.3 TAX CHARGES**

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; its N.J. State Exemption Number is 21-6000928.

##### **5.4 AVAILABILITY OF FUNDS**

NJ TRANSIT's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of NJ TRANSIT for payment of any money shall arise unless and until funds are appropriated each fiscal year by the State Legislature and made available through receipt of revenue.

#### **6. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section 6 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317 et seq., and Appendix II thereto.

##### **6.1 PROCUREMENT OF RECOVERED MATERIALS**

To the extent that the scope of work or specifications in the contract requires the contractor to provide any items subject to section 6002 of the Solid Waste Disposal Act, this Section 6.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 C.F.R. 200.323, the Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment and are energy efficient by

complying with and facilitating compliance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962 ("RCRA"), and U.S. Environmental Protection Agency's "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247. Contractor further agrees to comply with any and all RCRA requirements applicable to the work.

## **6.2 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:

- A. 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.
- B. 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.
- C. 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.
- D. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. 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.
- F. 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 its 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.
- G. 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.
- H. 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.

## **6.3 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 subcontractor 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.

## **6.4 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.

## **6.5 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.

## **6.6 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).

## **6.7 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.

## **6.8 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, member of Congress, officer or employee of Congress, or 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.

## **6.9 DOMESTIC PREFERENCES FOR PROCUREMENTS**

In accordance with 2 C.F.R. 200.322, the Contractor is advised 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).

For purposes of this section, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of 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.

## **6.10 CERTIFICATION OF NO TAX LIABILITY OR FELONY CONVICTION**

As a condition of any award relating to the Purchase Order, a private corporation, partnership, trust, joint-stock company, sole proprietorship, or any other business association, including each participant in a joint venture, hereby certifies, 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. Any such entity also certifies that it has not been convicted of any felony criminal violation under any federal law within the 24 months preceding the effective date of this Purchase Order.

Furthermore, any such entity is responsible for flowing down the requirements of the above paragraph 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.).

## **6.11 FEDERAL PROVISIONS RELATED TO CERTAIN TELECOMMUNICATIONS EQUIPMENT**

The vendor shall abide by 2 C.F.R. 200.216, which prohibits recipients and subrecipients of federal funds from entering into contracts (or extending or renewing a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Additional prohibitions include:

- (1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (2) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The vendor agrees to extend this provision to its subcontractors.

**EXECUTIVE ORDER NO. 125**

WHEREAS, beginning on October 28, 2012, and continuing through October 30, 2012, Hurricane Sandy struck the State of New Jersey with high winds and torrential rains; and

WHEREAS, Sandy produced unprecedented severe weather conditions, including enormous storm surges and devastating flooding; and

WHEREAS, Sandy destroyed entire communities across New Jersey, causing extraordinary damage to the State's people, economy, infrastructure, and resources; and

WHEREAS, the devastation caused by Sandy resulted in severe and unprecedented financial hardship and economic loss to New Jersey; and

WHEREAS, thanks to the efforts of first responders, private businesses, State and local governmental leaders, and all citizens of New Jersey, our State continues to recover and rebuild; and

WHEREAS, in order to address the severe losses suffered by individuals and businesses, the United States Congress passed, and on January 29, 2013, the President signed into law, the Disaster Relief Appropriations Act, 2013, P.L. 113-2, which provides federal fiscal year 2013 supplemental appropriations to respond to and recover from the severe damage caused by Sandy; and

WHEREAS, the State of New Jersey has pledged to work cooperatively and in coordination with our federal partners to ensure the integrity and accountability of all federal reconstruction resources received and distributed by the State to respond to and recover from the severe damage caused by Sandy; and

WHEREAS, in order to ensure the integrity of the expenditure of federal reconstruction resources, it is necessary and essential to implement comprehensive and stringent safeguards to make certain all such resources are utilized through an ethical and transparent process;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Each principal department and agency of this State is hereby directed to submit all potential State procurements involving expenditure of federal reconstruction resources to the Office of the State Comptroller ("State Comptroller") for review prior to commencement of the procurement process. The State Comptroller shall determine whether the proposed procurement process complies with applicable public contracting laws, rules, and regulations. If the State Comptroller determines that the proposed procurement process does not comply with applicable laws, rules, and regulations, the State Comptroller shall inform the contracting agency, as well as the Governor's Office of Recovery and Rebuilding, of the changes needed to make the process legally compliant.

2. The State Comptroller shall assign appropriate staff to conduct this review as necessary to ensure the integrity of the procurement process while still facilitating the timely expenditure of federal reconstruction resources to help rebuild New Jersey. Each department, office, division, and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the State Comptroller and to furnish the State Comptroller with such information and assistance on as timely a basis as is necessary to accomplish the purposes of this Order.

3. Each principal department and agency of this State is hereby directed to appoint an "Accountability Officer" to oversee the responsible disbursement and utilization of federal reconstruction resources allocated by or through that department or agency.

4. Each Accountability Officer shall serve as a liaison to the Governor's Office of Recovery and Rebuilding and the State Comptroller, and shall cooperate fully with the State Comptroller in its review of potential State procurements involving the expenditure of federal reconstruction resources.

5. In order to ensure transparency and integrity in the procurement process, the State Comptroller, in coordination with the Governor's Office of Recovery and Rebuilding and the New Jersey

Office of Information Technology, shall make certain that all approved State contracts for the allocation and expenditure of federal reconstruction resources are made available to the public by posting such contracts on an appropriate State website.

6. The website shall also provide information to the public regarding available federal funding streams and funding criteria, the tracking of federal funding allotments, and contract vendor information.

7. The State Comptroller, in coordination with the Governor's Office of Recovery and Rebuilding, shall provide information to contracting entities regarding applicable public contracting laws, rules, and regulations to help ensure accountability, transparency, and the timely expenditure of federal reconstruction resources.

8. Every State department and agency shall ensure that fraud prevention notices shall be prominently displayed at all construction projects involving federal reconstruction resources overseen by the department or agency. Such notices shall include the toll-free hotline established by the State Comptroller for reporting of fraud, waste, or abuse of federal reconstruction resources. The State Comptroller shall ensure that any information received indicating potential criminal activity shall be referred to the Office of the Attorney General.

9. The State Comptroller and the Governor's Office of Recovery and Rebuilding shall report to the Governor from time to time on the progress of the review process and the publication of related information on the website, and, in doing so, shall indicate whether additional staff and assistance is necessary to ensure accountability, transparency, and the timely expenditure of federal reconstruction resources.

10. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
8<sup>th</sup> day of February,  
Two Thousand and Thirteen, and  
of the Independence of the  
United States, the Two Hundred  
and Thirty-Seventh.

[seal]

/s/Chris Christie

Governor

Attest:

/s/Charles B. McKenna

Chief Counsel to the Governor