

Attachment G: Draft Vendor Contract

Proposers are encouraged to propose modifications to the agreement which will be considered in the evaluation.

Jaunt Purchasing Contract

This **Jaunt Purchasing Contract** (the “Contract”) is made as of the Effective Date, as defined herein, by and between Jaunt, Inc. (“Jaunt”), a Virginia stock corporation with a principal office address of 104 Keystone Place, Charlottesville, Virginia 22902 and _____ (“Contractor”). Jaunt and Contractor may each be referred to herein as a “party”, and collectively as the “parties”.

Whereas, Jaunt is a Virginia public service corporation that provides transit services and whose shareholders are political subdivisions of the Commonwealth of Virginia; and

Whereas, Jaunt desires to purchase certain goods or services and has issued and duly advertised a procurement solicitation dated _____ and identified as RFP/IFB # _____ (together with any addenda or corrections thereto, the “Procurement Solicitation”) which Procurement Solicitation is attached hereto as **Exhibit A** and describes in detail the goods or services Jaunt desires to purchase; and

Whereas, Contractor has submitted a proposal or bid (the “Proposal”) to provide to Jaunt the goods or services described in the Procurement Solicitation, a copy of the Proposal being attached hereto as **Exhibit B**; and

Whereas, Jaunt has reviewed the Proposal, and additional negotiated terms, clarifications, and pricing that were not included in the Proposal, if any, (the “Contract Negotiation Record”) are attached hereto as **Exhibit C**; and

Whereas, additional contractual terms required by the Commonwealth of Virginia Public Procurement Act and the Federal Transit Administration are attached hereto as **Exhibit D**; and

Whereas, Jaunt and Contractor now desire to enter into this Contract to provide for the sale from Contractor to Jaunt, and the purchase by Jaunt from Contractor, of the goods or services described in the Proposal.

Now, Therefore, Jaunt and Contractor agree as follows:

1. **Effective Date.** The Effective Date of this Contract is the earliest date this Contract, or counterparts thereof, has been signed by both parties.
2. **Contractor Identity.** Contractor represents and warrants that Contractor is licensed to perform business in the Commonwealth of Virginia and that Contractor holds all licensures and certifications required under the laws of the Commonwealth of Virginia or under federal law to be able to perform the services and/or sell the goods described in the Proposal. Contractor’s entity information is as follows:
 - a. Entity type: _____
 - b. State Corporation Commission Entity ID Number: _____
 - c. Principal Office Address: _____
3. **Incorporation of Exhibits.** All exhibits to this Contract are incorporated by reference and description into this Contract and are made a part of this Contract as if set forth fully herein. Failure to physically attach any exhibit to this Contract shall be deemed immaterial.

4. **Interpretation; Order of Precedence of Contract Documents.** This Contract and all exhibits hereto shall be interpreted in such a way that the terms are consistent with one another to the maximum extent possible. In the event of an express conflict, the terms of the body of this Contract shall take precedence over all exhibits; Exhibit B shall take precedence over Exhibit A; Exhibit C shall take precedence over Exhibits A and B; and Exhibit D shall take precedence over Exhibits A, B, and C.
5. **Term.** This Contract shall be effective as of the Effective Date and, unless earlier terminated or canceled, shall continue in effect for:
- a. *Initial Term.* A term of _____ year(s) from the Effective Date (the “Initial Term”).
 - b. *Renewal Term.* At the expiration of the Initial Term, this Contract shall automatically terminate unless Jaunt, in Jaunt’s sole discretion, provides written notice to Contractor of Jaunt’s intent to exercise Jaunt’s right to extend the Contract for an additional term of _____ year(s) (the “Renewal Term”). Such written notice of intent to exercise the Renewal Term must be provided by Jaunt at least 30 days in advance of the expiration of the Initial Term.
 - c. *Temporary Extension for Services in Progress.* In the event that services are in progress but are not complete upon the expiration of the Initial Term or Renewal Term, if any, Jaunt shall have the right to extend this Contract to allow for such limited additional time as may be necessary (the “Temporary Extension”), as determined by Jaunt in its sole discretion, to provide for the completion of such services.
 - d. *Definition of Term.* The Initial Term, Renewal Term, if any, and Temporary Extension, if any, are referred to collectively herein as the “Term”.
6. **Description of Goods and/or Services.** Contractor shall provide to Jaunt all the goods and/or services that are specified within the Proposal (Exhibit B) and Contract Negotiation Record (Exhibit C). Without limitation, such goods and services shall strictly conform to the descriptions and timing of delivery or performance specified therein, or on an on-going basis as needed by Jaunt if no timing for performance of services is otherwise specified.
- a. *Location of Services.* Unless otherwise specified in this Contract or agreed to in writing by Jaunt, all services shall be performed at Jaunt’s offices at 104 Keystone Place, Charlottesville, Virginia. Jaunt shall provide such access to Jaunt’s facilities as may be reasonably necessary for Contractor to perform its obligations under this Contract, provided that Contractor and its employees and agents shall comply with Jaunt’s safety and health environmental rules, as well as any other requirements which may be provided by Jaunt to Contractor. Jaunt reserves the right, upon reasonable notice to Contractor, to audit and observe Contractor’s performance hereunder at the facility where the services are being performed. Jaunt shall have the right upon written notice to Contractor to require Contractor to remove any of

Contractor's personnel from the performance of the services for good cause, which may include, but is not limited to, deficient performance or concerns regarding integrity or criminal history.

- b. *Delivery of Goods.* Unless otherwise specified herein or agreed to in writing by Jaunt, all goods shall be delivered at Seller's expense to Jaunt's offices at 104 Keystone Place, Charlottesville, Virginia. Time is of the essence for the performance of all services and delivery of all goods hereunder. Acceptance, rejection, or revocation of acceptance of any goods delivered to Jaunt under this Contract shall be in accordance Title 8.2 of the Code of Virginia, provided that Contractor agrees that under no circumstances shall Jaunt's reasonable opportunity to inspect goods be less than 10 business days.
7. **Price.** In consideration for Contractor fulfilling its obligations as set forth in this Contract, Jaunt shall pay to Contractor the purchase price, rate, or charges as may be specified in the Proposal (Exhibit B) and Contract Negotiation Record (Exhibit C) (the "Price"). The Price is fair and full compensation for the goods and/or services to be provided hereunder, and is inclusive of all taxes, insurance, fringe benefits, shipping, and any and all other expenses and fees whatsoever.
8. **Invoicing Procedure.** The Price shall be payable from Jaunt to Contractor as follows:
 - a. *Timing of Invoices.* Unless some other timeframe for invoicing is specified herein, Contractor shall submit an invoice to Jaunt no later than the 15th day of each month, such invoice to include all portions of the Price due for goods or services provided in the immediately preceding calendar month. All invoices shall be submitted to Jaunt, Accounts Payable, at ap@ridejaunt.org, or such other person or by mail per paragraph 15 below or otherwise as designated by Jaunt from time to time. Contractor's invoice shall include, or be accompanied by, such information and documentation as may be reasonably required by Jaunt to determine the correctness of the invoice. Invoices which do not include the information and documentation reasonably required by Jaunt shall be returned unpaid to Contractor for correction and re-submission.
 - b. *Timing of Payment.* Jaunt shall pay all undisputed portions of properly documented invoices within 30 days after receipt of Contractor's invoice. If Jaunt disputes any portion of an invoice or determines that the goods or services provided do not conform to the requirements of this Contract, Jaunt shall provide written notice to Contractor within 30 days after receipt of Contractor's invoice indicating the reason Jaunt is withholding any amount, and Jaunt shall pay the undisputed portion of the invoiced amount. Neither the payments made to Contractor, nor the method of such payments, shall be deemed acceptance by Jaunt of the services or goods.
9. **Accuracy of Contractors Proposal.** Contractor represents and warrants that all statements and representations in its Proposal were true and accurate at the time they were made and remain true and accurate as of the Effective Date, that Contractor is ready and able to

perform its obligations under this Contract, and that the goods and services provided under this Contract will conform to the statements and representations in its Proposal.

10. **Compliance with Laws and Regulations.** At all times during the Term, Contractor shall comply with all federal, state, and local laws, regulations, and ordinances that are applicable to Contractor's business, including without limitation Contractor's obligations under this Contract. Contractor shall timely pay all taxes relating to the work performed under this Contract and shall timely pay all fees necessary to maintain the certifications and licensures needed to perform its obligations under this Contract.
11. **Confidentiality.** Contractor understands and agrees that Jaunt maintains or possesses certain confidential information, included but not limited to Jaunt's employee records, records relating to Jaunt's customers and riders, certain software and proprietary information, and any information that may be marked "confidential", "proprietary", "business secret", or similar descriptive labels. Contractor agrees to not to access, possess, manipulate, change, or delete such information without Jaunt's express consent. In the event that Contractor accesses or possesses such confidential information, or information that Contractor reasonably believes may be confidential, Contractor agrees to take reasonable measures to safeguard such confidential information and to disclose such confidential information only to those employees of Contractor who need access to such confidential information to perform the services or deliver the goods hereunder, or as may be required by law or court order. Under no circumstances shall Contractor disclose confidential information to third parties without Jaunt's express permission, which permission may be conditioned upon Contractor and such third party entering into a confidentiality agreement acceptable to Jaunt.
12. **Indemnity.** Contractor agrees to indemnify, defend and hold harmless Jaunt and its shareholders, directors, officers, agents, volunteers, and employees from and against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses whatsoever, including attorney's fees, resulting from or arising out of (i) Contractor's breach of this Contract, (ii) Contractor's or its agent's and subcontractor's negligent activities or omissions, or (iii) from which the Contractor would have legal liability to Jaunt or any third party outside of this Contract. Jaunt retains the right to provide its own defense against any suits, claims, or actions, and to assess any costs of such defense to Contractor, including attorney's fees, expert witness fees, and court costs.
13. **Termination.** This Contract may be terminated as follows:
 - a. *Termination by Jaunt.* Jaunt may terminate this Contract at its sole discretion and for any or no reason upon 30 days' prior written notice to Contractor. Upon such termination, Contractor shall be entitled to receive payment for all work performed in accordance with this Contract as of the date of termination. Contractor understands and acknowledges that this Contract is subject to financial assistance provided by the U.S. Department of Transportation, the Virginia Department of Rail and Public Transportation, and Jaunt's governmental shareholders, and that

one possible reason for termination by Jaunt is a reduction of Jaunt's financial assistance from such sources.

- b. *Termination for Breach after Notice and Opportunity to Cure.* Either party may terminate this Contract for a breach by the other party of any of the terms and conditions of this Contract, without prejudice to any other rights or remedies the non-breaching party may have, provided the party seeking to terminate the Contract for breach must notify the other party in writing of the nature of the breach and provide a period of time not less than 30 days within which such party shall have an opportunity to cure the alleged breach.
- c. *Immediate Termination for Insolvency.* Either party may cancel this Contract immediately upon written notice to the other in the case of bankruptcy, insolvency, or appointment of custodian, receiver, trustee, or liquidator of the other party.

14. **Obligation Upon Receipt of Notice of Termination.** Upon receipt of a notice of termination in accordance with this Contract, Contractor shall reasonably discontinue or wind down its services or production of goods in accordance with Jaunt's instructions, and shall coordinate in good faith with Jaunt to take all appropriate actions to minimize Contractor's costs and liabilities incurred during the Term. Jaunt shall have no responsibility to pay for services performed or goods delivered after the effective date of termination.

15. **Notices.** Any notice that is required to be delivered to a party under this contract shall be delivered to the following designated persons. New or different persons may be designated in writing from time to time by each party.

a. *If to Jaunt:* _____, Contract Administrator
104 Keystone Place
Charlottesville, Virginia 22902
Facsimile:
Email: _____

b. *If to Contractor:* _____

16. **Insurance Requirements.** Unless higher limits are otherwise specified in this Contract, during the Term Contractor shall maintain the below-listed minimum insurance coverages in full force and effect. These coverages may be satisfied through a combination of insurance policies, provided that coverage requirements are met in the aggregate amount. All coverages must be provided by a company or companies licensed to conduct business within the Commonwealth of Virginia.

- a. *Workers' Compensation Insurance.* Workers' Compensation Insurance coverage is required only for employers of three or more employees, to include the employer. Contractors who fail to notify the Jaunt of increases in the number of employees that change their workers' compensation requirements during the Term shall be in noncompliance with the Contract.
 - b. *Employer's Liability.* Employer's Liability coverage is required in the amount of \$100,000.
 - c. *Commercial General Liability.* Commercial General Liability is required in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability must include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage, and shall not exclude punitive damages.
 - d. *Automobile.* Automobile Liability coverage is required in the amount of \$1,000,000 combined single limit only if a motor vehicle not owned by Jaunt is to be used as part of the services provided under the Contract. Automobile liability coverage shall not exclude punitive damages.
 - e. *Proof of Insurance.* On or before the Effective Date, and annually thereafter, Contractor will submit certificates evidencing that Contractor has obtained insurance in the coverages and amounts required by this Contract. Jaunt may, at Jaunt's sole option, require Contractor to list Jaunt and/or its elected and appointed officials, agents, and employees as additional insureds by endorsement to the commercial liability and automobile policies. In the event that Contractor receives notice of cancellation for any reason, non-renewal or material change in insurance coverage or limits, Contractor will immediately notify Jaunt. In the event of cancellation of Contractor's insurance for non-payment, Jaunt retains the right, but is not obligated, to pay any premiums and deduct such amounts from any payments due Contractor.
17. **Independent Contractor.** Contractor shall at all times during the Term be an independent contractor of Jaunt. This Contract does not, and shall not be construed to, create any employment relationship, agency, or partnership whatsoever. Neither party has the authority to make any statements, representations, or commitments of any kind nor to take any action binding on the other except to the extent (if any) provided for in this Contract.
- 2.1. **No Third-Party Beneficiaries or Obligations.** Nothing in this Contract shall create or be recognized to create and shall not be construed or interpreted to create any third-party beneficiary. Nothing in this Contract shall obligate, or be construed to obligate or create any expectation, with respect to any third party, including without limitation Jaunt's shareholders.

18. **Assignment.** Unless a subcontractor is expressly identified in Contractor's Proposal, Contractor shall not subcontract to any other person or entity any of the work to be performed under this Contract without Jaunt's permission in writing. Contractor may not assign this Contract, or any portion thereof, to any third party without Jaunt's written permission. Jaunt may assign its rights and obligations under this Contract to any successor to the rights and functions of Jaunt or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent Jaunt deems necessary or advisable under the circumstances.
19. **Amendment by Purchase Order or Change Order.** To the extent permitted by applicable laws and regulations, including without limitation Virginia Code § 2.2-4309, Jaunt and Contractor may agree on (i) the purchase of goods or services in addition to those specified in the Proposal or (ii) a reduction to the goods and services purchased hereunder. Such change may be documented in a supplemental change order or purchase order (the "Change Order") signed by both parties, which Change Order shall describe the change to the goods or services to be provided and any changes to the price thereof. Despite the Change Order being a separate document, all terms of this Contract shall apply to any Change Order entered into between Jaunt and Contractor during the Term.
20. **Claims, Administrative Issues, and Appeals.** Jaunt will be solely responsible for the settlement of all contractual and administrative claims by Contractor arising from this Contract. All contractual and administrative claims by Contractor shall be adjudicated using the following procedures:
- a. *Claims Process.*
 - i. Contractor shall give Jaunt written notice of the intention to file a contractual claim at the time of the event or the beginning of the work upon which the claim is based.
 - ii. Contractual claims must be submitted in writing to Jaunt no later than 60 days after final payment.
 - iii. Jaunt and Contractor shall work in good faith to resolve any claim through negotiation between senior-level personnel.
 - iv. Jaunt's Executive Director, or their designee, shall make a written decision addressing the claim within 90 days of submission.
 - b. *Administrative Appeal.*
 - i. Contractor may appeal the decision rendered above in Subsection (a)(iii) by filing a Letter of Appeal with Jaunt within 10 days of the date of the decision being challenged. No appeal will be allowed if the Letter of Appeal is untimely.
 - ii. The Letter of Appeal shall specify the basis for the appeal, the relief sought, and whether a hearing is requested.
 - iii. If a hearing is not expressly requested, Jaunt shall render a written decision within 10 days of receiving the Letter of Appeal.
 - iv. If a hearing is requested, the hearing shall be held within 30 days of receipt of the Letter of Appeal. The hearing will be conducted by a disinterested

arbiter appointed by Jaunt. The arbiter should be an attorney-at-law. Each party will have the opportunity to present pertinent information during the hearing. The hearing shall be an informal administrative proceeding, rather than a judicial-like trial, but it is nevertheless the appellant's burden to produce evidence sufficient to show that prior decision was erroneous. The hearing shall be recorded and transcribed. A final decision with findings of fact will be issued within 21 days of the hearing.

- c. *Judicial Review.* The process set out in Subsections (a) and (b) is a mandatory pre-requisite to filing any judicial action against Jaunt. After the completion of such process, however, such a judicial action may be filed within 21 days of the issuance of the arbiter's decision and not afterward. Such arbiter's decision shall be presumed correct and shall not be set aside unless (i) it reflects a material legal error, or (ii) it is factually unsupported by the record of the arbiter's hearing. The arbiter is entitled to assess the credibility of all witnesses and such assessments shall not be attacked judicially.
 - d. *Performance During Claims Process.* Unless Contractor has terminated the contract pursuant to an express right of termination provided herein, Contractor shall continue to perform its obligations under this Contract during the pendency of this claims process and any appeal.
21. **Governing Law and Venue.** This Contract shall be governed by Virginia law. Any dispute or procedure arising from or interpreting this Contract, or pertaining to the services or goods sold by Contractor to Jaunt hereunder, shall be heard in the General District or Circuit Courts of Albemarle County, Virginia.
22. **Limitation of Liability.** The amount of Jaunt's liability to Contractor under this Contract is limited to the portion of the Price to be paid hereunder during the one calendar year immediately preceding the event giving risk to any such liability. In no event shall Jaunt be liable to Contractor for consequential damages, economic damages, loss of business, incidental damages, punitive damages, or any other type of damages whatsoever other than payment of the Price.
23. **Attorney's Fees.** In the event that Jaunt prevails in an action against Contractor for breach of this Contract or to enforce this Contract, Jaunt shall be entitled to recover its reasonable attorney's fees expended in such action.
24. **Construction of Contract.** No rule of construction about the drafter of this Contract shall be used to construe or interpret any provision of aspect of this Contract. Captions used in this Contract are solely for convenience and are not to be used for applying, construing or interpreting this Contract.
25. **Waiver.** The waiver or approval by either party of or under any term or condition of this Contract at any time shall not be deemed a waiver or approval unless provided in writing by an authorized representative of the waiving or approving party. No waiver or approval

given shall be deemed to apply to such term or condition as to any other matter or aspect or for any subsequently required waiver or approval. A waiver of any failure to perform under this Contract shall neither be construed as nor constitute a waiver of any subsequent failure.

26. **Entire Agreement; Amendment.** This Contract, together with any Change Orders, is the entire agreement between Contractor and Jaunt concerning the subject matter hereof. Any amendment to this Contract must be in writing and signed by both parties.

In witness hereof, the parties have executed this Contract, intending to be bound hereby.

Jaunt, Inc.

By:

_____(L.S.) _____

Ted J. Rieck, Executive Director

Date

Contractor:

By:

_____(L.S.) _____

Title: _____

Date

Schedule of Exhibits:

Exhibit A – Procurement Solicitation

Exhibit B – Proposal

Exhibit C – Contract Negotiation Record (if any)

Exhibit D –Federal Transit Administration Federal Clauses

Exhibit A – Procurement Solicitation

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Exhibit B – Proposal

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Exhibit C – Contract Negotiation Record (if any)

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Exhibit D – Federal Transit Administration Federal Clauses

FEDERAL CLAUSES

Procurement Clauses Checklist

JAUNT receives funding from grants through the Federal Transit Administration (FTA) administered by the Virginia Department of Rail and Public Transportation. Since FTA funding will be used for this procurement, the successful vendor will comply with the federal statutes and regulations below. The following pages contain some of the language for each clause, but vendors are expected to reference each clause as found on the FTA website.

FTA REQUIRED CLAUSES FOR ALL PROCUREMENTS:

Access to Records and Reports
Americans with Disabilities Act
Buy America Requirements
Byrd Anti-Lobbying Amendment
Cargo Preference Requirements
Civil Rights Laws and Regulations
Clean Air Act and Federal Water Pollution Control Act
Conformance with its National Architecture
Debarment and Suspension
Disadvantaged Business Enterprise (DBE)
Energy Conservation
Federal Changes
Fly America
Incorporation of Federal Transit Administration (FTA) Terms
No Government Obligation to Third Parties
Notification to the Federal Transit Administration (FTA)
Procurement of Recovered Materials
Program Fraud and False or Fraudulent Statements and Related Acts
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
Prompt Payment
Safe Operation of Motor Vehicles
Special Notification Requirement for States
Simplified Acquisition Threshold
Termination
Violation and Breach of Contract

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

BUY AMERICA REQUIREMENTS

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

BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 Agency."

CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

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

CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246,

"Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3 Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45

C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

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

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees 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 FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

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

DEBARMENT AND SUSPENSION

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

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

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

FEDERAL CHANGES

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FLY AMERICA

a) Definitions. As used in this clause—

- 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

i. 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).

ii. Telecommunications or video surveillance services provided by such entities or using such equipment.

iii. Telecommunications or video surveillance equipment or services procured 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.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

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

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized;
- and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327.

The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

TERMINATION

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

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

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default.

In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

VIOLATION AND BREACH OF CONTRACT

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors; 2. The right to cancel this Contract as to any or all of the work yet to be performed; 3. The right to specific performance, an injunction or any other appropriate equitable remedy; and 4. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

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

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

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

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

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

Rights and Remedies

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