

## SAN DIEGO METROPOLITAN TRANSIT SYSTEM PURCHASE ORDER TERMS AND CONDITIONS – PREVAILING WAGE

**1. Definition and Acceptance of Terms:** MTS shall collectively mean San Diego Metropolitan Transit System (MTS), San Diego Transit Corporation (SDTC), and San Diego Trolley, Inc. (SDTI). Contractor shall mean the person and/or company from whom the merchandise, goods, equipment (hereinafter “goods”) or service are ordered as shown on the face hereof. This Purchase Order constitutes an offer by MTS to Contractor upon the terms and conditions stated herein and shall become a binding Purchase Order upon acceptance thereof either by acknowledgement or performance.

**2. Entire Purchase Order:** This Purchase Order, which includes the applicable terms and conditions, specifications, scope and any other included attachments, constitutes the entire Purchase Order and understanding between MTS and Contractor. Any amendments to this Purchase Order must be in writing and executed by both parties.

**3. Pricing:** The total price herein specified shall include all taxes which either party is required to pay with respect to the sale of the goods and services covered by this Purchase Order, including sales and use taxes, and shall include all charges for customs duties, freight charges and shipping unless specifically excluded. MTS is exempt from Federal Excise and Transportation Taxes. On out-of-state purchases, the Contractor must show their Use Tax Permit Number issued by the California State Board of Equalization, which authorizes them to charge and collect California sales tax. Fuel surcharges or charges for cartage, pallets, boxing or packaging shall not be allowed unless disclosed at the time the Contractor submits a response to a solicitation or request for quote.

**4. Payment:** MTS will pay Contractor only upon satisfactory delivery or receipt of goods and services. MTS will review each payment request as soon as practicable after receipt. If any payment request is determined to be unsuitable for payment, MTS shall notify Contractor as soon as practicable. MTS shall not pay any interest charges for late payments of invoices unless authorized by Cal. Pub. Con. Code, 2104.50.

**5. Labor:** A. Hours of Work: Eight (8) hours of work shall constitute a legal day’s work. Contractor and each subcontractor shall forfeit, as penalty to MTS, twenty-five dollars (\$25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, section 1810 to section 1815, except as provided in Labor Code section 1815. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of MTS and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

B. Prevailing Rates of Wages: The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. Since this Project involves an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at MTS’s Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the Project site. Contractor shall defend, indemnify and hold MTS, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The Contractor shall forfeit as a penalty to MTS not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned. Because the Project involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its sub-contractors shall pay the higher of the state or federal prevailing wage rates. Federal prevailing wage rates are available from the U.S. DOL at [www.access.gpo.gov](http://www.access.gpo.gov).

C. Payroll Records: Pursuant to Labor Code Section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (“DIR”) on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. If not subject to paragraph (a), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (“DLSE”) of the DIR or shall contain the same information as the forms provided by the DLSE. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to MTS for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

D. Employment of Apprentices: Contractor’s attention is directed to the provisions of sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to sections 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. E. Nondiscrimination: Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law. F. Labor Certification: I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

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**6. Delivery:** Timely performance and deliveries are essential to this Purchase Order. Contractor must immediately advise MTS if there is any delay or shortage in shipment or of a partial shipment and date full shipment will be delivered. All goods and services described herein must be delivered within the time specified on this Purchase Order. Delivery of goods shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed to by MTS. Unless otherwise specified herein, all goods acquired under this Purchase Order are sold F.O.B. location specified by MTS. An original copy of the freight bill must be attached to the invoice. Contractor is not authorized to ship the goods under a reservation and no tender of a bill of lading shall operate as a tender of the goods. COD shipments are expressly prohibited. Shipment in greater or lesser quantity than ordered may be returned at Contractor's expense unless authorized by MTS.

**7. Inspection, Acceptance or Rejection of Goods:** Inspections and acceptance or rejection of the goods will be at the delivery location unless otherwise specified. MTS will inspect the goods and either accept or reject them within 30 calendar days from the date of delivery. If any specified inspection or testing is required to determine if the goods meets the specifications, Contractor shall perform or shall have performed such inspections and tests at Contractor's sole cost prior to the delivery of such goods to MTS. Any goods received damaged or not in accordance with the instructions or specifications on the Purchase Order will be rejected and returned to Contractor at Contractor's risk and expense. MTS will notify the Contractor in writing stating the reason(s) why the goods are deemed damaged or non-conforming. Contractor will have 10 business days or an otherwise agreed upon date to deliver conforming goods. MTS will hold the damaged or non-conforming goods for a reasonable time not to exceed 30 calendar days and Contractor must remove the rejected goods at Contractor's sole cost and expense.

**8. Risk of Loss:** Contractor will bear all costs, loss or damage and assume all risk and liability associated with manufacture or delivery of the goods or services regardless of the cause thereof until MTS accepts their delivery.

**9. Material Safety Data Sheet (MSDS):** It is mandatory for Contractor to supply an MSDS with the shipment of any goods that contains any hazardous material. At any time the content of an MSDS is revised, Contractor is required to provide the new information relevant to the specific hazardous material to MTS.

**10. Excavations:** If this Purchase Order involves digging trenches or other excavations that extend deeper than four (4) feet below the surface the Contractor shall promptly and before the following conditions are disturbed, notify MTS, in writing, of any: 1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health & Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; and 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Purchase Order. If any of the above conditions exist, MTS will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Purchase Order.

**11. Subcontractor:** Contractor shall provide the name, the business address, the California contractor license number and the portion of the work that will be done by each subcontractor or subcontractor's subcontractor who will perform work, labor or render service to the Contractor to MTS. Written consent by MTS must be received before Contractor substitutes a person as subcontractor in place of the Subcontractor listed in the original bid. If Contractor fails to specify a subcontractor or a subcontractor's subcontractor in the bid or purchase order documents, the Contractor agrees that they are fully qualified to perform that portion and will perform that portion themselves.

**12. Prompt Progress Payments:** A prime Contractor or Subcontractor shall pay any subcontractor no later than seven (7) business days from the receipt of each progress payment from MTS in accordance with Cal. Bus. & Prof. Code, 7108.5 concerning prompt payment to subcontractors. Any delay or postponement of payment over 30 calendar days may take place only for good cause and with MTS's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, deficient subcontractor performance, or noncompliance by a subcontractor. Prime contractors must submit the MTS Prompt Payment Certification to the MTS Contracts Administrator via email at Antonio.Monreal@sdmts.com. This form certifies that all subcontractors and suppliers were paid within seven (7) days of receiving payment from MTS for work performed during the previous month and retainage was released for those subcontractors and suppliers whose work is complete. The prime contractor must submit the completed form monthly during the project and the month following final acceptance of the project. In addition, the 7-day prompt payment requirement prevails over Purchase Order language between a prime contractor and a subcontractor or supplier.

**13. Retention:** MTS shall hold retainage of 5% from the Prime Contractor for any public works purchase order over \$5,000. MTS shall make prompt and regular incremental acceptances of portions as determined by MTS of the Purchase Order work and retain 5% of the Purchase Order price until final completion and acceptance of performance. The Prime Contractor or Subcontractor shall return all monies withheld in retention from a subcontractor within seven (7) business days after receiving retention proceeds from MTS for work satisfactorily completed and accepted. Any delay or postponement of payment over 30 calendar days may take place only for good cause and with MTS's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Cal. Bus. & Prof. Code, 7108.5 and Cal. Pub. Con. Code, 7107. These requirements shall not be construed to limit or impair any contractual, administration, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor deficient subcontract performance, or noncompliance by a subcontractor.

**14. Substitution of Security:** At the request and expense of the Contractor, MTS will substitute securities for the amount so retained in accordance with Cal. Pub. Cont. Code Section 22300.

**15. Changes:** MTS may at any time by written order make changes within the general scope of this Purchase Order in any of the following ways: 1) drawings, designs or specifications; 2) method of shipping or packing; 3) place of delivery; 4) delivery schedule; 5) description of services to be performed; 6) time of performance; 7) place of performance; or 8) method or manner of performance. Should any such change increase or decrease the cost or time required for performance of this Purchase Order, proper adjustments shall be made in price and/or schedule as the case may be. The Contractor must assert its right to an adjustment under this clause within 30 calendar days from the date of receipt of the written order. If the Contractor requests a change to the Purchase Order, the change must be authorized by MTS in writing and the Contractor must provide notice to MTS prior to the time Contractor shall have performed the service and/or deliver the goods if based on an act or failure to act by MTS or in all other cases within 15 calendar days after the happening of the event, thing, occurrence or other cause giving rise to the potential change.

**16. Audit/Inspection of Records and Work Sites:** The Contractor and any Subcontractor shall retain complete and readily accessible records related in whole or in part to the Purchase Order, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type and supporting materials related to those records. The Contractor shall maintain all books, records, accounts and reports required under this Purchase Order for a period of not less than three (3) years after the date of termination or expiration of this Purchase Order, except in the event of litigation or settlement of claims arising from the performance of this Purchase Order, in which case records shall be maintained until the disposition of all such litigation, appeals,

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claims or exceptions related thereto. The Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., FTA, DOT Office of Inspector General, the State, MTS or any of their authorized representatives to inspect and audit records pertaining to this Purchase Order as reasonably may be required. The Contractor shall also permit FTA and its contractor's access to the sites of performance under this Purchase Order as reasonably may be required. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**17. Termination:** Should Contractor fail within seven (7) calendar days from receipt of MTS's written notice to correct any default, including but not limited to failure perform the Work in accordance with these terms and conditions and/or technical specifications, failure to comply with the directions of MTS, or failure pay its creditors, MTS may terminate this Purchase Order. Following a termination for default, MTS shall have the right to take whatever steps it deems necessary to correct Contractor's deficiencies and charge the cost thereof to Contractor, who shall be liable for the full cost of MTS's corrective action, including reasonable overhead, profit and attorneys' fees. MTS may at any time terminate the Purchase Order at MTS's convenience upon five days written notice to Contractor; in the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which costs are documented to MTS's satisfaction, plus a reasonable amount not to exceed fifteen percent (15%) of the actual cost of the Work performed for overhead and profit. Contractor shall not be entitled to any claim against MTS for any additional compensation or damages in the event of such termination. If MTS terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits

**18. Insurance:** Contractor will include the Purchase Order/contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best. MTS utilizes the services of a third party insurance monitoring company. As a condition of Purchase Order award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS's choosing.

A. COVERAGE REQUIRED - ALL PURCHASER ORDERS: (1) Liability: (a) Commercial General Liability: At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work. All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds as their interests may appear. (b) Automobile Liability: At all times during this Purchase Order, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles. (c) Workers' Compensation/Employer Liability: At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES MAY BE REQUESTED BY MTS BASED ON PROJECT PURCHASE REQUIREMENTS.

**19. Indemnification:** To the fullest extent allowed by law, Contractor shall defend, indemnify and hold MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees, free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with the Work or this Purchase Order, including claims made by subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of MTS's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees, in any such suit, action or other legal proceeding. Contractor shall reimburse MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782. Contractor agrees to pay, or reimburse MTS, SDTI, SDTC, SD&AE, and SD&IV for regulatory agency or court imposed fees, fines, or penalties imposed on MTS, SDTI, SDTC, SD&AE, and SD&IV arising from Contractor's failure to complete the Work in a timely manner and/or in accordance with the Purchase Order Documents and any applicable permits or Applicable Laws. Contractor's responsibility and obligation to pay, or reimburse, MTS for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Work.

**20. Warranties:** Contractor warrants that: (1) all goods delivered under this Purchase Order will be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code and free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Contractor); (2) the goods will be manufactured and delivered strictly in accordance with MTS's specifications, drawings, and approved sample, if any; and (3) the goods will be free from defects in design. Contractor agrees that the goods furnished under this Purchase Order will be covered by the most favorable commercial warranties the Contractor gives to any customer for the same goods. Contractor also warrants and agrees that title to all materials equipment furnished under this Purchase Order and accepted by MTS will pass to MTS free and clear of all liens, claims, security interests or encumbrances. MTS's rights and remedies as set out herein are in addition to and not limited by any rights MTS may have under any other term of this Purchase Order or provision of law.

**21. Governing Law and Choice of Forum:** Contractors quote, the resulting purchase order and the work performed under it shall be governed by these Terms and Conditions and the laws of the State of California. Contractor warrants that in the performance of this Purchase Order it shall comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations thereunder. Any action or proceeding to enforce or relating to this Purchase Order shall be brought exclusively in the federal or state courts located in San Diego County, California, and the Contractor and MTS hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding

**22. Disputes Claims and Resolution:** MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Purchase Order informally through their designated representatives. If the informal efforts are unsuccessful, then any dispute shall be resolved in accordance with the procedures set forth in Public Contract Code sections 9204 and 20104 et seq. MTS will provide a written response to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim, unless the parties mutually agree to extend the time for response. If MTS does not respond within the 45-day time period, or as extended by mutual agreement, the claim shall be deemed rejected in its entirety. If the Contractor disputes MTS's response, or if MTS fails to respond within the statutory time period(s), the Contractor may so notify MTS within 15 days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, MTS shall schedule a meet and confer conference within 30 days. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion thereof remains in dispute, MTS shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any portion of the claim that remains in dispute shall be submitted to nonbinding mediation. The selection of the mediator shall be in accordance with Public Contract Code section 9204 and MTS and the Contractor shall equally share the associated mediator fees. Each party will be responsible for its own attorney's fees and other costs. Contractor must comply with the

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claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against MTS. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against MTS.

**23. Notice of Third Party Claims:** Pursuant to Cal. Pub. Cont. Code Section 9201, MTS shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Purchase Order. MTS is entitled to recover reasonable costs incurred in providing such notification.

**24. Independent Contractor:** In the performance of any services or delivery of any goods to be provided hereunder, Contractor's relationship to MTS shall be that of an independent Contractor and not an employee, agent or other representative of MTS.

**25. Assignments:** Neither this Purchase Order nor any interest herein nor claim hereunder may be assigned by Contractor either voluntarily or by operation of law, nor may all or substantially all of this Purchase Order be further subcontracted by Contractor without the prior written consent of MTS. Pursuant to Cal. Pub. Cont. Code Section 7103.5, in entering into a public works Purchase Order or subcontract to supply goods, services, or materials pursuant to a public works Purchase Order, Contractor or subcontractor offers and agrees to assign to MTS all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Purchase Order or any subcontract.

**26. Identification of Personnel/Security.** MTS shall provide all Contractor personnel assigned to work under this Purchase Order with Contractor Identification Badges ("MTS ID Card"). Requests for MTS ID Cards will be made to and processed by the MTS-designated project manager or contracting officer. Approved requests for MTS ID Card(s) will be processed within two business days. All Contractor personnel must obtain MTS ID Cards prior to entering MTS property. Valid MTS ID Cards must be displayed prominently on the uniform of all of Contractor's employees while on MTS property. Contractors are required to provide their employees uniforms prominently bearing the name of the Contractor's business entity. MTS will allow only properly credentialed personnel of the Contractor who are wearing the appropriate uniform on its property. Contractor personnel who enter MTS property without valid MTS ID Cards may be arrested and/or cited by MTS Code Enforcement and/or other law enforcement for trespassing and violation of MTS Ordinance 13. Contractor must collect MTS ID Cards from all Contractor personnel separating from employment with the Contractor and return them to MTS for destruction. Contractor is strictly liable for the use of all MTS ID Cards issued to its employees under this Purchase Order.

a. Required Background Checks. MTS requires that all Contractor personnel assigned to work on MTS property pass comprehensive background checks (Investigative Consumer Report), conducted by the Contractor, prior to beginning work on MTS property or under this Purchase Order. At a minimum, the background check must, (1) positively establish the employee's identity, (2) search all common databases for criminal offenses (e.g., Federal District Court Databases), (3) verify the social security number or tax ID provided by the employee, (4) search sex offender databases, and (5) search the local criminal databases of every County in which the employee has lived in the last seven years. Contractor must conduct background checks in accordance with applicable law, including but not limited to, the Fair Credit Reporting Act and California Civil Code Sections 1785 and 1786. Contractor personnel meeting any of the conviction criteria outlined below are not eligible for issuance of an MTS ID Card and may not be assigned to work on MTS property. The term conviction includes being found guilty, pleading guilty, pleading no contest, or being found guilty by reason of insanity.

b. Permanent Disqualification. The following are permanently disqualified: (1) Registered sex offenders are ineligible; (2) Espionage or conspiracy to commit espionage; (3) Sedition or conspiracy to commit sedition; (4) Treason or conspiracy to commit treason; (5) A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime; (6) A crime involving a TSI (transportation security incident). Note: A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute; (7) Improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law; (8) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f); (9) Murder; (10) Threat or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility; (11) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the permanently disqualifying crimes; (12) Attempt to commit the crimes in items (2)-(5) of this section; (13) Conspiracy or attempt to commit the crimes in items (6)-(11) of this section; and (14) Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

c. Non-Permanent Disqualification. Disqualification for seven years from the date of the offense or five years from the date of release from prison for the offense (whichever is later): (1) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21; (2) Extortion; (3) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering, where the money laundering is related to a crime listed in Parts A or B (except welfare fraud and passing bad checks); (4) Bribery; (5) Smuggling; (6) Immigration violation; (7) Distribution, possession w/ intent to distribute, or importation of a controlled substance; (8) Arson; (9) Kidnapping or hostage taking; (10) Rape or aggravated sexual abuse; (11) Assault with intent to kill; (12) Robbery; (13) Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law; (14) Violations of the Racketeer Influenced and Corrupt Organizations Act under 18 U.S.C. 1961, et seq., or a comparable state law, other than any permanently disqualifying offenses; (15) Voluntary manslaughter; (16) Conspiracy or attempt to commit crimes in this section; and (17) Any offense that is still pending in the courts (without official legal disposition) that will disqualify the individual if they are convicted.

d. Standards. This section sets forth minimum standards Contractors must uphold through their background checking process, when assigning employees to work on an MTS contract. These disqualifying criteria are minimum standards to promote public safety/security. Contractor may choose to exceed these standards and is otherwise unrestricted in its employment decisions. Contractor may choose to employ individuals who do not meet these standards, as long as they are not assigned to work under this Purchase Order or on MTS property. Questions regarding the application of MTS's background checking standards should be directed to the MTS Manager of Human Resources.

e. Oversight. Upon request of MTS, Contractor will provide sufficient documentation for MTS to audit Contractor's compliance with MTS's background checking standards. MTS reserves the right to delay provision of MTS ID Cards until Contractor documents completion of appropriate background checks on employee(s) for whom Contractor is requesting MTS ID Card(s). MTS's oversight of Contractor's background checking process is not intended to replace Contractor's judgment or ability to manage its workforce and operation. MTS's oversight, or lack thereof, shall not limit Contractor's liabilities and/or obligations as set forth in this Purchase Order. MTS reserves the right to suspend or revoke the MTS ID Cards of Contractor's employees at its sole and absolute discretion. If, with MTS's consent, Contractor

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subcontracts all or part of the services within this Purchase Order, Contractor will remain directly responsible and liable for ensuring subcontractor(s) adhere to MTS background checking and ID Card standards. If MTS determines that Contractor has breached its obligations as defined in this section, MTS may immediately terminate this Purchase Order by providing written notice to Contractor. If this Purchase Order is terminated, Contractor will be paid its costs for work performed up to the time of termination.

### **FEDERAL CLAUSES - The following clauses apply only for Purchase Orders over \$3,500 that are assisted with Federal Funds unless otherwise stated.**

**27. Incorporation of Federal Transit Administration (FTA) Terms:** The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT). All provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Purchase Order. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTS requests which would cause MTS to be in violation of the FTA terms and conditions.

**28. Federal Changes:** The 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 FTA Master Agreement between MTS and FTA, as they may be amended or promulgated from time to time during the term of this purchase order. Contractor shall also ensure compliance by subcontractors at any tier of any applicable change to federal requirements.

**29. No Federal Government Obligations to Third Parties:** Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Purchase Order, absent the express written consent by the Federal Government, the Federal Government is not a party to this Purchase Order and shall not be subject to any obligations or liabilities to Contractor or any other party (whether or not a party to that Purchase Order) pertaining to any matter resulting from the underlying Purchase Order. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**30. Program Fraud and False or Fraudulent Statements and Related Acts:** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. Section 3801, et seq., and DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this purchase order. Upon execution of the underlying Purchase Order, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the underlying Purchase Order or the FTA assisted project for which this Purchase Order work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a Purchase Order connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53., the government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5323(l) on the Contractor, to the extent the federal government deems appropriate. The Contractor agrees to include this provision in each subcontract financed in whole or in part with Federal assistance from the FTA.

**31. Fly America:** (Applicable to all purchase orders transporting persons or property by air outside the U.S.) The Contractor agrees to comply with 49 U.S.C. 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**32. Cargo Preference:** (Applicable to all purchase orders involving equipment, materials or commodities which may be transported by ocean vessels) 46 U.S.C. 55305 and 46 C.F.R. Part 381 which imposes U.S. cargo preference requirements on the shipment of foreign made goods shall apply to this procurement. A. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Purchase Order, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels. B. The Contractor shall furnish within 20 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 United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (A) above to MTS (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project. C. The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Purchase Order when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

**33. Energy Conservation:** The Contractor and any Subcontractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq and 49 C.F.R. part 622, subpart C.

**34. Seismic Safety:** (Applicable to A&E and construction purchase orders for new buildings or additions to existing buildings) The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in DOT Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this Purchase Order including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**35. Recycled Products:** (Applicable to all purchase orders involving items designated by the EPA, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000) The Contractor and any Subcontractor 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 State Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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**36. Disadvantaged Business Enterprise (DBE) Participation:** This project is subject to 49 CFR Part 26 entitled "Participation by DBEs in DOT Financial Assistance Programs." MTS's DBE program has an aspirational goal of 2.9% participation by certified DBE's over FFY 2019 to 2021 (October 1, 2018 – September 30, 2021). There is no specific DBE purchase order goal for this project. In order to help MTS achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 CFR 26 in the performance of purchase orders financed, in whole or in part, with federal funds. It is the policy of MTS to ensure that DBEs have an equal opportunity to receive and participate in MTS DOT-assisted purchase orders. It is also our policy to: 1) Ensure nondiscrimination in the award and administration of all MTS purchase orders and subcontracts; 2) Create a level playing field by which DBEs can compete for and perform in MTS DOT-assisted purchase orders; 3) Ensure that the MTS DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*; 4) Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs; 5) Help remove procurement and purchase ordering barriers, which impede DBE participation in MTS DOT-assisted purchase orders; 6) Monitor and enforce Contractors' compliance in meeting established goal objectives and program requirements; 7) Assist in the development of DBEs and Small Businesses to increase their ability to compete successfully in the market place outside the DBE Program; 8) Ensure MTS Contractors and subcontractors take all necessary; and reasonable steps to comply with these policy objectives. To ascertain whether it's overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid purchase orders. MTS encourages Contractor to outreach to DBEs and other small business enterprises for any potential subcontracting opportunities on this project. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The California Unified Certification Program DBE Directory can be found at: <http://californiaucp.org/>.

**37. Civil Rights:** The Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof. A. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, gender identity, sexual orientation, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. B. 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. C. 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. D. 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. § A-27 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.

**38. MTS's Equal Employment Opportunity (EEO) Program:** MTS is an Equal Opportunity Employer. As such, MTS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, MTS 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. MTS' Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Purchase Order (a copy can be obtained from MTS' Clerk of the Board). B. Contractor's Equal Employment Opportunity Plan: Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for MTS each year of the Purchase Order, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the Purchase Order. The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability or age. C. Compliance with Regulations: During the performance of this Purchase Order, the contractor agrees as follows: (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this Purchase Order or with any of the said rules, regulations, or orders, this Purchase Order may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the

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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.

**39. Contractor Assurance:** The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Purchase Order. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Purchase Orders. Failure by the Contractor to carry out these requirements is a material breach of this Purchase Order, which may result in the termination of this Purchase Order or such other remedy as MTS deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph.

**40. ADA Access:** The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC Section 794; 49 USC Section 5301(d), which prohibit 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.

**41. Davis-Bacon and Copeland Anti-Kickback Acts:** (applicable to any construction purchase order over \$2,000) Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall 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, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. 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." In accordance with 18 U.S.C. § 874, the Contractor is 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.

**42. Veterans Preference/Employment:** Per MAP-21 at 49 U.S.C. § 5325(k), the Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C. § 2108) who have the requisite skills and abilities to perform the construction work required under the Purchase Order. This provision shall not be understood, construed or enforced in any manner that would require the Contractor to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**43. Equal Employment Opportunity in Construction Work:** (Applicable to all Construction Purchase Orders over \$10,000) Contractor agrees to comply with DOL regulations, Executive Order No. 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. part 1964-1965 Comp., p. 339), as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" for all construction work, as defined in 41 C.F.R. Part 60-1.3. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area of San Diego, County of San Diego, State of California, are as follows: Goals for minority participation for each trade are 16.9% and goals for female participation in each trade are 6.9%. These goals are applicable to all Contractor's construction work (whether or not that portion is Federal or federally-assisted) performed in the covered area. Although a contractor is required to make good faith efforts to meet their goals, the goals are not quotas and no sanctions are imposed solely for failure to meet them. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training shall be substantially uniform throughout the length of the Purchase Order, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project, for the sole purpose of meeting the Contractor's goals, shall be a violation of the Purchase Order, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed. The Contractor shall provide written notification to the Director OFCCP, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Purchase Order. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

**44. Safe Operation of Motor Vehicles:** A. 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 MTS. B. 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 Purchase Order. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.