

**Kansas City Area Transportation Authority**  
 Standard Purchase Order/Agreement Terms and Conditions  
 (Micro-Purchase of Goods, \$3,000 or less)

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**1. INTRODUCTION**

- (a) Goods covered by this Agreement shall be furnished subject to the terms and conditions set forth herein.
- (b) This Agreement is the complete and exclusive statement of the terms of agreement between Seller and Buyer.
- (c) No modification of this Agreement (including any addition, deletion, or other modification proposed in Seller's acceptance) shall be binding on Buyer unless agreed to by Buyer in a writing signed by Buyer's Purchasing Representative (or other authorized person(s)).

**2. DEFINITIONS**

Unless otherwise defined, capitalized terms used herein have the same meaning provided in the Kansas City Area Transportation Authority Standard Purchase Order/Agreement (collectively, with these terms and conditions, the "Agreement").

**3. CHANGES**

- (a) Buyer may at any time, by written order, make changes within the general scope of this Agreement. No such changes shall be made by Seller without prior written consent of Buyer.
- (b) If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of this Agreement, regardless of whether changed by a written order, Buyer shall make an equitable adjustment in Agreement price, delivery schedule, or both, and shall modify this Agreement accordingly in writing.
- (c) Seller must assert any right it may have to an adjustment in writing to Buyer and any such written assertion must be received by Buyer within thirty (30) days from date of receipt of Buyer's written change order. However, if Buyer decides the facts justify it, Buyer may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.
- (d) If Seller's proposal for adjustment includes cost of property made obsolete or excess as a result of Buyer's written change order, Buyer shall have the right to prescribe the manner of disposition of the property.

- (e) Failure to agree to any adjustment shall be a Claim under Section 15 of this Agreement. However, nothing in this clause shall excuse Seller from proceeding with this Agreement as changed.

**4. CONFLICTS BETWEEN PURCHASE ORDER DOCUMENTS**

Seller shall promptly notify Buyer in writing for resolution of any real or apparent conflicts, discrepancies, errors or omissions among the documents comprising this Agreement. Any performance affected by such conflict, discrepancy, error or omission performed by Seller prior to resolution of the same by Seller shall be at Seller's risk.

**5. SHIPPING INSTRUCTIONS AND INSURANCE FOR GOODS**

A packing list must accompany each shipment of Goods. If a packing list is not included, Buyer's count will be accepted as final and conclusive. A Packing list must indicate Buyer's purchase order/agreement number and any additional identifying information. If shipment is made by Seller's supplier, Seller's name must be shown on packing list in addition to the above information. Seller shall mark Buyer's purchase order/agreement number on all packages and consolidate daily shipments. All material must be forwarded in accordance with routing specified in this Agreement or additional instructions issued by Buyer.

Seller shall maintain any and all required insurance to ensure all Goods are delivered to Buyer pursuant to the terms of this Agreement.

**6. TITLE**

Title to Goods furnished under this Agreement shall be the property of Buyer, regardless of when or where Buyer takes physical possession.

**7. RISK OF LOSS**

Regardless of point of inspection or acceptance, risk of loss or damage to Goods provided under this Agreement shall remain with Seller until, and shall pass to Buyer upon delivery of Goods to:

- (a) shipping point carrier, if Buyer pays carrier's transportation costs; or
- (b) Buyer or Buyer's designee at final delivery destination specified in this Agreement, if Seller pays transportation costs.

**8. PRICES AND NEW MATERIAL**

Unless otherwise provided in this Agreement:

- (a) Prices appearing herein include all packaging, crating, and shipping.
- (b) Seller warrants that Goods furnished under this Agreement are new and are not of such age or so deteriorated as to impair their usefulness or safety. Used Goods that have been refurbished and warranted as new are considered used.

**9. VARIATION IN QUANTITY OR QUALITY**

Buyer shall not be obligated to accept any variation in quantity or quality of any Goods called for by this Agreement unless such variation has been specified elsewhere in this Agreement, or otherwise agreed to by Buyer, in writing.

**10. QUALITY ASSURANCE/BUYER ACCEPTANCE**

(a) Unless otherwise specified in this Agreement, Seller shall be responsible for all quality assurance measures necessary to ensure that only Goods conforming to the requirements of this Agreement are tendered to Buyer for acceptance. This shall include such testing, in process inspection and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by Seller's suppliers and incorporated into end Goods furnished to Buyer are not counterfeit or of suspect quality. Acceptance of any portion of the Goods prior to final acceptance shall not release Buyer from liability for faulty Goods, or failure to fully comply with all of the terms of this Agreement.

(b) Buyer reserves the right to inspect and test all Goods that have been tendered for acceptance; provided, however, Buyer is under no duty to make such inspection, and no inspection so made shall relieve Seller from any obligation under this Agreement. Buyer has the right to reject nonconforming Goods with or without disposition instructions from Seller, the right to require the correction, replacement, reperformance, the right to accept nonconforming Goods and reduce the Agreement amount to reflect the reduced value of the nonconformance(s), or the right to terminate this Agreement for cause.

**11. SUSPECT/COUNTERFEIT GOODS**

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(a) **Warranty.** Seller warrants that all goods, including subassemblies, components, and parts, tendered to Buyer shall be genuine, new and unused, and conform to the requirements of this Agreement, unless otherwise approved in writing by Buyer prior to delivery. Seller further warrants that all components, parts, materials, and supplies incorporated into Buyer facilities or equipment by Seller during performance at Buyer's facilities shall be genuine, new and unused, and original-equipment-manufacturer goods, unless otherwise approved in writing by Buyer as suitable for the intended purpose prior to use. Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to goods supplied to Buyer, and to certifications, affirmations, information, or documentation related to the authenticity and quality of goods supplied or delivered to Buyer under this Agreement.

(b) **Warranty Indemnification.** Seller shall indemnify Buyer, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this Agreement that are not genuine, original, and new and unused, or otherwise not suitable for the intended purpose. Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from goods furnished or used under this Agreement that are defective, suspect, or counterfeit, or that have been provided under false pretenses, or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(c) **Impoundment of Suspect or Counterfeit Goods.** Suspect/counterfeit goods furnished under this Agreement will be impounded by Buyer. Seller must promptly replace them, at no cost, with goods acceptable to Buyer, and Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit good characteristics or conditions. Because falsification of information or documentation may constitute criminal conduct, Buyer will segregate impounded goods and related paperwork pending a determination as to whether the segregated/impounded goods should be utilized as evidence.

Buyer shall incur no liability for the impoundment of goods, nor the failure to return impounded goods to Seller and Buyer does not assume any liability for loss or damage to goods impounded pursuant to this clause regardless of the circumstances under which said loss or damage may have occurred, and whether impounded goods are in Buyer's possession or under its control. All such liability is expressly waived by Seller, or any person claiming any right or interest under this Agreement, in the impounded goods.

(d) **Right to Reject.** Nothing in this clause shall limit Buyer's right to reject suspect and counterfeit goods and related paperwork, as non-conforming, to deny payment for such goods, to return such goods to Seller, or to assert other remedies provided under this Agreement or by law.

(e) **Definitions.** A good or other product, equipment, material or supply is suspect when inspection or testing indicates that it may not conform to established Government or industry-accepted specifications or national consensus standards or whose documentation, appearance, performance, material or other characteristics may have been misrepresented by the supplier or manufacturer. A counterfeit good or other product, equipment, material or supply is one that has been copied or substituted without legal right or authority or whose material, performance or characteristics have been misrepresented by the supplier or manufacturer.

Seller shall include this clause in subcontracts hereunder.

### 12. PREFERENCE FOR DOMESTIC PRODUCTS

Provisions of the Buy American Act do not directly apply to this Agreement; however, Buyer does state a preference for use of domestic products and delivery of domestic end products when feasible and appropriate.

### 13. FEDERAL, STATE AND LOCAL TAXES

Sales taxes, gross receipts taxes, and use taxes may be applicable to this Agreement unless Buyer provides Seller with evidence of exemption from such taxes. No other taxes are applicable and Seller warrants that the Agreement price does not include any amount for taxes of any kind.

### 14. INVOICES, DISCOUNTS, AND PAYMENTS

(a) Seller shall be paid, upon submission of proper invoice(s), prices stipulated herein for Goods accepted by Buyer, less any deductions, set-offs or recoupments. Seller shall submit an original invoice and one copy to the billing address specified in the Agreement.

(b) Unless otherwise specified in the Agreement, Buyer's standard payment terms are "net 30 days" from the date of invoice receipt. Buyer will, however, consider early payment where discounts for prompt payment are specified either in the terms of the Agreement or stated on Seller's invoice. In connection with any discount offered for early payment, time shall be computed from the date a correct invoice is received by Buyer.

### 15. DISPUTES

(a) Unless otherwise provided in this Agreement, all disputes arising under or relating to this Agreement, which are not disposed of by mutual agreement of the parties, shall be resolved under this clause.

(b) "**Claim**" means, as used in this clause, a written demand or written assertion by one of the parties to this Agreement seeking, as a matter of right, payment of money in a sum certain, adjustment or interpretation of Agreement terms, or other relief arising under or relating to this Agreement. However, a written demand or written assertion by Seller seeking payment of money exceeding \$3,000 is not a Claim until certified as required by subparagraph (c)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim. The submission may be converted to a Claim by complying with the submission and certification requirements of this clause if it is disputed either as to liability or amount, or is not acted upon in a reasonable time.

(c)(1) A Claim by Seller shall be made in writing and submitted to Buyer's Senior Manager of Procurement for a written decision. A Claim by Buyer against Seller shall be subject to a written decision by Buyer's Senior Manager of Procurement.

(2) For Seller Claims exceeding \$3,000, (or any amount when the parties have agreed to a form of alternative dispute resolution per paragraph (h) below) Seller shall submit with a Claim, a certification that:

(i) the Claim is made in good faith;

(ii) supporting data is accurate and complete to the best of Seller's knowledge and belief;

(iii) the amount requested accurately reflects the Agreement adjustment for which Seller believes Buyer is liable; and

(iv) a statement by the person certifying the Claim that they are duly authorized to certify the Claim on behalf of Seller.

(d) Buyer's Senior Manager of Procurement shall, within sixty (60) days, decide the Claim or notify Seller of date by which decision will be made.

(e) The decision rendered by Buyer's Senior Manager of Procurement shall be final and conclusive and not subject to review or revision by any forum, tribunal or Government agency unless suit is filed as provided in this clause.

(f) Buyer shall pay interest on the amount found due and unpaid from the later of, (1) the date Buyer receives the Claim (properly certified if required), or (2) the date payment otherwise would be due, until the date payment is made. Simple interest on Claims shall be paid at the rate fixed by the Secretary of the Treasury under the Agreement Disputes Act of 1978 (P.L. 95-563), which is applicable to the period during which Buyer receives the Claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the Claim.

(g) Seller shall proceed diligently with performance of this Agreement, pending final resolution of any Claim arising under or relating to this Agreement, and shall comply with any decision of Buyer's Senior Manager of Procurement.

(h) Notwithstanding any other provision of this clause, parties may, by mutual consent, agree to a form of alternative dispute resolution involving an impartial third party to mediate or arbitrate disputes.

### 16. RIGHTS AND REMEDIES OF BUYER

Rights and remedies of Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity and failure or delay of Buyer to exercise any rights or remedies under this Agreement shall not operate as a general waiver thereof.

### 17. EXCUSABLE DELAYS

Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Seller and without its fault or negligence such as acts of God or public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Seller shall notify Buyer, in writing, as soon as is reasonably possible after commencement of any excusable delay, setting forth full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Buyer of cessation of such occurrence.

### 18. TERMINATION

(a) **Buyer's Convenience.** Buyer reserves the right to terminate this Agreement, or any part hereof, at any time by written notice to the Seller when it is in Buyer's best interest. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to

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terms of this Agreement, Seller shall be paid a portion of the Agreement price reflecting the percentage of Goods delivered prior to notice of termination. Seller shall not be paid for any Goods delivered or costs incurred which reasonably could have been avoided. If the Seller has any property in its possession or under its control belonging to the Buyer, the Seller will account for same, and dispose of it in the manner Buyer directs.

(b) Bankruptcy. In the event Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Seller agrees to furnish, by certified mail, written notification of the bankruptcy to Buyer's Purchasing Representative. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Buyer's contract numbers against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

(c) Termination for Default [Breach or Cause]. If the Seller does not deliver Goods in accordance with the Agreement delivery schedule, or if the Seller fails to comply with any other provisions of this Agreement, Buyer may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Seller setting forth the manner in which the Seller is in default. The Seller will only be paid the Agreement price for Goods delivered and accepted in accordance with the manner of performance set forth in this Agreement.

If the termination is for failure of the Seller to fulfill the Agreement obligations, Buyer may complete the Agreement in question by alternative means and the Seller shall be liable for any additional cost incurred by Buyer. If, after termination for failure to fulfill Agreement obligations, it is determined that the Seller was not in default, Buyer, after setting up a new delivery schedule, may allow the Seller to continue providing Goods under the Agreement, or treat the termination as a termination for convenience.

(d) Funding Contingency. If this Agreement is subject to financial assistance provided by the U.S. Department of Transportation ("U.S. DOT"), the Seller agrees that withdrawal or termination of such financial assistance by the U.S. DOT may require Buyer to terminate this Agreement in accordance with other provisions of this Agreement.

(e) Opportunity to Cure. Buyer in its sole discretion may, in the case of a termination for default, allow the Seller an appropriately short period of time in which to cure the defect. In such case, the written notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Seller fails to remedy the default, to Buyer's satisfaction, within the time period permitted, Buyer shall have the right to terminate the Agreement without any further obligation to Seller. Any such termination for default shall not in any way operate to preclude Buyer from also pursuing all available remedies against Seller for said default.

(f) Waiver of Remedies for any Breach. In the event that Buyer elects to waive its remedies for any breach by Seller of any covenant, term or condition of this Agreement, such waiver by Buyer shall not limit Buyer's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(g) Property of Buyer. Upon termination of this Agreement for any reason, and if the Seller has any property in its possession or under its control belonging to Buyer, the Seller shall protect and preserve the property, account for the same, and dispose of it in the manner Buyer directs. Upon termination of this Agreement for any reason, the Seller shall deliver to Buyer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

#### 19. PATENT INDEMNITY

Except for an infringement resulting from compliance with specific written instructions of Buyer directing a change in Goods to be delivered or in materials or equipment to be used, or directing a manner of performance not normally used by Seller, Seller shall indemnify Buyer and its officers, agents, and employees against liability, including costs for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of or relating to performance of this Agreement.

#### 20. WARRANTY

(a) Seller warrants and implies that Goods delivered hereunder are merchantable and fit for use for the particular purpose described in this Agreement. Seller further agrees that Goods furnished under this Agreement shall be covered by the most favorable warranties Seller gives to any customer for the same or substantially similar Goods and are in addition to and do not limit any rights afforded Buyer by any other clause of this Agreement.

(b) Seller shall furnish to Buyer copies of the most favorable warranties Seller gives to any customer for the same or substantially similar Goods, and such warranties shall be deemed a part of this Agreement.

#### 21. INDEPENDENT CONTRACTOR

Seller shall act solely as an independent contractor in the performance of this Agreement and nothing herein shall be construed to create a relationship of employment, partnership, agency or joint venture between Buyer and Seller or between Buyer and any of Seller's employees in connection with the performance of this Agreement.

#### 22. RELEASE OF INFORMATION TO THE PUBLIC

Seller shall not, without prior written consent from Buyer, make any release of information in any form (other than to Seller's employees and subcontractors which is required for their performance under this Agreement) which identifies or could lead to identification of Buyer's name or which uses Buyer's name in any advertising, publicity or promotional material.

#### 23. CONFIDENTIALITY OF INFORMATION

(a) To the extent that performance under this Agreement requires that Seller be given access to confidential or proprietary business or financial information belonging to the Buyer or other companies, Seller shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information for its own use or to disclose such information to third parties, including its corporate parent, unless specifically authorized in writing by Buyer.

(b) Seller shall obtain written agreement, in a form satisfactory to Buyer, of each employee permitted access, whereby such employee agrees that he will not discuss, divulge or disclose any such information to any person or entity except those persons within Seller's organization directly concerned with performance of the Agreement.

(c) Seller agrees, if requested by Buyer, to sign an agreement identical, in all material respects, to provisions of this clause, with each company supplying information to Seller under this Agreement, and to supply a copy of such agreement to Buyer.

(d) Seller agrees that upon request by Buyer it will execute a Buyer-approved agreement with any party whose facilities or information it is given access to and restrict use and disclosure of information obtained from those facilities. Upon request by Buyer, such an agreement shall also be signed by Seller personnel.

(e) This clause shall flow down to all appropriate subcontracts.

#### 24. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS, CODES, RULES, AND REGULATIONS

Unless otherwise stated in this Agreement, Seller shall, without additional expense to Buyer, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, executive orders, codes, rules, and regulations applicable to performance of this Agreement.

#### 25. LIABILITY AND INDEMNIFICATION

(a) Seller's Liability. Seller shall be liable for all damages to persons (including employees of Seller) or property of any type that may occur as a result of any act or omission by Seller, any subcontractors, or sub-subcontractor, their respective agents or anyone directly employed by any of them or anyone for whose acts any of them may be liable or arising out of any Goods provided under this Agreement.

(b) Subrogation. Seller, its agents and any subcontractor hereby waive and relinquish any right of subrogation or claim against Buyer, its commissioners, directors and employees arising out of the use of Buyer's premises (including any equipment) by any party in performance of this Agreement.

(c) Indemnification.

(1) To the fullest extent permitted by law, Seller agrees to and shall indemnify, defend and hold harmless Buyer, its Commissioners, officers and employees (the "Indemnified Parties") from and against any and all claims, losses, damages, causes of action, suits, liens and liability of every kind, (including all expenses of litigation, expert witness fees, court costs and attorney's fees whether or not suit be commenced) by or to any person or entity (collectively the "Liabilities") arising out of, caused by, or resulting from the acts or omissions of Seller, subcontractors, or sub-subcontractors, their respective agents or anyone directly or indirectly employed by any of them in performing under this Agreement, and provided such claim is attributable to bodily injury, sickness, disease or death of any person, or injury to or destruction of property, including consequential damages, regardless of whether or not such claim, damage, loss or expense is caused in part by an Indemnified Party, so long as such Liabilities are not caused by the sole negligence or willful misconduct of an Indemnified Party. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

(2) In claims against any Indemnified Party, by an employee or Seller, subcontractor or sub-subcontractor or anyone directly or indirectly employed by any of them, the

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indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Seller, subcontractor, or sub-subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. If any action at law or suit in equity is instituted by any third party against Seller arising out of or resulting from the acts of Seller in performing under this Agreement, Seller shall promptly notify Buyer of such suit.

(3) If any action at law or suit in equity is instituted by any third party against an Indemnified Party arising out of or resulting from the acts of Seller, a subcontractor or sub-subcontractor, their respective agents or anyone directly or indirectly employed by any of them in providing products, equipment or materials, or in performing under this Agreement, and if Seller has failed to provide insurance coverage to Buyer against such action as required herein or otherwise refuses to defend such action, Buyer shall have the right to conduct and control, through counsel of its choosing, the defense of any third party claim, action or suit, and may compromise or settle the same, provided that Buyer shall give the Seller advance notice of any proposed compromise or settlement.

(4) Buyer shall permit Seller to participate in the defense of any such action or suit through counsel chosen by the Seller, provided that the fees and expenses of such counsel shall be borne by Seller. If Buyer permits Seller to undertake, conduct and control the conduct and settlement of such action or suit, Seller shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to Buyer. Seller shall promptly reimburse Buyer for the full amount of any damages, including fees and expenses of counsel for Buyer, incurred in connection with any such action.

### 26. PROHIBITED INTERESTS

No board member, officer, employee or agent of Buyer or of a local public body who has participated or will participate in the selection, award, or administration of this Agreement, nor any member of his or her immediate family, business partner or any organization which employs, or intends to employ any of the above during such period, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, to any share or part of this Agreement, or to any benefit arising therefrom. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.

No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of this Agreement, or to any benefit arising therefrom. This shall not be construed to prevent any such person from owning stock in a publicly-owned corporation.

### 27. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision hereof.

### 28. NOTICES

Any notice given by either Seller or Buyer to the other party shall be sent in writing and shall be: a) delivered personally; b) sent by certified mail, return receipt requested; or c) sent by a recognized overnight mail or courier service, with delivery receipt requested, to the address specified for that purpose in this Agreement.

### 29. APPLICABLE LAW

Rights and obligations of the parties hereto shall be governed by, and this Agreement shall be interpreted in accordance with, the laws of the State of Missouri and applicable Federal Law.

### 30. ASSIGNMENT

This Agreement is assignable by Buyer. Neither this Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by Seller except as expressly authorized by Buyer. In the event Buyer consents to an assignment of this Agreement, all of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

### FEDERAL PROVISIONS

#### 31. DISCLAIMER OF FEDERAL GOVERNMENT OBLIGATION OR LIABILITY

The federal government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other party in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third party agreement, the federal government continues to have no obligations or liabilities to any party, including any subrecipient, third party contractor, lessee, or other participant at any tier under this Agreement.

#### 32. FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS (AMENDED APRIL 2009)

The Seller acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the performance of this Agreement. Upon execution of this Agreement, the Seller certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or may make pertaining to the performance under this Agreement. In addition to other penalties that may be applicable, the Seller 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 Agreement to the extent the federal government deems appropriate.

The Seller also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification in connection with this Agreement, the government reserves the right to impose on the Seller the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the federal government deems appropriate.

### 33. RECORD RETENTION AND ACCESS

The Seller agrees that, during the course of this Agreement and any extensions thereof, and for three (3) years thereafter, it will maintain intact and readily accessible to the Buyer all data, documents, reports, records, contracts, and supporting materials relating to this Agreement. In the event of litigation or settlement of claims arising from the performance of this Agreement, the Seller agrees to maintain same until such litigation, appeals, claims or exceptions related thereto have been disposed.

The Seller shall permit Buyer, the Secretary of Transportation, the Comptroller General of the United States, and representatives of Buyer participating communities, to inspect all work, materials, construction sites, payrolls, and other data and records, and to audit the books, records, and accounts of the Seller relating to its performance under this Agreement.

The Seller agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### 34. FEDERAL CHANGES

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

### 35. CIVIL RIGHTS

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, the Seller agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Seller agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2002e, and Federal Transit Laws at 49 U.S.C. § 5332, the Seller agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor ("U.S. DOL") regulations, "Office of Federal Contractor Compliance Programs, Equal Employment Opportunity, Department of Labor," 49 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623. The Seller agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, disability, or age. 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. In addition, the Seller agrees to comply with any implementing requirements FTA may issue.

In the event of the Seller's non-compliance with nondiscrimination provisions of this Agreement, Buyer shall impose such sanctions as it, the U.S. DOL, or the City of Kansas City, Missouri, may determine to be appropriate including, but not limited to withholding of payments to the Seller under this Agreement until the Seller complies, and/or cancellation, termination, or suspension of the Agreement, in whole or in part.

(c) American with Disabilities Act. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Seller agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission ("EEOC"), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

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employment of persons with disabilities. In addition, the Seller agrees to comply with any implementing requirements FTA may issue.

(d) ADA Access Requirements (Amended April 2009). In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Seller agrees that it will comply with the requirements of U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Seller agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Seller also agrees to comply with any implementing requirements FTA may issue.

**36. DISADVANTAGED BUSINESS ENTERPRISE ("DBE")**

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by DBEs in U.S. DOT Financial Assistance Programs. The national goal for participation of DBEs is ten percent (10%). Buyer's overall goal for DBE participation is 8.5%. A separate goal has not been established for this procurement.

(b) The Seller shall not discriminate on the basis of race, color national origin, or sex in the performance of this Agreement. The Seller shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of this DOT-assisted agreement. Failure by the Seller to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Buyer deems appropriate. Each subcontract the Seller signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

(c) The Seller is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the Seller's receipt of payment from that work from the Buyer.

(d) The Seller must promptly notify the Buyer whenever a DBE subcontractor performing work related to this Agreement 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 Seller 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 Buyer.

**37. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

The provisions in this Agreement include, in part, certain standard terms and conditions required by U.S. DOT, whether or not expressly set forth. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference into this Agreement. 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 Agreement. The Seller shall not perform any act, fail to perform any act, or refuse to comply with any of Buyer's requests that would cause Buyer to be in violation of the FTA terms and conditions.

**38. PROHIBITED WEAPONS AND MATERIALS**

Missouri Revised Statutes, Section 571.107 allows government units and businesses to prohibit persons holding a concealed carry endorsement from carrying concealed firearms on its premises. Accordingly, the Buyer has adopted the following rules prohibiting weapons, whether concealed or not, and whether or not the individual carrying the weapon has an endorsement or permit to carry on.

No weapon, including firearms concealed or not, other instrument intended for use as a weapon, or any object capable of inflicting serious bodily injury upon another person or property may be carried in or on any facility or property of the Buyer, including vehicles of contractors parked on the Buyer's property or leased facilities, or vehicles used in transporting the Buyer's customers, even if a person has a permit to carry a concealed weapon, unless authorized in writing to do so by the Buyer in its sole discretion. For the purposes hereof, a weapon shall include, but not be limited to, a firearm, knife, sword, or any instrument of any kind known as blackjack, billy club, club, sandbag and metal knuckles.

No explosives, flammable liquids, acids, fireworks, other highly combustible materials, radioactive materials or biochemical materials may be carried on or in any of the Buyer's property, facilities or vehicles, including vehicles of contractors parked on the Buyer's property or leased facilities, or vehicles used in transporting any of the Buyer's customers, except as authorized in writing by the Buyer in its sole discretion.

Any contractor, subcontractor, employee or agent thereof, who has a firearm or other weapon, including those used for recreational purposes, in his/her possession, including on his/her person, in a vehicle on the Buyer's facilities, in a vehicle carrying the Buyer's customers, or

accessible such as in first aid kits, toolboxes, purses, lunch or carrying bags, etc., at any time while performing the Buyer's contracted services or on the Buyer's property, including parking lots, concealed or not, shall be immediately prohibited from performing any further work for the Buyer, even if the person has a permit to carry a concealed weapon.

Any Buyer contractor, subcontractor, employee or agent thereof, while performing the Buyer's contracted services or on any of Buyer's property or facilities, who has in his/her possession, carries, transports, displays, uses, flourishes, or threatens another person with a weapon, radioactive material, biochemical material or other dangerous weapon, object or material, which has the capability of inflicting bodily injury, shall be immediately prohibited from performing any further work for the Buyer.