

PURCHASE ORDER TERMS & CONDITIONS – PUBLIC WORKS

1. Definition and Acceptance of Terms NCTD shall mean the North County Transit District. Contractor shall mean the person and/or company from whom the merchandise, goods, materials, and/or equipment (“Goods”) or services (“Services”) are ordered as shown on the face of this Purchase Order (“PO”), which shall hereinafter be referred to as “the Work”. This PO constitutes an offer by NCTD to Contractor upon the terms and conditions stated herein and is a binding contract upon Contractor’s acceptance either by acknowledgement or performance.

2. Entire Agreement This PO, which incorporates all applicable terms and conditions, specifications, scope of work and any other included attachments, constitutes the entire agreement between NCTD and Contractor. Any amendments to this PO 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 Agreement, including sales and use taxes, and shall include all charges for customs duties, freight charges and shipping unless specifically excluded. NCTD 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. Any fuel surcharges or charges for cartage, pallets, boxing or packaging shall not be allowed unless expressly disclosed in Contractor’s response to a solicitation or request for quote.

4. Payment NCTD will pay Contractor only upon satisfactory completion of the scope of work. NCTD will review each payment request as soon as practicable after receipt. If any payment request is determined to be unsuitable for payment, NCTD shall notify Contractor as soon as practicable. NCTD shall not pay any interest charges for late payments of invoices unless permitted by law. Payments may be withheld, or portions thereof may be withheld, or set-offs made against Contractor if Contractor’s performance is not in accordance with the PO requirements.

5. Labor Requirements

5.1 Hours of Work Contractor shall comply with California Labor Code section 1810 through 1815. A legal day’s work is 8 hours. Contractor and each subcontractor shall forfeit, as penalty to NCTD, \$25 for each worker employed in the execution of the scope of work by Contractor or any subcontractor for each day during which the worker is required or permitted to work more than 8 hours per day and more than 40 hours during any one week. 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 PO. Work performed by Contractor’s employees in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 and ½ times the basic rate of pay. Contractor must record the name and actual hours worked each calendar day and each calendar week by each worker. This record shall be kept open at all reasonable hours to the inspection of NCTD and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

5.2 Prevailing Rates of Wages Contractor is aware of the requirements of public works laws (Labor Code section 1720 et seq.) and prevailing wage laws (Lab. Code section 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 “public works” and “maintenance” projects. If this Work involves an applicable “public works” or “maintenance” project, and the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this scope of work from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform the Work available to interested parties upon request and shall post copies at the Contractor’s principal place of business and at the Work site. Contractor shall defend, indemnify and hold NCTD, 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. Contractor shall forfeit as a penalty to NCTD not more than \$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 (“DIR”) for such work or craft in which such worker is employed for any public work done under the PO by it or by any subcontractor under it. The difference between 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 Work site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned. When the Work 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.

5.3 Payroll Records Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain accurate 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 on this scope of work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and correct, and the Contractor complied with the requirements set forth in Labor Code sections 1771, 1811, and 1815 for any Work performed by that person’s employees. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In accordance with Labor Code section 1771.4, when applicable the Contractor and each subcontractor shall furnish the certified payroll records directly to the 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) of Labor Code section 1776, 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, Contractor shall have 10 calendar days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall pay a penalty of \$100.00 to NCTD 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 DLSE, such penalties shall be withheld from progress payment then due. Contractor shall have sole responsibility to comply in all respects with every requirement of Labor Code section 1776, which is made a part hereof as though fully set forth.

5.4 Employment of Apprentices Contractor’s attention is directed to the provisions of Labor Code sections 1777.5, 1777.6, and 1777.7 concerning employment of apprentices by 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. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the DIR, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Responsibility for compliance with these requirements lies solely with Contractor.

5.5 Nondiscrimination Pursuant to Labor Code section 1735 and other applicable federal, state, and local laws, rules, and regulations, 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, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, veteran or military status of any person, or any other classifications protected by law on this Work. 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, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or any other classifications protected by law.

5.6 Labor Certification Contractor certifies that he/she/Contractor's representative is aware of the provisions of Labor Code section 3700 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 will comply with such provisions before commencing the performance of the Work of this PO.

6. Delivery Timely performance and deliveries are essential. Time is of the essence. Contractor shall notify NCTD if there is any delay or shortage in shipment or of a partial shipment and of the date full shipment or Services will be delivered. All Goods and Services must be delivered within the time specified on this PO, or the revised delivery schedule approved by NCTD in writing. Delivery shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed to by NCTD. Unless otherwise specified in this PO, all Goods acquired are sold Free on Board (FOB), location specified by NCTD. Contractor is not authorized to ship any Goods under a reservation and no tender of a bill of lading shall operate as a tender of the Goods. Cash on delivery (COD) shipments are expressly prohibited. Shipment in greater or lesser quantity than ordered may be returned at Contractor's expense unless authorized by NCTD.

7. Excusable Delays / Force Majeure Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor's reasonable control, without Contractor's fault or negligence. Acts of God, such as storms or floods, commandeering of materials, products, plants or facilities by the government, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events excusable for being beyond Contractor's reasonable control, only upon fulfillment of the following conditions within seven (7) calendar days of the commencement of any excusable delay: (a) Contractor shall provide NCTD with written notice of the cause and extent thereof, accompanied by a request for a schedule extension for the estimated duration; and (b) Contractor shall provide NCTD with written notice of the actual delay incurred. Upon NCTD's approval of a conforming excusable delay, Contractor's time for performance will be extended for the time actually lost by reason of the excusable delay.

8. Inspection, Acceptance or Rejection of Goods and/or Services All Work is subject to final inspection and acceptance by NCTD. NCTD will inspect the work and either accept or reject within a reasonable time. If any specified inspection or testing is required to determine if the Work meets the specifications, Contractor shall perform or shall have performed such inspections and tests at Contractor's sole cost prior to the delivery to NCTD, or onsite as directed by NCTD. Any Goods received damaged, or not in accordance with the instructions or specifications on the PO, will be rejected and returned to Contractor at Contractor's risk and expense. If NCTD determines that any Services performed or Goods delivered are rejected, NCTD will notify Contractor in writing stating the reason(s) why the Goods, Services and/or Work is deemed damaged or nonconforming. Contractor will have 10 business days, or an agreed upon date if mutually agreed upon in advance, to deliver conforming Goods or to reperform nonconforming Services/Work. NCTD will hold the damaged or non-conforming Goods for a reasonable time not to exceed 30 calendar days and Contractor must remove any rejected Goods or nonconforming work at Contractor's sole cost and expense.

9. Risk of Loss Contractor shall bear all costs, loss or damage and assume all risk and liability associated with manufacture of, and delivery of, Goods or Services until NCTD accepts delivery. Upon delivery, title passes to NCTD and Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from Contractor's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by NCTD.

10. Material Safety Data Sheet (MSDS) It is mandatory for Contractor to supply a MSDS with the shipment of any Goods that contains any Hazardous Material, as defined by California Health and Safety Code section 25501. If at any time the content of a MSDS is revised, Contractor is required to provide the new information relevant to the specific hazardous material to NCTD.

11. Excavations If this PO involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly and before the following conditions are disturbed, notify NCTD, in writing, of any: 1) Material that Contractor believes may be material that is Hazardous Waste, as defined in Health and Safety Code section 25117, 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 site conditions differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; and 3) Unknown physical site conditions of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the PO. If any of the above conditions exist, NCTD 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 Contractor's cost of, or the time required for, performance of any part of the Work, will issue a change order.

12. Subcontractor When applicable, 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. Written consent by NCTD 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 PO documents, Contractor agrees that they are fully qualified to perform that portion and will perform that portion themselves.

13. Prompt Progress Payments and Retention Contractor shall make prompt payment of all monies due and owed to Disadvantaged Business Enterprise ("DBE") and non-DBE companies within seven (7) business days upon receipt of payment from NCTD. When applicable, payment of retention shall be made to all DBE and non-DBE subcontractors within 10 days after satisfactory completion of the subcontracted Work. The Contractor shall utilize the PlanetBids "My Contracts" portal to report monthly subcontractor payment reports during the reporting month. Contractor shall ensure that their subcontractors are added into the PlanetBids "MyContracts" portal once the PO has been awarded. Contractor shall submit a monthly subcontractor payment report on the PlanetBids "MyContracts" portal by the 20th of each month following the end of the reporting month and should reflect all payments made to subcontractor(s) through the last day of the previous month, even if the subcontractor(s) did not perform any work. Contractor shall ensure that its subcontractor(s) use the PlanetBids "MyContracts" portal to verify the payment amounts the Contractor submitted by the 25th of each month following the end of the reporting month. For the Contractor to submit a properly executed monthly subcontractor payment report, the Contractor must verify that their subcontractors' DBE certification is current at the time of payment. Certified Contractors can be found at the following State of California website: <https://californiaucp.dbesystem.com/>

The Contractor or subcontractor shall pay to any subcontractor for the satisfactory performance of their contracts not later than 10-days of receipt of each progress payment, in accordance with 49 CFR 26.29 and Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 10-days may take place only for good cause and with

NCTD's prior written approval. Any violation of 49 CFR 26.29 or Section 7108.5 of the California Business and Professions Code shall subject the violating Contractor or subcontractor to the penalties, sanctions, and other remedies of those Sections. 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, and/or noncompliance by a subcontractor.

In addition, for Work that invoice only at the completion of the Work, within seven (7) days of the Contractor's receipt of released retention from NCTD upon completion of the Work as defined in California Public Contract Code section 7107, the Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For Work that issues progress payment invoices, upon incremental acceptance of any portion of the Work by NCTD, the Contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. Any delay or postponement of payment may take place only for good cause and with NCTD's prior written approval. Any violation of these provisions shall subject the violating Contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 7107 of the California Public Contract Code. 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, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

The Construction Manager/Project Manager shall notify the Project Manager and Contract Officer immediately if the Contractor fails to meet any of the requirements of the Fabrication, Inspection and Test Plan, or at any time the Construction Manager/Project Manager determines that the work performed is substandard. The Project Manager is responsible to determine the course of action to be taken by NCTD upon notification from the Construction Manager/Project Manager.

Disputes between the Contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. Contractor shall notify NCTD in writing of such dispute within 10 days of failure to resolve. If affected subcontractor is not comfortable contacting the Contractor directly regarding payment or unable to resolve payment discrepancies with Contractor, subcontractor should contact Disadvantaged Business Enterprise Liaison Officer ("DBELO") to initiate complaint. NCTD's DBELO will coordinate meeting requests to assist in the resolution of disputes between Contractor and subcontractor. The assigned NCTD representative will conduct the resolution meetings with parties in dispute. All parties must agree to the procedure. If filing a prompt payment complaint with NCTD's DBELO does not result in timely and meaningful action by NCTD to resolve prompt payment disputes, affected subcontractor may contact the responsible Federal Transit Administration ("FTA") contact. The Contractor and Subcontractors shall include the dispute resolution provision in their contract.

14. Retention NCTD shall hold retainage of five (5) percent from the Contractor for any public works PO over \$5,000. NCTD shall make prompt and regular incremental acceptances of portions as determined by NCTD of the PO work and retain five (5) percent of the PO price until final completion and acceptance of performance. The Contractor or subcontractor shall return all monies withheld in retention from a subcontractor within seven (7) business days after receiving retention proceeds from NCTD 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 NCTD's prior written approval. Any violation of this provision shall subject the violating Contractor or subcontractor to the penalties, sanctions, and other remedies specified in California Business and Professions Code section 7108.5 and California Public Contract Code section 7107. These requirements shall not be construed to limit or impair any contractual, administration, 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 subcontract performance, or noncompliance by a subcontractor.

15. Substitution of Security At the request and expense of the Contractor, NCTD will substitute securities for the amount so retained in accordance with California Public Contracts Code section 22300.

16. Audit/Inspection of Records and Work Sites Contractor and any subcontractor shall retain complete and readily accessible records related in whole or in part to the PO, 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. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. section 200.334. Contractor and any subcontractor shall maintain all books, records, accounts and reports required under this PO on a generally accepted accounting basis for a period of not less than three (3) years after the date of final payment by NCTD, except in the event of litigation, claims, or audit findings arising from the performance of this PO, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, audits or exceptions related thereto. The Contractor shall provide sufficient access to the U.S. Secretary of Transportation, Comptroller General of the U.S., the FTA, the Department of Transportation ("DOT") Office of Inspector General, the State of California, and NCTD or any of their authorized representatives to inspect and audit records pertaining to this PO as reasonably may be required. Contractor shall also permit NCTD, the FTA and its contractor's access to the sites of performance under this PO as reasonably may be required, including inspections for any and all Build America, Buy America Act (BABA) compliance. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

17. Changes (A) **Changes to the Work:** NCTD may at any time by written notice or order make changes within the general scope of this PO in any of the following ways: 1) scope of work modifications, drawings, designs or specifications; 2) method of shipping or packing; 3) place of delivery; or 4) delivery schedule. If any change increases or decreases the cost or time required for performance of this PO, Contractor must assert its right to an adjustment under this clause within 30 calendar days after the change is ordered. If Contractor requests an adjustment to the PO, the change must be authorized by NCTD in writing and Contractor must provide notice to NCTD prior to the time Contractor performs the work and an equitable adjustment will be made where appropriate. (B) **Substitutions:** No substitution of any specified item, product, material or system ("Specified Items") will be considered unless Contractor submits a request to substitute Specified Items along with data substantiating the equivalency of the proposed substitution with the Specified Items not more than seven (7) days after the date of award of the contract to the Contractor. Contractor shall reimburse NCTD for all costs and expenses incurred by NCTD to review a proposed substitution for Specified Items. NCTD's acceptance or rejection of a proposed substitution shall be final. No substitution accepted by NCTD shall increase the price or time to provide such Specified Items as set forth in the PO; provided, however, if the cost to furnish/install an approved substitution of is less than the Specified Item, the price shall be reduced by such cost difference.

18. Termination for Convenience Performance under this PO may be terminated by NCTD in whole or, from time-to-time, in part, whenever NCTD shall elect. Any termination shall be by delivery to Contractor of a written Notice of Termination specifying the extent to which performance under this PO is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise: (1) immediately discontinue performance on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the PO that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to NCTD of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon NCTD concurrence assign to NCTD those orders; and (4) assist NCTD, upon request, in the maintenance, protection and disposition of property acquired by NCTD under this PO. If Contractor submits a written claim within 30 calendar days after Notice of Termination, NCTD will pay to Contractor an equitable adjustment to include (without duplication of any item): (1) all amounts due and not previously paid to Contractor for Goods completed in accordance with this PO prior to such notice; (2) a reasonable amount for any Goods then in production; provided that no such adjustment be made in favor of Contractor with respect to any Goods which are Contractor's standard stock; and (3) satisfactory work completed between the receipt of Notice of Termination and the effective date

of termination pursuant to a specific request by NCTD for the performance of such Work. If the Contractor has any property in its possession belonging to NCTD, the Contractor will account for the same and dispose of or return it in the manner NCTD directs. The total sum to be paid to Contractor under this clause shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion—all claims for which Contractor agrees to waive. The allowable costs must be documented to NCTD's satisfaction, plus a reasonable amount not to exceed 15 percent of the actual cost of the Work performed for overhead and profit. Contractor shall not be entitled to any claim against NCTD for any additional compensation or damages in the event of such termination.

19. Termination for Default In case of Contractor's breach or failure to perform, NCTD reserves the right to terminate the PO for default. NCTD may award the contract to the next lowest responsive, responsible bidder, solicit new bids, or pursue any other remedy authorized by law. In addition to any remedy authorized by law, NCTD may retain money due to Contractor under this PO, as considered necessary by NCTD, until disposition of the issue(s). The retention of money due to Contractor shall be subject to the following: (1) NCTD will give Contractor seven (7) calendar days' notice of its intention to retain funds from any partial payment which may become due to Contractor prior to termination by NCTD. Retention of funds from any payment made after acceptance may be made without such prior notice to Contractor; (2) No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments; and (3) If NCTD has retained funds, and it is subsequently determined that NCTD is not entitled to be indemnified and held harmless by Contractor in connection with the matter for which such retention was made, NCTD shall be liable for interest earned on the amount retained for the period of such retention. If Contractor fails to correct any default within seven (7) calendar days from receipt of NCTD's written notice, including but not limited to, failure to perform the Work in accordance with these terms and conditions and/or technical specifications, failure to comply with NCTD directions, or failure to pay its creditors, NCTD may terminate this PO. Following a termination for default, NCTD 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 NCTD's corrective action, including reasonable overhead, profit and attorneys' fees. NCTD may terminate the PO at NCTD's convenience at any time upon five (5) calendar days written notice to Contractor. If NCTD 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 Section 14, 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.

20. Insurance Contractor will include the PO/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. As a condition of the PO award, Contractor shall submit, at the request of NCTD, any required insurance policies to NCTD's third-party insurance monitoring service provider, MyCOI. Unless higher limits are requested by NCTD, Contractor shall obtain: (A) **COVERAGE REQUIRED - ALL PURCHASE ORDERS:** (1) **Liability:** (a) **Commercial General Liability:** At all times during this PO and, with respect to Products and Completed Operations Liability, for 12 months following the acceptance of the Work by NCTD, 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 NCTD. The coverage shall be on an "occurrence" basis, shall include all elements of Coverages A, B and C and contain no restricting or exclusionary endorsements with respect to the performing of Services described in the scope of work; limits no less than \$1,000,000 – per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit and issued on a policy basis. (b) **Automobile Liability:** At all times during this PO, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage utilizing ISO form CA0001 covering any auto (Code 1); limits no less than \$300,000 – per accident and issued on a combined single limit and issued on a combined single limit. (c) **Workers' Compensation/Employer Liability:** At all times during this PO, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against NCTD, and the policy form must permit and accept such waiver. (B) **ADDITIONAL COVERAGES MAY BE REQUESTED BY NCTD BASED ON WORK PURCHASE REQUIREMENTS.** All such policies shall name in the endorsement North County Transit System, their directors, officers, agents, and employees as additional insureds as their interests may appear. Contractor's policies shall be primary. The specified limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD to the same extent as provided to Contractor. The requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Contractor including, but not limited to, indemnification.

21. Indemnification Contractor shall defend, indemnify and hold harmless NCTD, and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which NCTD, or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this PO. In addition to any other remedy authorized by law, money due Contractor under this PO as shall be considered necessary by NCTD may be retained until disposition has been made of any claim for damages. **Infringement Indemnity:** Contractor shall defend at its expense, any suit against NCTD based on a claim that any item furnished under this PO or the normal use or sale thereof infringes any US Letters Patent or copyright and shall pay costs and damages finally awarded in any such suit, provided that Contractor is notified in writing of the suit and given authority, information, assistance to Contractor's expense for the defense of the suit(s). If the use or sale of the item is enjoined, Contractor, at no expense to NCTD, shall obtain for NCTD the right to use and sell said item, or shall substitute an equivalent item acceptable to NCTD and extend this patent indemnity thereto.

22. Standard of Performance Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this PO and all applicable federal, state and local laws. If Contractor is retained to perform Services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this PO.

23. Prohibited Interests Contractor acknowledges that the California Political Reform Act ("Act"), California Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as NCTD, may be deemed to be a "public official" subject to the Act if the Contractor advises NCTD on decisions or actions to be taken by NCTD. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act and the conflict of interest restrictions imposed on public officials by California Government Code section 1090 et seq.

24. Warranties Contractor warrants to NCTD that all materials and equipment furnished for the Work will be of the highest quality and new unless otherwise specified by NCTD and free from faults and defects and in conformance with PO. All materials and equipment not conforming to these standards shall be considered defective. If required by NCTD's designated representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of all supplied materials and equipment. The Work shall be safe, substantial, and durable in all respects. Contractor shall assume responsibility for all Goods and Services provided under this PO, whether provided by the Contractor or by a subcontractor of its selection. Contractor shall warrant the Work for no less than the time required by law, but at a minimum of one (1) year, from the date of receipt and acceptance of the Work. Warranty shall include pick-up, delivery, transportation, travel-time, and removal & replacement (R&R), if required.

In the event of substandard performance or faulty equipment, the Contractor shall reimburse NCTD, upon demand, for all costs incurred in restoring the Work to the required standards. NCTD shall have the unqualified option to either make any needed replacements/repairs itself or to have such replacements or repairs done by the Contractor. In the event NCTD elects to have the Work performed by the Contractor, it shall be agreed that the repairs shall be made and such materials as are necessary shall be furnished and installed within the time specified in the PO. If the Contractor fails or refuses to comply with its obligations under this warranty, NCTD shall be entitled to all costs and expenses, including attorneys' fees and expert costs reasonably incurred by reason of Contractor's failure or refusal.

25. Governing Law & Choice of Forum Contractor's quote, the resulting PO 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 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 PO shall be brought exclusively in the courts located in San Diego County, California; and venue is proper in the North County Division of the San Diego Superior Court.

26. Disputes, Claims and Resolution NCTD and Contractor agree that every effort shall be made to resolve any dispute arising under this PO 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. NCTD will provide a written response to 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 NCTD 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 NCTD's response, or if NCTD fails to respond within the statutory time period(s), the Contractor may so notify NCTD 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, NCTD shall schedule within 10 days a meet and confer conference to be held as soon thereafter as practicable. Within 10 calendar days following the conclusion of the meet and confer conference, if the claim or any portion thereof remains in dispute, NCTD 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 payment due on an undisputed portion of the claim shall be processed and made within 60 days after NCTD issues its written statement. 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 California Public Contract Code section 9204 and NCTD 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 claim procedures set forth in California Government Code section 900 et seq. prior to filing any lawsuit against NCTD. 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 claim / lawsuit against NCTD.

27. Notice of Third Party Claims Pursuant to California Public Contract Code section 9201, NCTD shall provide the Contractor with timely notification of the receipt of any third-party claims relating to this PO. NCTD is entitled to recover reasonable costs incurred in providing such notification.

28. Survival Notwithstanding NCTD's Acceptance Notwithstanding acceptance of the Work and any payment thereof, Contractor shall remain obligated under all clauses of this PO which expressly, or by their nature, extend beyond and survive such acceptance and payment.

29. Severability If any term, provision, or condition of this PO is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder shall not be affected thereby, and each term, provision, or condition of this PO shall be valid and enforceable to the fullest extent permitted by law.

30. Independent Contractor In the performance of the Work, Contractor's relationship to NCTD shall be that of an independent contractor and not an employee, agent or other representative of NCTD.

31. Assignments Neither this PO 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 PO be further subcontracted by Contractor without the prior written consent of NCTD. Pursuant to California Public Contract Code section 7103.5, in entering into a public works PO or subcontract to supply Goods, Services, or materials pursuant to a PO for public works, Contractor or subcontractor offers and agrees to assign to NCTD all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 PO or any subcontract.

32. Third Party Beneficiaries No provisions of the PO shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the PO or of any one or more of the terms and conditions of the PO or otherwise give rise to any cause of action in any person not a party to the PO.

33. Non-Exclusive This PO is not exclusive. NCTD reserves the right to retain contractors to perform all, or any portion, of the Work.
