

Valley Regional Transit

Purchase Order Terms and Conditions

1. Offer/Acceptance. These terms and conditions (including Addendum 1, Additional Terms and Conditions Relating to Federal Law, below (“**Addendum**”), and any other purchase order, attachments, exhibits, specifications, or appendices accepted by Valley Regional Transit (collectively, the “**PO**”) shall represent the entire and exclusive agreement between Valley Regional Transit (“**VRT**”) and the vendor (“**Vendor**”). The terms and conditions under this PO are binding between VRT and Vendor and supersede and replace any Vendor terms and conditions. Unless expressly stipulated under this PO or required under applicable law, VRT expressly rejects any incorporation attempt by Vendor of any other terms and conditions, whether from Vendor or from what is common industry practice. If this PO refers to Vendor’s bid or proposal, this PO is an ACCEPTANCE of Vendor’s OFFER TO SELL in accordance with the terms and conditions of this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor’s acceptance, demonstrated by Vendor’s performance or written acceptance of this PO. VRT shall not be responsible or liable for goods or services delivered or performed prior to issuance of this PO.

2. Order of Precedence. In the event of a conflict or inconsistency within this PO, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: **(a)** Addendum 1: Additional Terms and Conditions Relating to Federal Law, below; **(b)** the Purchase Order document; **(c)** these Terms and Conditions; and **(d)** any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Any terms and conditions included on Vendor’s forms or invoices not included in this PO are void.

3. Termination Prior to Vendor Acceptance. If Vendor has not begun performance under this PO, VRT may cancel this PO by providing written notice to the Vendor.

4. Termination for Convenience of VRT. VRT reserves the right to terminate this order or any part of it for VRT’s sole convenience. In the event of such termination, Vendor shall immediately stop all work subject to the PO, and shall immediately cause any of its suppliers or subcontractors to cease such work. Vendor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination plus actual direct costs resulting from termination. Vendor shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Vendor’s suppliers or subcontractors which Vendor could reasonably have avoided.

5. Termination for Cause. VRT may also terminate this order or any part of it for cause in the event of any default by the Vendor or if the Vendor fails to comply with any of the terms and conditions of this offer. Causes allowing VRT to terminate this order for cause shall include but not be limited to late deliveries, deliveries of goods or services which are defective or which do not conform to this order, and failure to provide VRT, upon request, reasonable assurances of future performance. In the event of Vendor’s failure to deliver as specified, VRT reserves the right to cancel this order, or any part of it, without prejudice to any other rights it may have. Vendor also agrees that VRT may return part or all of any shipment in the event of Vendor’s failure to deliver as specified and may charge Vendor with any expense sustained by VRT, including the additional cost of purchasing the goods elsewhere. It is understood that time is of the essence. In the event of termination for cause, VRT shall not be liable to Vendor for any amount, and Vendor shall be liable to VRT for any and all damages sustained by reason of the default which gave rise to the termination.

6. Delivery. Unless otherwise specified in this PO, delivery shall be FOB destination, freight prepaid and allowed. VRT is relying on the promised delivery date and any installation or service performance set forth in this PO as material and basic to VRT's acceptance. If Vendor fails to deliver or perform as and when promised, VRT, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

7. Inspection and Acceptance. VRT's final acceptance of goods or services is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. VRT shall have the right to inspect goods or services provided under this PO at all reasonable times and places. VRT shall be the sole judge in determining "equals" with regard to conformance with the specifications outlined in this PO for quality, price, and performance. If any of the goods or services do not conform to this PO, VRT, at its sole discretion, may require Vendor to either **(a)** replace the goods specified by VRT or **(b)** perform the services again, without additional payment from VRT. When defects in the quality or quantity of goods or services cannot be corrected by replacement or re-performance, VRT may **(c)** require Vendor to take necessary action to ensure that future performance conforms to this PO and **(d)** equitably reduce the payment due Vendor to reflect the reduced value of the goods or services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

8. Rights to Materials. Unless specifically stated otherwise in this PO, all materials, including without limitation supplies, equipment, documents, content, information, or other material of any type, whether tangible or intangible (collectively "**Materials**"), furnished by VRT to Vendor or delivered by Vendor to VRT in performance of its obligations under this PO shall be the exclusive property of VRT. Vendor shall return or deliver all Materials to VRT upon completion or termination of this PO. Notwithstanding the foregoing, this Section 8 shall not apply to purchase orders issued for information technology.

9. Reporting. If Vendor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this PO or may affect Vendor's ability to perform its obligations under this PO, Vendor shall, within 10 days after being served, notify VRT of such action and deliver copies of such pleading or document to VRT. Vendor shall disclose, in a timely manner, in writing to VRT all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting this PO. VRT may impose any remedies available, which may include, without limitation, suspension or debarment.

10. Price Warranty - Vendor warrants that the prices for the goods and services sold VRT are not less favorable than those currently extended to any other customer for the same or substantially similar goods and services in similar quantities. In the event Vendor reduces its price for such goods or services during the term of this order, Vendor agrees to reduce the prices hereof correspondingly and to immediately refund any amounts paid by VRT in excess of such price. Vendor warrants that prices shown on this PO shall be complete, and no additional charges of any type shall be added without VRT's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, or crating.

11. Warranty for Goods. If this PO is for the provision of goods, Vendor warrants that the goods (a) are of merchantable quality; (b) are fit for the particular needs and purposes of VRT as may be communicated to Vendor; (c) comply with the highest warranties, representations and options expressed by Vendor orally or in any written advertisement, correspondence or other document provided to or in the possession of VRT; (d) comply with all applicable laws, codes and regulations as published by any national, state or local association or group; and (e) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Vendor agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential and other damages suffered by VRT and any other persons, and to defend, indemnify and hold harmless VRT from any claim asserted by any person resulting in whole or in part from such breach.

12. Warranty for Services. If this PO is for the provision of services, Vendor warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Vendor shall be responsible for the professional quality, timeliness, coordination and completeness of the services. Vendor personnel assigned to perform the services shall be as proposed by Vendor and approved by VRT. No such personnel of Vendor shall be reassigned without the approval of VRT. Vendor shall use only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Vendor agrees to replace any of its employees whose work is considered by VRT to be unsatisfactory or contrary to the requirements of the services to be performed hereunder. VRT shall not supervise nor control the details of Vendor's services, but rather shall be interested only in the results of Vendor's services.

13. Taxes. VRT is exempt from most federal excise taxes and from State and local sales and use taxes. VRT will furnish tax-exemption certificates, if requested by Vendor.

14. Payment. VRT shall pay Vendor for all amounts due within 30 days after VRT's receipt of goods or services and acceptance of a correct invoice of amount due. Amounts not paid by VRT within 30 days of VRT's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 30th day at the rate set forth in Idaho Code §28-22-104 until paid in full. Interest shall not accrue if a good faith dispute exists as to VRT's obligation to pay all or a portion of the amount due. Vendor shall invoice VRT separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate. VRT may benefit from any early payment discount offered by Vendor by making payment within the timeframes required by Vendor to be eligible for such discount. If Vendor offers an early payment discount, then the discount shall be shown on Vendor's invoices to VRT, and if VRT makes payment on the invoice within the time frame for the discount, Vendor shall either **(a)** accept the payment amount less the appropriate discount or **(b)** refund the discount back to VRT. Except as specifically agreed in this PO, Vendor shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this PO.

15. Assignment. Vendor's rights and obligations under this PO shall not be transferred or assigned without the prior, written consent of VRT and execution of a new PO. Any attempt at assignment or transfer without such consent and new PO shall be void. Any new PO approved by VRT shall be subject to the same terms and conditions as those set forth in this PO.

16. Subcontracts. Unless otherwise specified in this PO, Vendor shall not enter into any subcontract in connection with its obligations under this PO without the prior, written approval of VRT. Vendor shall submit to VRT a copy of each such subcontract upon request by VRT. All subcontracts entered into by Vendor in connection with this PO shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Idaho, and shall be subject to all provisions of this PO.

17. Severability. The invalidity or unenforceability of any provision of this PO shall not affect the validity or enforceability of any other provision of this PO, which shall remain in full force and effect, provided, that the parties can continue to perform their obligations in accordance with the intent of this PO.

18. Survival of Certain PO Terms. Any provision of this PO that imposes an obligation on a party after termination or expiration of this PO shall survive the termination or expiration of this PO and shall be enforceable by the other party.

19. Third Party Beneficiaries. Except for the parties' respective successors and assigns, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the parties. Enforcement of this PO and all rights and obligations hereunder is reserved solely to the parties. Any services or benefits which third parties receive as a result of this PO are incidental to this PO, and do not create any rights for such third parties.

20. Waiver. A party's failure or delay in exercising any right, power, or privilege under this PO, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

21. Indemnification. Vendor shall indemnify, save, and hold harmless VRT, its employees, agents and assignees (the "**Indemnified Parties**"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information.

22. Limitation on Liability. Purchaser's aggregate liability arising from or relating to a PO is limited to the amount paid by purchase for the goods and/or services. To the maximum extent allowable under applicable law, Purchaser shall not be liable under this order for any special, incidental, consequential, indirect, or punitive damages including, without limitation, lost revenues even if VRT has been advised of the possibility of such damages.

23. Notice. All notices given under this PO shall be in writing, and shall be delivered to the contacts for each party listed on the Purchase Order document. Either party may change its contact or contact information by notice submitted in writing to the other party without a formal modification to this PO.

24. Insurance. Except as otherwise specifically stated in this PO, Vendor shall obtain and maintain insurance at all times during the term of this PO in accordance with requirements set forth in Section 19 of the Addendum.

25. Certifications Required by Idaho Law.

A. Vendor hereby certifies, pursuant to Section 67-2346, Idaho Code, that Vendor, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of this PO engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Section defined in Section 67-2346, Idaho Code, shall have the meanings set forth therein.

B. Vendor hereby certifies, pursuant to Section 67-2359, Idaho Code, that Vendor, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently owned or operated by the Government of China and will not for the duration of this PO be owned or operated by the Government of China. The terms in this Section defined in Section 67-2359, Idaho Code, shall have the meanings set forth therein.

C. Vendor hereby certifies, pursuant to Section 67-2347A, Idaho Code, that Vendor, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of this PO engage in, a boycott of any individual or company because the individual or company: (i) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (ii) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in Section 18-3302(2)(d), Idaho Code. The terms in this Section defined in Section 67-2347A, Idaho Code, shall have the meanings set forth therein.

26. Funds Availability. Financial obligations of VRT payable after VRT's current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. VRT represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

27. Independent Contractor. Vendor shall perform its duties under this PO as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of VRT. Vendor shall not have authorization, express or implied, to bind VRT to any agreement, liability or understanding, except as expressly set forth herein. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through VRT and VRT shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this PO. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by VRT, and (c) be solely responsible for its acts and those of its employees and agents.

28. Safety Information. All chemicals, equipment, and materials proposed or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Safety Data Sheets (SDS) for any regulated chemicals, equipment, or hazardous materials at the time of delivery. If good or services provided by Vendor under this PO involve handling, cleanup, treatment, storage and/or disposal of hazardous

substances including, but not limited to, hazardous materials or hazardous waste, Vendor shall only assign individuals to handle any such hazardous substances who meet the current training requirements for Hazardous Waste Operations and Emergency Response Standard (HAZWOPER), as required by the Occupational Safety and Health Administration.

29. Compliance with Law. Vendor shall comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

30. Choice of Law, Jurisdiction and Venue. Idaho law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this PO. The Idaho Uniform Commercial Code shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference, which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise.

ADDENDUM 1

Additional Terms & Conditions Relating to Federal Law

1. Incorporation of Federal Transit Administration (“FTA”) Terms. The provisions of this PO include, in part, certain standard terms and conditions required by the United States Department of Transportation (“DOT”), whether or not expressly set forth in the preceding provisions of this PO. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, as revised, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this PO. Vendor shall not perform any act, fail to perform any act, or refuse to comply with any request by VRT which would cause VRT to be in violation of the FTA terms and conditions.

1.1 Vendor shall include this clause in each subcontract financing in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the sub-vendor who will be subject to the clause

2. Federal Changes. Vendor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (23) dated October 1, 2016) between VRT and FTA, as they may be amended or promulgated from time to time during the term of this PO. Vendor's failure to so comply shall constitute a material breach of this PO.

3. Civil Rights. The following requirements apply to this PO:

3.1 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, Vendor 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, Vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

3.2 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this PO:

3.2.1 Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Vendor 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. 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), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of providing the services contracted for under this PO. Vendor 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, 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, Vendor agrees to comply with any implementing requirements FTA may issue.

3.2.2 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, Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Vendor agrees to comply with any implementing requirements FTA may issue.

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

3.2.4 Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

4. Program Fraud and False or Fraudulent Statements or Related Acts.

4.1 Vendor 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 services to be provided under this PO. Upon execution of this PO, Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this PO or the FTA assisted project for which the work under this PO is being performed. In addition to other penalties that may be applicable, Vendor further acknowledges that if it makes, or causes to be made, 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 Vendor to the extent the Federal Government deems appropriate.

4.2 Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract 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. § 5307, the Government reserves the

right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Vendor, to the extent the Federal Government deems appropriate.

4.3 Vendor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the sub-vendor to include this clause in any lower tier subcontract. It is further agreed that the clauses shall not be modified, except to identify the sub-vendor who will be subject to the provisions.

5. No Obligation by the Federal Government.

5.1 VRT and Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this PO, absent the express written consent by the Federal Government, the Federal Government is not a party to this PO and shall not be subject to any obligations or liabilities to VRT, Vendor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this PO.

5.2 Vendor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the sub-vendor who will be subject to its provisions.

6. Federal Privacy Act Requirements.

6.1 Vendor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Vendor agrees to obtain the express consent of the Federal Government before Vendor or its employees operate a system of records on behalf of the Federal Government. Vendor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this PO.

6.2 Vendor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

7. Records Disclosure.

7.1 Vendor will retain, and will require its sub-vendors of all tiers to retain, complete and readily accessible records related in whole or in part to this 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.

7.2 Vendor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Vendor shall maintain all books, records, accounts and reports required under this PO for a period of at not less than three (3) years after the date of termination or expiration of this PO, except in the event of litigation or settlement of claims arising from the performance of this PO, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

7.3 Vendor agrees to provide VRT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Vendor which are directly pertinent to this PO for the purposes of making audits, examinations, excerpts and transcriptions. Vendor also agrees to provide the FTA Administrator or his/her authorized representatives including any PMO Vendor access to Vendor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

7.5 Vendor agrees to permit VRT, FTA and their vendors access to the sites of performance under this PO as reasonably may be required.

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

8.1 Vendor shall include this clause in each subcontract financing in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the sub-vendor who will be subject to the clause.

9. Breaches and Dispute Resolution.

9.1 Disputes arising in the performance of this PO which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of VRT's Chief Executive Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Vendor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, Vendor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon Vendor and Vendor shall abide by the decision.

9.2 **Performance During Dispute.** Unless otherwise directed by VRT, Vendor shall continue performance under this PO while matters in dispute are being resolved.

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

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

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

9.6 Vendor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clauses shall not be modified, except to identify the sub-consultants who will be subject to the provisions.

10. Fly America Requirements. Vendor 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 sub-recipients of Federal funds and their vendors 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, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Vendor 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. Vendor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

11. Water Pollution.

11.1 Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . Vendor agrees to report each violation to VRT and understands and agrees that VRT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

11.2 Vendor shall include this clause in each subcontract financing in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the sub-vendor who will be subject to the clause.

11.3 The provisions of this Section 11.3 are applicable if this PO is expected to exceed \$150,000. In the event that this PO is not expected to exceed \$150,000, the provisions of this Section 11.3 are inapplicable.

12. Clean Air Act.

12.1 Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq . Vendor agrees to report each violation to VRT and understands and agrees that VRT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

12.2 Vendor shall include this clause in each subcontract financing in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clause shall not be modified, except to identify the sub-vendor who will be subject to the clause.

12.3 Applicability. The provisions of this Section 12.3 are applicable if this PO is expected to exceed \$150,000. In the event that this PO is not expected to exceed \$150,000, the provisions of this Section 12.3 are inapplicable.

13. Lobbying Limitations and Certification. By executing this PO, Vendor certifies that, to the best of his or her knowledge and belief, that:

13.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Vendor shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413).

13.3 Vendor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

13.4 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13.5 Vendor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clauses shall not be modified, except to identify the sub-consultants who will be subject to the provisions.

13.6 The provisions of this Section 13.6 are applicable if this PO is expected to exceed \$100,000. In the event that this PO is not expected to exceed \$100,000, the provisions of this Section 13.6 are inapplicable.

14. Contracts Involving Experimental, Development, Or Research Work.

14.1 This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this PO. The Vendor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this PO and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this PO and shall, at a minimum, include the following restrictions: Except for its own internal use, the Vendor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Vendor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by this PO. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of this PO.

14.1.1 The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

A. Any subject data developed under this PO, whether or not a copyright has been obtained; and

B. Any rights of copyright purchased by the Vendor using Federal assistance in whole or in part by the FTA.

14.1.2 Unless FTA determines otherwise, the Vendor performing completed for any reason whatsoever, all data developed under this PO shall become experimental, developmental, or research work required as part of this PO agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of this PO, or a copy of the subject data first produced under this PO for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this PO, is not subject data as defined herein and shall be delivered as the Federal Government may direct.

14.1.3 Unless prohibited by state law, upon request by the Federal Government, the Vendor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Vendor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Vendor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

14.1.4 Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

14.1.5 Data developed by the Vendor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying PO is exempt from the requirements herein, provided that the Vendor identifies those data in writing at the time of delivery of the Contract work.

14.1.6 The Vendor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

14.2 Patent Rights. This following requirements apply to each contract involving experimental, developmental, or research work:

14.2.1 General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this PO to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, VRT and Vendor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

14.2.2 Unless the Federal Government later makes a contrary determination in writing, irrespective of Vendor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), VRT and Vendor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative POs," 37 C.F.R. Part 401.

14.2.3 Vendor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

15. Debarment and Nonprocurement.

15.1 Vendor shall comply and facilitate compliance with U.S. DOT regulations, supplements “Nonprocurement Suspension and Debarment,” 2 C.F.R part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to this PO and all related contract at any level irrespective of the contract amount. As such, Vendor certifies that its principals, affiliates, and sub-vendors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

15.1.1 Debarred from participation in any federally assisted Award;

15.1.2 Suspended from participation in any federally assisted Award;

15.1.3 Proposed for debarment from participation in any federally assisted Award;

15.1.4 Declared ineligible to participate in any federally assisted Award;

15.1.5 Voluntarily excluded from participation in any federally assisted Award;
or

15.1.6 Disqualified from participation in any federally assisted Award.

15.2 The certification in Section 18.16.1 is a material representation of fact relied upon by VRT. If it is later determined by VRT that Vendor knowingly rendered an erroneous certification, in addition to remedies available to VRT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Vendor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, during the term of this PO.

15.3 Vendor agrees to include the above two clauses in each subcontract expected to equal or exceed \$25,000 or subject to a federally required audited which is financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract which satisfy either or both of these prerequisites. It is further agreed that the clauses shall not be modified, except to identify the sub-consultants who will be subject to the provisions.

16. Employee Protections.

16.1 Vendor represents and warrants that a copy of the current prevailing wage determination issued by the DOL has been provided to VRT in connection with the RFP.

16.2 Vendor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable

to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5. Vendor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Vendor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Vendor will permit such representatives to interview employees during working hours on the job.

16.3 If this PO meets the definition of a prime construction, alteration or repair contract in excess of \$2,000 awarded by FTA, then Vendor agrees to comply with the terms of this Section 16.3. Vendor 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. Vendor 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, Vendor 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, Vendor agrees to pay wages not less than once a week. Vendor 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, “Vendors and Sub-vendors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Vendor 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.

16.4 If Vendor’s performance of this PO involves the employment of mechanics or laborers and the value of this PO is in excess of \$100,000, then Vendor agrees to comply with the terms of this Section 16.4. Vendor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, Vendor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence. In the event of any violation of the clause set forth herein, Vendor and any sub-vendor responsible therefor shall be liable for the unpaid wages. In addition, Vendor and sub-vendor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this

clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

16.5 These requirements extend to all third party vendors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland “Anti-Kickback” Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

17. Recovered Materials.

17.1 Vendor 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 Resource Conservation and Recovery Act, as amended, 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. 2 C.F.R. §200.322.

17.2 Vendor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clauses shall not be modified, except to identify the sub-consultants who will be subject to the provisions.

18. Veterans Employment. 49 U.S.C. 5325 (k).

18.1 To the extent practicable, Vendor agrees that it:

18.1.1 Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

18.1.2 Will not require an employer 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, and

18.2 Vendor also assure that its sub-vendor will:

18.2.1 Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and

18.2.2 Will not require an employer 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.

19. Required Insurance Coverage: Vendor shall procure, maintain, and keep in force, at Vendor's expense, the Insurance Coverage as required below and shall cause VRT to be a named insured on all policies (except professional liability). Vendor shall provide Proof of Insurance to VALLEY REGIONAL TRANSIT prior to award. Proof of Insurance shall include an additional insured endorsement. For the duration of the PO and until all work under the PO is completed, Vendor shall have and maintain, at Vendor's expense, the following types of insurance and shall comply with all limits, terms and conditions of such insurance.

19.1 Commercial General and Umbrella Liability Insurance. Commercial General Liability (CGL) Insurance and, if necessary, Commercial Umbrella covering bodily injury and property damage. This insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent vendors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. Combined single limit shall not be less than \$500,000 each occurrence and \$1,000,000 in the aggregate.

19.2 Workers' Compensation. Where required by law, the Vendor and its sub-vendors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of \$500,000 per Accident, \$500,000 Disease, \$1,000,000 Policy Limit. The Vendor must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

19.3 Automobile Liability. Automobile Liability Insurance covering owned or non-owned vehicles. Combined single limit per occurrence shall not be less than \$1,000,000.

20. Bonding. For all contracts with an estimated value of \$50,000 or more, the Vendor will provide a performance and payment bond in an amount equal to the estimated value of the work. Such performance and payment bond will be issued by a surety acceptable to VRT.

21. Seismic Safety. The vendor 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 Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The vendor also agrees to ensure that all work performed under this contract, including work performed by a sub-vendor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

21.1 The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier vendors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all sub-vendors.

22. Safe Operation of Motor Vehicles.

22.1 Seat Belt Use. Vendor 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 Vendor or VRT.

22.2 Distracted Driving. Vendor 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 Vendor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this PO.

22.3 Flow Down. Vendor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA and also a clause requiring the subcontractors to include this clause in any lower tier subcontract. It is further agreed that the clauses shall not be modified, except to identify the sub-consultants who will be subject to the provisions.

23. Buy American. Vendor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. Vendor agrees to submit a certification to VRT of its compliance with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 with respect to any bids or offers made in connection with this PO. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

23.1 Further, and as may be applicable, Vendor agrees to comply with the requirements of OMB Memorandum M-22-11 (April 18, 2022) related to the “Build America, Buy America” portion of the Infrastructure Investment and Jobs Act.

23.2 Specifically, Vendor is hereby notified that none of the funds provided under this PO may be used for a Project for infrastructure unless:

23.2.1 all iron and steel used in the Project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

23.2.2 all manufactured products used in the Project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

23.2.3 all construction materials, (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

23.3 The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure Project.

23.4 The Buy American requirement flows down from FTA recipients and subrecipients to first tier vendors, who are responsible for ensuring that lower tier vendors and sub-vendors are in compliance.