

GENERAL TERMS AND CONDITIONS
(For Purchases < \$25K)

The following General Terms and Conditions are incorporated into and made a part of this Solicitation.

4.1 GENERAL INFORMATION

The Southwest Ohio Regional Transit Authority ("SORTA"), with its administrative offices located at 602 Main Street, Suite 1100, Cincinnati, Ohio 45202, is a regional transit authority and a political subdivision of the State of Ohio organized and operating under Ohio Revised Code Sections 306.30 et seq., and funded in part by grants from the Federal Transit Administration ("FTA") of the United States Department of Transportation.

The term "Contractor" as used herein, shall mean the firm or individual entering into a contract with SORTA for the work defined in the contract, and specifically shall include the term "Consultant." Contractor acknowledges and agrees that it is an independent contractor and neither it nor any of its employees shall be considered employees of SORTA. The term "Subcontractor" as used herein shall refer to firms or individuals which directly or indirectly enter into a contract with the Contractor for performance of a portion of the work defined in the Contractor's contract with SORTA, and shall include sub-consultants, vendors, suppliers, but not the employees of the Contractor or any Subcontractor.

By entering into this contract, Contractor represents and warrants that it is fully qualified to perform the services required hereunder and possesses any necessary licenses or permits and shall maintain such licenses and permits during the term of this contract and any warranty period.

4.2 FTA APPROVAL

In the event that SORTA is required to obtain Federal Transit Administration (FTA) approval prior to entering into this Contract, the Contract shall be deemed subject to the condition precedent of FTA approval, and the failure to obtain such approval, where required, shall terminate all the Contractor's right hereunder and bar it from the right to any mortgage, lien or other security interest in any way arising out of or relating to the project.

4.3 PAYMENT

Unless otherwise specified herein, SORTA shall pay Contractor the Contract price upon completion and acceptance of the Work hereunder, and submission and approval of an appropriate invoice. Completion of the Work shall include the provision of any documents relating to warranties, releases of liability, and operating and parts manuals as appropriate. Payment to Contractor will generally be made within thirty (30) calendar

days following approval by SORTA of an invoice. Such approval or payment shall not constitute acceptance or approval of the services and/or materials invoiced. Late payments shall accrue no interest.

Within ten (10) working days after receiving payment from SORTA, Contractor shall pay each sub-consultant, subcontractor, or material supplier (collectively "Subcontractors") all amounts due and invoiced by the subcontractor and paid to the Contractor by SORTA.

If this Contract (or a Task Order) specifies that SORTA will withhold from Contractor a specific percentage or specific dollar amount of the work as a retainer, and/or if Contractor withholds, through agreement with any Subcontractor, a specific percentage or specific dollar amount of the subcontracted work or materials from any Subcontractor, Contractor shall release any and all retainage due to each such Subcontractor within ten (10) working days following the completion of that Subcontractor's work hereunder.

Payments hereunder shall only be made upon invoices properly submitted hereunder. Unless otherwise specified herein, invoices shall be submitted monthly for goods or services accepted by SORTA during the preceding month. Contractor shall include in each invoice all amounts properly due to Subcontractors that are properly and timely submitted by them. Each invoice submitted shall identify the funding authorization (purchase order) number assigned to this contract. Each invoice shall be supported by satisfactory documentation as to the time expended and the Services performed during that time. Unless otherwise directed by SORTA, all invoices shall be mailed to: SORTA, Attn: Accounts Payable Department, 602 Main Street, Suite 1100, Cincinnati, Ohio 45202.

4.4 ESTABLISHMENT AND MAINTENANCE OF ACCOUNTS

The Contractor shall establish and maintain as a separate set of accounts, or within the framework of an established accounting system, accounts for the Contract in a manner consistent with Office of Management and Budget Circular A-87, as amended.

4.5 DOCUMENTATION OF COSTS AND EXPENSES

All costs charged to the Contract, including any approved services contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, and/or vouchers evidencing in detail the nature and propriety of the charges.

All checks, payrolls, invoices, contracts, vouchers, others, or other accounting documents pertaining in whole or in part to the Contract shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents. Such records, together with supporting documents, shall be

maintained for a period of three years after receipt of the final payment, and other pending matters are closed under this contract.

4.6 TAXES

SORTA is exempt from payment of the State of Ohio sales tax and Federal excise taxes, and all pricing and invoicing under this contract shall exclude such items. Contractor shall be solely responsible for payment of all taxes accruing from its activities under this contract, including, but not by way of limitation, income taxes, payroll taxes, or other federal, state or local taxes relating to the generation of income or the employment of individuals.

4.7 AUDITS AND INSPECTION

The Contractor shall permit, and shall require its subcontractors to permit, the Secretary of the U.S. Department of Transportation and the Comptroller General of the United States, SORTA, or any of their duly authorized representatives to have access to all work, materials, payrolls, books, documents, papers, and other data and records directly pertinent to this contract, for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall maintain all required records for three (3) years after final payment and other pending matters are closed under this contract.

4.8 INSURANCE

Contractor shall procure and maintain at its own cost and expense, during the entire period of the performance under this Agreement, sufficient types and amounts of insurance to protect the interest of SORTA and the Federal Transit Administration with insurance companies authorized to operate in the State of Ohio, possessing not less than an A- rating from A.M. Best Company and otherwise acceptable to SORTA. The following represents SORTA's minimum insurance requirements, which shall apply unless modified in the Special Provisions of this Agreement.

Workers Compensation

Statutory for each state in which work is to be performed hereunder.

Employer's Liability

\$1,000,000 per occurrence.

Comprehensive General Liability

Not less than \$1,000,000 of combined bodily injury and property damage coverage per occurrence, including contractual, contingent and completed operations liability coverage.

Automobile

Not less than \$1,000,000 per occurrence, covering all owned, non-owned and hired vehicles used in connection with the work.

Owner's Protective Liability Insurance

To be issued in the name of SORTA, in an amount not less than \$1,000,000 per occurrence. The Contractor shall furnish a policy of Owner's Protective Liability Insurance as set forth herein. This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Contractor.

Contractual Liability Insurance

In an amount not less than \$1,000,000 covering all liability arising out of the terms of the Agreement documents.

With respect to coverages other than Workers' Compensation, SORTA shall be named as an additional insured. Within ten (10) working days of notice of award of this Contract, Contractor shall provide SORTA with Certificates of Insurance reflecting the coverages and limits of liability provided. SORTA reserves the right to require the Contractor to furnish copies of the policies represented by the Certificates. No such insurance coverage may be cancelled or altered in a manner affecting SORTA's rights thereunder without 30 days' advance written notice to SORTA.

Contractor shall not commence its work hereunder until all such coverages have been obtained and are in full force and effect. Failure to obtain and maintain all such coverages throughout the course of this contract shall be deemed an act of default on the part of the Contractor.

4.9 COMMUNICATIONS

Communications between the parties in connection with this contract shall be in writing and, unless otherwise stated, shall be effective on receipt. However, communications by registered mail addressed to the employees of SORTA and of the Contractor designated to receive communications shall be effective upon mailing. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Electronic communications shall be effective upon documented receipt by the non-sending party, but must be confirmed by hard copy within 24 hours of transmission.

4.10 ASSIGNMENT OF CONTRACT

Contractor shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without the prior approval of SORTA.

Contractor shall not voluntarily assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), except as provided herein, without the prior written consent of SORTA; provided, however, that claims for money due or to become due to Contractor from SORTA under this Contract may be assigned to a bank, trust company, or other financial institution without such approval,

but subject to any claims SORTA may have against Contractor. Notice of any such assignment or transfer shall be furnished promptly to SORTA. Any involuntary assignment or transfer of any portion of Contractor's interest in this contract to a third party as the result of bankruptcy, insolvency, by judicial order, or by operation of law shall be grounds for the termination of this contract for default.

SORTA specifically reserves the right to assign part or all of the base or any option contract rights, supplies, equipment, or services (collectively "Rights") to any other public transportation agency or governmental entity. Such assignment shall be in accordance with FTA Circular 4220.1F, § V7(a)(2). The assignment shall be in writing, signed by SORTA and the assignee and acknowledged by the Contractor. Any Rights so assigned shall be subject to a separate contract between the Contractor and SORTA's assignee, and SORTA shall have no further obligations to the Contractor with respect to such assigned Rights.

4.11 PERSONNEL

(a) The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under the contract.

(b) All of the services required by the Contract will be performed by the Contractor or under its competent supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

(c) Work or services covered by the Contract may not be subcontracted without the prior written approval of SORTA. To the extent such subcontracted Work is included in the Contractor's bid or final proposal as accepted by SORTA, it is deemed to be approved.

4.12 SUBCONTRACTORS

Contractor may employ subcontractors, sub-consultants and material men (collectively "Subcontractors") to perform work hereunder only with the prior approval of SORTA, which approval shall not be unreasonably withheld. Any Subcontractors identified in Contractor's final bid or proposal, as accepted by SORTA, shall be deemed to be so approved. SORTA shall promptly notify the Contractor in writing if SORTA, after due investigation, has reasonable objection to and does not approve any subcontractor.

The Contractor shall be fully responsible to SORTA for the acts and omissions of all Subcontractors, and of persons either directly or indirectly employed by Subcontractors, as the Contractor is for the acts and omissions of persons directly employed by the Contractor.

The Contractor shall flow down all appropriate provisions of this Contract to subcontractors of all tiers relative to compliance by each Subcontractor with the applicable provisions of this Contract.

4.13 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

(a) Title VI Civil Rights Act of 1964: The Contractor shall comply with all provisions of Executive Order 11246, as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations 41 C.F.R. Part 60 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(b) Nondiscrimination: During the performance of the Contract, the Contractor agrees as follows:

(i) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(iii) The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

(iv) In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated, or

suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11375 and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11375 by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(v) The Contractor shall include the portion of the sentence immediately preceding Paragraph (i) and the provisions of Paragraphs *i) through *vi) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11375, so that such provisions shall be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(vi) If, as a condition of assistance, the Contractor has submitted, and the Government has approved, an equal employment opportunity program that the Contractor agrees to carry out, such program is incorporated into this agreement by reference. Such program shall be treated as a contractual obligation; and failure to carry out the terms of that equal employment opportunity program shall be treated as a violation of the Contract. Upon notification to the Contractor of its failure to carry out the approved program, the Government will impose such remedies as it may deem appropriate, which remedies may include termination of the contract or other measures that may affect the ability of the Contractor to obtain further financial assistance under the Urban Mass Transportation Act of 1964, as amended, or the Federal-Aid Highway Act of 1973, as amended.

(c) The Contractor or any of its subcontractors shall insert in any subcontracts the clauses set forth in subsections (a) and (b) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the requirements set forth herein.

4.14 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

The Contractor agrees to comply with, and assure that any subcontractor under this Contract complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 et seq. and 49 U.S.C. Section 322; Section

504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. Section 1612; and the following regulations and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
4. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R. Part 101-19;
7. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Sub part F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

4.15 ACCESS TO PROPERTY

SORTA shall assist Contractor, as required, in gaining access to property necessary in the performance of the services hereunder. If the work hereunder requires the Contractor to enter SORTA's property, Contractor's personnel (including those of any Subcontractor) shall comply with all SORTA policies and regulations regarding activity on its property as applied to SORTA's own personnel including, but not by way of limitation, those addressing safety and security issues. Any violation of this requirement shall be grounds for removal of the violating individual from SORTA's property.

4.16 DATA TO BE FURNISHED TO CONTRACTOR

If the services to be performed hereunder are dependent upon SORTA furnishing data and information to the Contractor, all information, data reports records, etc. that are existing, available, and necessary for the carrying out of the work shall, unless otherwise specified, be furnished to the Contractor without charge and in timely fashion by SORTA . Contractor shall use such data and information only in the performance of this contract and shall not, without SORTA's prior written permission, furnish any such data and information to third parties except as required for the performance of services hereunder.

4.17 REPORTS AND INFORMATION

The Contractor shall, at such times and in such manner as SORTA may require, furnish SORTA with periodic reports and statements pertaining to the approved activities and annual work program and other related matters covered hereunder.

4.18 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All work products produced by, for or on behalf of Contractor pursuant to this Agreement shall become the sole property of SORTA in perpetuity, and Contractor hereby forever assigns to SORTA and its successors and assigns and hereby agrees to cause any third parties producing any such work products for or on behalf of Contractor to forever assign to SORTA and its successors and assigns, all of such assignor's worldwide right, title and interest in and to such work products and any related intellectual property rights related thereto, and in and to any and all renewals and extensions thereof, all of which shall be held and enjoyed by SORTA, its successors and assigns as fully and entirely as the same would have been held and enjoyed by such assignor had the foregoing assignment or contemplated assignment not been made.

Work products include such items as documents, field notes, records, computations, calculations, work sheets, sketches, drawings, specifications, cost estimates, laboratory data, test results, correspondence and all other products resulting from the work performed by the Contractor under this Agreement. Final payment by SORTA to Contractor shall be withheld until such work products are transferred to SORTA by Contractor. All tangible personal property purchased by Contractor and paid for by SORTA as a direct contract expense shall immediately become the property of SORTA. Contractor shall be authorized to use said tangible personal property for SORTA's benefit until termination or expiration of the Contract or such earlier time that SORTA requests that Contractor return such property to SORTA.

4.19 COPYRIGHTS, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

No written material, in any medium or format produced in whole or in part under the Contract shall be subject to copyright in the United States or in any other country.

SORTA and the Federal Transit Administration shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, drawings, designs, data, or other copyrightable materials prepared under this Contract.

No reports, information, data, etc., given to, or prepared or assembled by, Contractor under this Agreement shall be made available to any individual or organization by Contractor without prior written approval by SORTA.

4.20 PUBLIC RECORDS ACT

Contractor acknowledges that SORTA is a public entity subject to the requirements of the Ohio Public Records Act (Ch. 149.43, Ohio Revised Code) and that documents prepared by Contractor may be subject to public disclosure thereunder. Contractor shall clearly identify any documents prepared by it in connection with this contract which it believes to be excluded from disclosure under the Act. SORTA will not recognize or withhold from disclosure any documents so marked in a general or indiscriminate fashion or containing information which is patently subject to disclosure under the Act. Should Contractor request SORTA to exclude documents from disclosure, and should the failure to disclose be challenged, Contractor shall be solely responsible for defending such withholding, and shall indemnify SORTA and hold it harmless for any costs incurred thereby, including but not limited to any penalties imposed on SORTA as the result of such non-disclosure.

4.21 PATENT INFRINGEMENT

SORTA will notify the Contractor of any impending claim or suit alleging in violation of one or more patents. The Contractor shall defend any such suit or proceeding brought against SORTA based on a claim that any equipment, process or other item or any part thereof (collectively "Item") furnished under this contract constitutes an infringement of any patent, and the Contractor shall pay all damages and cost awarded therein, excluding incidental and consequential damages, against SORTA. SORTA shall fully cooperate in the defense of any such suit, and provide any readily available information relating thereto. SORTA specifically reserves the right to employ its own legal counsel in connection with any matter addressed herein. Should said Item or any part thereof be held to constitute infringement and use of said Item in whole or in part is enjoined, the Contractor shall, at its own expense and at its option, either procure for SORTA the right to continue using said Item, or replace same with a non-infringing Item, or modify the existing Item so it becomes no infringing. No delay to completion of Contractor's services hereunder shall be waived due to the existence of such suit or claim

4.22 INDEMNIFICATION

Contractor shall indemnify SORTA and SORTA's trustees, officers, employees or agents against and hold them harmless from all losses, damages, costs, expenses, claims, suits and judgments in law and equity, that may at any time arise, or may be set up, by any breach of any express or implied warranties arising out of the furnishing of

the equipment, materials, services and/or supplies; or any infringement of the patent rights of any person or persons in consequence of the use by SORTA or by any of its employees or agents of the equipment, materials, and/or supplies under this agreement; or arising out of any other failure of Contractor to meet the obligations of the contract. SORTA will give Contractor prompt notice in writing of the institution of any suit or proceeding and permit the Contractor, through its counsel, to defend same and will give all needed information, assistance and authority to enable the Contractor to do so. The Contractor also assumes the risk of liability for and shall indemnify, defend, protect and save harmless SORTA, its trustees, officers, agents and employees from and against any and all claims, damages, suits, judgments, liabilities, losses, court costs and expenses including attorney's fees for all injury, sickness, disease, destruction including damages for death of any person or persons whosoever and to any property whatsoever arising out of or in the course of performance of this Agreement by the Contractor's employees, agents, representatives, and subcontractors of any tier.

4.23 WARRANTY

Unless otherwise specified herein, all services, supplies and equipment furnished by the Contractor hereunder shall be warranted against any defects in material or workmanship for a period of one year from the date of final payment to the Contractor under this Contract. Upon notice by SORTA of any such defect, the Contractor shall promptly correct, repair or replace the defective items at no additional cost to SORTA. Should SORTA, in its sole judgment, direct the Contractor not to correct, repair or replace such defect, the Contract price shall be equitably adjusted.

4.24 CONTRACT MODIFICATIONS

SORTA may at any time, by a written order, and without notice to sureties, if any, make changes within the general scope of this Contract. Such change shall serve to modify this Contract to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by the order, SORTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly. The Contractor must assert its right to an adjustment under this article within three working days from the date of receipt of the written order. Failure by contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if SORTA decides that the facts justify it, the SORTA may receive and act upon a proposal submitted at any time before final payment of the contract. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, SORTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this provision shall excuse the Contractor from proceeding with the contract as changed.

4.25 DISPUTES AND REMEDIES

It is the intent of the parties to resolve disputes in the most efficient and amicable way possible. If a dispute cannot be resolved at the project manager level in a reasonable amount of time, the project managers may agree to refer it to their immediate supervisors. This referral must be in writing. Within thirty (30) calendar days of such notice, the supervisors will, if agreement is not reached, refer the dispute to SORTA's CEO and General Manager ("CEO") who shall issue a written decision within thirty (30) calendar days and mail or otherwise furnish a copy thereof to the Contractor. Prior to the decision of the CEO, the Contractor shall be afforded an opportunity to appear before the CEO, and to offer documentary evidence in support of its position. The decisions of the CEO shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accord with SORTA's position in the dispute; such continued performance will not in any manner imply that the Contractor accepts or agrees with SORTA's position nor does it prejudice the Contractor's rights hereunder.

Granting or acceptance of extensions of time to complete the Work or furnish the labor, supplies, materials, or equipment required under the Contract will not release the Contractor or its surety from their obligations hereunder.

4.26 TERMINATION

(a) Termination for Convenience

(i) SORTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in SORTA's best interest to do so. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SORTA. Upon approval by SORTA, the amount claimed or any other amount as may be agreed by the parties shall be paid to the Contractor. If the parties cannot agree upon the amount to be paid, SORTA shall pay the amount it agrees to be due, and the Contractor may pursue the remainder of the amount claimed under the Disputes clause on this contract. If the Contractor has any property in its possession belonging to SORTA, the Contractor will account for the same, and dispose of it in the manner SORTA directs. The value of any property retained by the Contractor, with or without SORTA's approval, and any net proceeds from the sale of such property shall be credited against the Contractor's claim.

(ii) After receipt of a notice of termination, except as otherwise directed by SORTA, the Contractor shall: stop work under the contract on the date and to the extent specified in the notice of termination; place no further orders or subcontracts for equipment, materials, supplies, and/or services, except as may be necessary for completion of such portion of the work under the contract as is

not terminated; terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; assign to SORTA in manner, at the times, and to the extent directed by SORTA, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case SORTA shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts to the extent SORTA may require; transfer title to SORTA and deliver in the manner, at the times, and to the extent, if any, directed by SORTA the fabricated or un-fabricated parts, work in process, completed work, supplies, and other materials produced as a part of, or acquired in connection with their performance of, the work terminated, and the completed; or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to SORTA; use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by SORTA, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed and at a price(s) approved by SORTA; complete performance of such part of the work as shall not have been terminated by the notice of termination; and take such action as may be necessary, or as SORTA may direct, for the protection or preservation of the property related to this contract which is in the possession of the Contractor and in which SORTA has or may acquire an interest.

(iii) Settlement of claims by the Contractor or recoveries by SORTA under this termination for convenience clause shall be in accordance with the legal rights and liabilities of the parties to this agreement.

(b) Termination for Default

(i) If the Contractor fails to perform its services in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SORTA may terminate this contract for default. Termination shall be effected by serving a written notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(ii) If it is later determined by SORTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, SORTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(iii) SORTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

(iv) If the Contractor fails to remedy to SORTA's satisfaction the breach or default within the period specified in the written termination notice SORTA shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude SORTA from also pursuing all available remedies against the Contractor and its sureties for said breach or default. Specifically, but not by way of limitation, SORTA may complete the work itself or through other contractors, and any excess cost incurred by SORTA above the unpaid portion of contract price shall be charged to the Contractor.

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

4.27 COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, & POLICIES

This Contract is subject to the applicable terms and conditions of SORTA's financial assistance grant contract with the Federal Transit Administration (FTA), United States Department of Transportation (DOT) which reflects the requirements of the FTA Master Agreement (Currently MA-18) issued annually on October 1. The Contractor understands and shall comply with all applicable Federal laws, regulations, policies, and related administrative practices applicable to this contract, as well as any changes to these Federal requirements, which may be modified from time to time during the term of this Contract. The changed requirements will apply to the contract as required.

The provisions set forth or incorporated into this Contract include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth herein. All contractual provisions required by DOT, as set forth in FTA Circular C4220.1F, as it may be amended from time to time, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SORTA requests which would cause SORTA to be in violation of the DOT terms and conditions.

4.28 NO FEDERAL OBLIGATION TO THIRD PARTIES

(1) SORTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the

Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to SORTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

4.29 THIRD PARTY LIABILITY

Nothing contained in this Agreement is intended to or shall have the effect of creating any rights in any third party against SORTA. The inclusion of the Agreement or any part thereof in any other document shall not be deemed to be creating or incorporating any obligation, duty, or liability on the part of SORTA. The Contractor shall indemnify SORTA in accordance with the provisions of this paragraph against any claim made by any third party claiming rights under the Agreement.

4.30 JOINT AND SEVERAL LIABILITY

If the Contractor is a joint venture or partnership, each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of this Agreement. Each of such venturers or partners waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from or assumed under the Agreement, and the failure to give any such notice shall not affect or impair such venturer's or partner's joint and several liability hereunder

4.31 TIME IS OF THE ESSENCE

Time is of the essence for the work described in this contract. It is anticipated by the parties that all work described herein will be completed within the schedule established hereunder, and that any delay in the completion of the work described herein shall constitute a material breach of this contract.

In the event that the services hereunder are not performed in accordance with the schedule established herein, including any modifications thereto, SORTA may terminate this Contract or the affected portion thereof for default; procure substitute services elsewhere; and recover from the Contractor any increased costs thereby incurred together with all resulting incidental and consequential damages.

The Contractor shall be entitled to a reasonable extension of time from SORTA for any delays beyond the reasonable anticipation and control of the Contractor and its subcontractors.

4.32 INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

4.33 INTEREST OF PUBLIC OFFICIALS

No member, officer, employee or agent of SORTA shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

4.34 COVENANT AGAINST GRATUITIES

The Contractor shall not offer or provide gifts, favors, entertainment or any other gratuities of more than nominal value to any trustee, officer, employee or agent of SORTA during the period of this contract or for a period of one year thereafter.

4.35 DEBARMENT AND SUSPENSION

The Contractor, including any of its officers or holders of a controlling interest, has certified during the solicitation process that it is not or has not been on the Excluded Parties List System maintained by the United States General Services Administration. Should the Contractor be included in this System during the performance of this contract, it shall so inform SORTA. The Contractor shall also ensure compliance with this requirement on the part of its subcontractors of any tier.

4.36 USE OF UNITED STATES FLAG VESSELS

(1) Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, and

(2) Contractor agrees to furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading of shipments originating outside the United States, a legible copy of a rate, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to SORTA (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC, 20230, marked with appropriate identification of the Project.

4.37 FLY AMERICA

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

4.38 SEVERABILITY

In the event any provision of this Contract is declared or determined by judicial decision to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract unaffected by such determination, and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

4.39 ENERGY CONSERVATION

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

4.40 WAIVERS

Any waiver by SORTA of any condition to the Contract shall apply only to the specific item addressed, and shall not imply that SORTA will waive that condition or any other condition of the Contract in the future.

4.41 BINDING AGREEMENT

This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns but shall not inure to the benefit of any third party or other person.

4.42 APPLICABLE GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Any suit or proceeding arising out of, relating to or mentioning this Agreement shall be commenced only in the courts of Hamilton County, Ohio, and each party to this Agreement hereby consents to the jurisdiction and venue of such court, and waives its right to proceed in any other jurisdiction.

4.43 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- (a) The Contractor 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 this Contract. By execution of this contract, the Contractor 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 the Contract. In addition to other penalties that may be applicable, the Contractor 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, 31 USC §3801 et seq. on the Contractor to the extent the Federal Government deems appropriate.
- (b) The Contractor 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 the Contractor, to the extent the Federal Government deems appropriate.
- (c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4.44 ENVIRONMENTAL & SUSTAINABILITY MANAGEMENT SYSTEM

The Southwest Ohio Regional Transit Authority (SORTA) has adopted an Environmental Policy Statement, which may be found on its website at <http://www.go-metro.com/about-metro/about2/going-green>, and is a signatory to the American Public Transportation Association's Sustainability Commitment. Accordingly, SORTA encourages its suppliers and contractors to perform its contracts in accordance with the highest level of environmental responsibility and sustainability.

4.45 RECOVERED MATERIALS

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

4.46 EMPLOYEE DIVERSITY

Contractor hereby represents and certifies that it will, in the performance of its obligations hereunder, utilize its best efforts to utilize competent individuals including minorities and women at all levels. Contractor shall seek to provide opportunities for the professional growth of such individuals through such utilization. Contractor shall, to the greatest extent consistent with laws and regulations, maintain records of the employment, training and mentoring efforts extended to such individuals in connection with this contract, and make such records available to SORTA upon request.

4.47 VETERANS HIRING PREFERENCE

SORTA and its sub recipients are recipients of federal financial assistance in this contract. The contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5 CFR) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would 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.”

END OF GENERAL TERMS AND CONDITIONS