

CONTRACT TO PROVIDE SUBSTATION REPAIRS & UPDATES

Regional

Transit

BY AND BETWEEN

REGIONAL TRANSIT AUTHORITY

A Political Subdivision of the

State of Louisiana

2817 Canal St.

Authority

New Orleans, Louisiana 70119

AND

POWELL ELECTRICAL SYSTEMS, INC.

Electrical Division - North Canton

8967 Pleasantwood Ave NW North Canton, OH 44720

2817 Canal Street,

A. SCOPE OF WORK:

As specified herein.

New Orleans,

B. CONTRACT PRICE:

As specified herein.

Louisiana

C. PERIOD OF PERFORMANCE:

As specified herein.

70119-6301

Administration

504.827.8300

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EXHIBITS

EXHIBIT "A"	Proposal from Contractor, dated September 11, 2024
EXHIBIT "B"	RTA's General Provisions
EXHIBIT "C"	Federal Requirements

AGREEMENT

BY AND BETWEEN

THE REGIONAL TRANSIT AUTHORITY

AND

POWELL ELECTRICAL SYSTEMS, INC.

STATE OF LOUISIANA PARISH OF ORLEANS

This AGREEMENT made and entered into this 8th day of January , 2025 by and between the REGIONAL TRANSIT AUTHORITY (hereinafter referred to as the "RTA"), a political subdivision of the State of Louisiana, herein represented by its Chief Executive Officer, Lona Hankins and POWELL ELECTRICAL SYSTEMS, INC. (hereinafter also referred to as "Consultant" or "Contractor") a Corporation, herein represented by its Project Manager, Shelby Santizo, authorized to do and doing business in the State of Louisiana.

WITNESSETH

WHEREAS, the RTA is a political subdivision of the State of Louisiana, charged with the responsibility of providing, maintaining and administering a transit system in the areas within its jurisdiction; and

WHEREAS, in accordance with state and federal laws and regulations, RTA requested a Sole-Source procurement to procure a contractor to provide substation repairs and updates; and

WHEREAS, Powell Electrical Systems, Inc., a corporation, submitted a proposal, Exhibit "A" attached hereto, Proposal from Contractor, dated September 11, 2024, made a part hereof and attached hereto; and

WHEREAS, after evaluation of Contractor's offer, RTA determined that Contractor was responsible and had submitted a responsive offer.

NOW, THEREFORE, IN CONSIDERATION of the promises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. SUPERSEDING EFFECT

This Agreement supersedes all prior oral or written Agreements, if any, between the parties and constitutes the entire Agreement between the parties relative to the work to be performed under this Agreement. Any changes or modifications to this Agreement shall be accomplished solely by written amendment signed by both parties.

II. SCOPE OF SERVICES

Contractor shall provide RTA with repair and update of substations (HWD DC Breaker Retrofill), in accordance with the proposed terms and conditions set forth in Exhibit "A". Contractor agrees that all goods and services under this Agreement shall be delivered in a professional, timely manner and shall conform to or exceed in all respects the prevailing industry standards.

III. COMPENSATION

The RTA will compensate Contractor for the goods to be provided under this Agreement, as specified in this agreement and pursuant to Exhibit "A". The compensation due Contractor shall not exceed \$1,053,128.00 unless properly authorized. Payment terms are Net 30 days after receipt and acceptance of materials and/or services or after receipt of a proper invoice, whichever is later.

IV. TERM OF AGREEMENT

This Agreement shall be deemed effective on the date first above written and shall continue in effect until all items have been delivered or until the occurrence of one of the following events, occurs:

A. The certification by RTA or its agents that the requirements of this Agreement have been satisfactorily completed by Contractor, or;

B. The termination of this Agreement as provided in Article V, herein below. The duration of this agreement may be extended by mutual agreement of the parties.

V. TERMINATION

Termination under this Agreement shall be in accordance with Exhibit "B", Federal Requirements, Paragraph 18, Termination; Section A – Termination for Convenience and Section B – Termination for Default of the Regional Transit Authority General Provisions.

VI. INTEREST OF CONTRACTOR

Contractor covenants that it currently has no interest and shall acquire no interest, direct or indirect, which would conflict in any manner or degree with the delivery of the goods called for under this Agreement. RTA and Contractor further covenant that in the performance of this Agreement no persons having any such interest shall be employed.

VII.

IDENTIFICATION OF DOCUMENTS

Any document, memorandum or report prepared under this Agreement for publication and not merely for internal use shall contain the following or a similar stipulation deemed acceptable to the RTA:

A. The preparation of this document has been financed in part through RTA operating funds. The RTA is a recipient of grant funds from the United States Department of Transportation under the provisions of the Urban Mass Transportation Act of 1964, as amended.

B. The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of RTA or the United States Department of Transportation, Federal Transit Administration.

VIII. OWNERSHIP OF DOCUMENTS

Any documents, drawings, specifications, reports or data generated by the Contractor in connection with this project shall become the sole property of the RTA, subject to any rights asserted by FTA of the U.S. Department of Transportation. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports or data from this project without prior written permission from the RTA.

IX. MEDIA COVERAGE

The Contractor shall be prohibited from participating in or directing any third-party media coverage, in any form, of this project without first submitting a written request to RTA's Procurement representative noted in Article XI of this contract and receiving written approval from the same in advance of any such coverage.

X. APPLICABLE LAW

This Agreement shall be entered into the State of Louisiana and shall be governed and/or construed in accordance with the laws and jurisprudence of the State of Louisiana.

XI. NOTICES

Any notice required or permitted under the Agreement shall be either hand delivered to the party to whom the notice is directed or sent to same by certified mail, return receipt requested, and addressed as follows:

A. REGIONAL TRANSIT AUTHORITY

2817 Canal St.

New Orleans, Louisiana 70119

ATTN:

Gizelle Johnson-Banks Chief Financial Officer - RTA Regional Transit Authority

XII. DOCUMENTS INCORPORATED BY REFERENCE

The following documents are hereby incorporated by reference:

EXHIBIT "A" Proposal from Contractor, dated September 11, 2024

EXHIBIT "B" New Orleans Regional Transit Authority General Provisions

EXHIBIT "C" Federal Terms and Conditions

XIII. ORDER OF PRECEDENCE

The following order of precedence shall govern in the event of a conflict between documents of this contract.

Articles I through XV hereof.

EXHIBIT "B" New Orleans Regional Transit Authority General Provisions EXHIBIT "C" Federal Terms and Conditions

XIV. INSURANCE

To protect RTA against liability in connection with, or resulting from the carrying out of this contract, Contractor shall provide, before the work is commenced hereunder, and shall at all time during the life of the contract carry at the expense of the Contractor, with a reliable insurance

company, and approved to do business in the State of Louisiana, all insurance required by local, state or federal laws should there be any such requirement(s). Any subcontractor employed by the Contractor shall be governed by the same insurance requirements as stated herein. The Contractor shall deliver to the RTA a Certificate of Insurance when required.

During the term of this Agreement the Contractor shall obtain and maintain the following types and amounts of insurance. The Contractor shall furnish to RTA Certificates showing types, amounts, class of operations covered, effective dates and dates of expiration of policies:

- Worker's Compensation Insurance as required by applicable Louisiana Law.
- Vehicle Liability Insurance in the amount of \$1,000,000.00.
- General Liability Insurance in the amount of \$1,000,000.00.

XV. DBE COMPLIANCE

It is the policy of the RTA to ensure access to the economic opportunity the agency offers in a manner that is fair and equitable and that affords participation to all citizens regardless of race, gender, ethnicity, age, religious background, sexual orientation and disability. Accordingly, the RTA's DBE Program is designed to increase small and disadvantaged business participation in RTA contracts and procurements. The growth and development of small and disadvantaged businesses is important to the New Orleans regional economy.

The RTA works to support that growth and development, in part, by providing business opportunities under its DBE Program Legal Authority.

The RTA is a recipient of federal transit funds from the U.S. Department of Transportation Federal Transit Administration (FTA). As a condition of receiving this federal funding, RTA is legally required to establish and maintain a DBE program in compliance with Title 49 of the U.S. Code of Federal Regulation, Part 26 (49 CFR Part 26).

Contractor Assurance

The contractor, subcontractor or sub-recipient (hereinafter contractor) shall not discriminate on the basis of race, color, national origin, sexual orientation, age or disability in the performance of this contract. Additionally, the Contractor must comply with all requirements of the RTA DBE Program as authorized by the Code of Federal Regulations 49 CFR Part 26. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which shall result in such remedy as the RTA, deems appropriate and may include the termination of this Agreement.

Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- a) Any party to this Contract, when expending any Federal funds received under this Agreement, must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps are required for the hiring of any subcontractors under this Contract.
- b) Affirmative steps must include:
- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

DBE Participation

Contractor shall count only the value of the work performed by its DBE subcontractor toward attainment of the DBE goal. Contractor shall also ensure that any work that its DBE subcontractor has subcontracted to a non-DBE firm does not count toward attainment of the DBE goal. Finally, Contractor shall ensure that any fees or expenses paid to its DBE subcontractor are only counted

toward attainment of the DBE goal if the DBE subcontractor is performing a commercially useful function under this Agreement.

Prompt Payment of Subcontractors

Contractor shall pay each subcontractor under this Agreement, especially DBE firms, no later than five (5) business days from the receipt of each payment Contractor receives from the RTA. Contractor further agrees to return retainage payments to each subcontractor, within five (5) business days after the subcontractor's work is satisfactorily completed and accepted by the RTA, and all delays under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause, following written approval of the RTA.

DBE Contract Termination

Contractor shall not terminate for convenience the contract of its DBE subcontractor and subsequently perform the work of the terminated DBE subcontractor with its own forces or those of an affiliate, without prior written consent from the RTA. In addition, if a DBE subcontractor is justifiably terminated, or fails to complete its work for any reason, Contractor must make good faith efforts (also referred to as best efforts) to find another certified DBE firm to substitute for the original DBE subcontractor. Good faith efforts must be directed towards finding a substitute DBE subcontractor to perform at least the amount of work needed to meet the DBE goal.

Monthly Reporting

Contractor must complete and submit to the DBE Liaison Officer for the RTA (DBELO) monthly and quarterly reports of DBE firm participation under this Agreement. Failure to report DBE activity is a material breach of this agreement that shall result in such remedy as the RTA deems appropriate and may include withholding payment of invoices until such time as the monthly reports are received or penalties of \$100 per day. All RTA contract awarded, vendors are required to register contract information including their subcontractor information into the B2GNOW database.

https://norta.dbesystem.com

Access to Books and Records

Contractor must grant the DBELO reasonable access to its books and records for the purpose of verifying Contractor's compliance with the RTA DBE Program requirements.

XVI. INDEMNIFICATION

The Contractor covenants and agrees to fully defend, protect, indemnify and hold harmless the RTA, their directors, officers, employees, agents, and assigns from and against all liability, including strict liability, claims, demands, and causes of action brought by others against RTA, and expenses, including but not limited to reasonable attorney's fees; and expense incurred in defense of RTA, arising out of, or in any way incidental to, or in connection with the work hereunder, and other activities by contractor; provided, however, that such indemnification shall apply only to the extent permitted by applicable law, and except and to the extent such liability, claim, demand or cause of action results from RTA's negligence. To the extent there is a conflict between RTA and Powell Electrical Systems, Inc., RTA's General Provisions, and Federal Requirements shall take precedence.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate originals in the presence of the undersigned competent witnesses.

ATTEST:	REGIONAL TRANSIT AUTHORITY
Jaroft By has	LONA HANKINS CHIEF EXECUTIVE OFFICER
ATTEST:	Da A
BY:	
	Shelby Santizo Project Manager POWELL ELECTRICAL SYSTEMS, INC.

Certification by Officer of

POWELL ELECTRICAL SYSTEMS, INC.

Approved as to legal form and adequacy and as to the authorization of the signatory hereto on behalf of POWELL ELECTRICAL SYSTEMS, INC. on the date herein above shown.

Dated this 8 day of January, 2024.

Signature

Division Controller

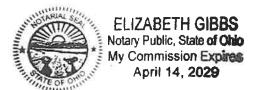
Title

ACKNOWLEDGMENT

STATE OF Oh()	
PARISH/COUNTY OF	Stark

ON THIS day of January, 2024 before me, Shelby Santizo appeared, to me personally known; who being by me duly sworn, did say that he is the National Service Sales Executive of POWELL ELECTRICAL SYSTEMS, INC. and that this Agreement was signed on behalf of said Corporation by authority of its Project Manager, Shelby Santizo by said appearer acknowledged said instrument to be the free act and deed of Shelby Santizo.

IN WITNESS WHEREOF I have hereunto set my official hand and seal on the date above written.



OTARY PUBLIC IN AND FOR

PARISH (COUNTY), STATE

<u>ACKNOWLEDGMENT</u>

STATE OF COULS FORM
PARISH/COUNTY OF County OF
ON THIS 15th day of day
Johnson-Banks, to me personally known, who being by me duly sworn, did say that she is
the Chief Financial Officer of Regional Transit Authority (RTA), a political subdivision of
the State of Louisiana, and attached Agreement was signed on behalf of the RTA by
authority of its Board of Commissioners, and said appeared acknowledged said instrument
to be the free act and deed of the RTA.
IN WITNESS WHEREOF I have hereunto set my official hand and seal on the date
above written.
1

Gizelle Johnson-Banks Chief Financial Officer

NOTARY PUBLIC IN AND FOR

PARISH (COUNTY), STATE

Commission Engine At Death
State of Louisiana

EXHIBIT A

Proposal from Contractor

HWD DC Breaker Retrofill

Powell Opportunity Number: 259159

Dear NORTA,

Date: September 11, 2024

Powell has a long history in providing custom electrical equipment and solutions and would like to continue the relationship/tradition. Enclosed you will find a proposal for HWD DC Breaker Retrofill. Please let us know if you have any questions. Proposal was based on bid documents listed under reference documents.

Please note that this retrofill has been completed successfully at another transit agency with the same issue of an obsolete and aging breaker install base. It's critical that Powell and NORTA collaborate when it comes to the field work of the retrofill which we can do during the manufacturing phase of the project to ensure success for the installation and operation phases.

Please note that Powell will need an acceptable purchase order by the start date indicated on our estimated schedule or an estimated 2-3% price increase will apply.

Thank you for the opportunity to earn your business.

Sincerely,



www.powellind.com



Cc: Matt Zeedyk

Powered by Safety® Tel: 330.966.1750 • Fax: 330.966.2225 www.powellind.com

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PROPOSAL REVISIONS

Date	Revision	Reason
May 15, 2024	00	Initial Proposal
May 21, 2024	01	Revised Base Bid
September 11, 2024	0	Revalidated Proposal.

Proposal Attachments

- A. Powell Clarification Log, SAE-FO-0037, Rev00
- Powell Services Proposal, 259180-R1-QOT
- Powell Services Clarification Log, 259180-R1-SAE-FO-0033
- D. HWD Breaker Obsolescence Letter

REFERENCE DOCUMENTS

For HWD DC Breaker Retrofill Powell utilized the following information to bid:

Drawings:

Powell Project Drawings: G6291 (Calliope, Dublin, Valance)

Specification Sections:

None

BILLS OF MATERIAL

HWD DC Breaker Retrofill

Equipment & Services Summary (More detail to follow):

ITEM	QTY	DESCRIPTION	
3.1.1	6	HWD DC Breaker Retrofill: 2-4000A Feeder Breakers at Calliope, Dublin, Valance	
3.1.2	1	stallation Drawing Package	
3.1.3	1	ield Technical Support	
3.1.4	1	O&M Manual Amendment	
3.1.5	1	Field Services: Site Walk, Demo, Installation, SAT (Phase 1 and Phase 2), Energization Assistance (Phase 3), Final Operation Checks (Phase 4)	
3.1.6	3	pare DC Feeder Breaker	
3.1.7	1	Training	

3.1.1 HWD DC Breaker Retrofill

	Retrofill Feeder Breaker BOM (Typical)		
Qty	Standard		
1	Cell		
1	Vent Chamber		
1	Vent Chamber Adapter		
2	Control/Aux Relay		
2	Control/Aux Relay Socket		
1	Misc Bus		
1	Miniature Circuit Breaker 1-Pole		
2	Miniature Circuit Breaker 2-Pole		
1	Miscellaneous (Hardware, General cell parts)		
53	Modular Terminal Blocks		
3	Modular Terminal Block End Plate		
3	Modular Terminal Block Marking Strip		
2	Strip Heaters (2 per cell std)		
4	1" Standoff Insulator (2 per Strip Heater)		
1	TOC 8 stage		
1	Umbilical Assembly SIS (STD)		
1	NDC BREAKER, 800V,4000A		

3.1.2 Installation Drawing Package

Set of drawings for each site that depict the changes needing to be made and the final configuration once changes have been implemented. These drawings will be used for the installation and represent the AsBuilt status.

3.1.3 Field Technical Support

Up to one week of remote technical support during field activities from the North Canton, OH office.

3.1.4 O&M Manual Amendment

Standard Instruction Manuals for the NDC DC Breaker to be incorporated into the existing O&M Manuals.

3.1.5 Installation and Commissioning

See Attachments B and C.

3.1.6 Spare DC Breaker

Three spare 4000A DC Feeder Breakers.

3.1.7 Training

See Attachments B and C.

Options

Equipment & Services Summary (More detail to follow):

ITEM	QTY	DESCRIPTION	
3.2.1	1	xtended Warranty, Six Months	
3.2.2	1	sight-FCA Factory (Prepay and Add, Cost Plus 20%)	
3.2.3	1	FAT, Demonstration	
3.2.4	0	pare DC Feeder Breaker	
3.2.5	1	pare CBCM	
3.2.6	0	Training	

3.2.1 Extended Warranty

Six months of extended warranty. This can be added at the time of purchase in increments required by the customer up to total (Standard and Extended) warranty duration of five years.

3.2.2 Freight-FCA

Freight costs are NOT included. Shipment preparation <u>only</u> is provided. A good faith estimate can be provided upon request. Where agreed to Powell will facilitate shipment to site (to gate) in a Prepay and Add arrangement, invoicing at Cost Plus 20%.

3.2.3 Factory Acceptance Testing (FAT), Demonstration

One (1) day at Powell North Canton Facility for up to five project representatives. Demonstration of NDC Breaker and inspection of Retrofill equipment.

3.2.4 Spare DC Breaker

3.2.5 Spare CBCM

One spare Circuit Breaker Control Module (CBCM).

3.2.6 Training

WARRANTY

Standard Warranty (No Additional Cost)

Powell's standard warranty is included in the lump sum bid for this proposal. Powell's standard warranty is 18 months from shipment or 12 months from energization (whichever comes first).

Note: Extended Warranty can be offered upon request.

PAYMENT TERMS

Milestone	Payment Due	
Order Acceptance	20%	
Approval Drawing Submittal	25%	
Release to Manufacture	35%	
Shipment	20%	

Payments are NET 30 from date of invoice. Invoices are subject to a charge of 1.5% per month until payment is received.

SCHEDULE

Estimated Schedule - NORTA HWD Retrofill (6VS)

Milestone	Weeks to Complete	Time Totaled	Date Complete	
Purchase Order Accepted	0	0 days	9/23/2024	
Technical Review	3	3 weeks	10/14/2024	
Drawings for Approval, Cycle 1	20	24 weeks and 3 days	3/13/2025	
Drawings out for Approval (Customer Review), Cycle 1	4	28 weeks and 3 days	4/10/2025	
Review and Incorporate Comments, Cycle 1	6	34 weeks and 3 days	5/22/2025	
Shop Drawings	6	41 weeks	7/7/2025	
Production Start/Receipt of Long Lead	9	50 weeks and 1 day	9/9/2025	
Production	12	62 weeks and 3 days	12/4/2025	
Internal Test	1	63 weeks and 3 days	12/11/2025	
Factory Acceptance Test (FAT)	1	64 weeks and 3 days	12/18/2025	
Shipment Preparation	1	66 weeks and 4 days	1/2/2026	
Warranty Trigger (Shipment)	TBD	TBD	1/2/2026	
Warranty Expiration (Standard Warranty)	TBD	TBD	6/26/2027	

The above schedule is based on an assumed Purchase Order acceptance date. In the event of a different date, the rest of the schedule will be affected accordingly.

Each working week is five working days long. Please note that Powell holidays do not count as working days. Working days are Monday through Friday 8:00AM to 5:00PM EST. Schedule and Pricing is based on quantity of review cycles within the number of weeks defined above. The above schedule includes time added for Powell holidays.

Please note that dependencies drive this schedule. Powell will not be held responsible for delays related to late return of Approval Drawings/Documents, failure to provide timely responses to RFIs, or schedule impacts related to customer requests for changes.

Schedule/s in this proposal are estimated based on the information provided and evaluated considering timing of project, backlog, and current lead times. Project schedule/s will be provided as tentative at time of receipt of customer order. Final Schedules to be confirmed after RTM documents have been approved and returned, any changes incorporated, and current factory loading has been evaluated. Project PM will contact customer to address any concerns over firm delivery dates and discuss any possible changes required.

Bus Duct: Where bus duct is included in the Powell scope the approval documents for bus duct will be provided only after the associated equipment designs have been approved. This is to avoid unnecessary revisions to the submittals due to incomplete information. Ratings information can be provided in advance of design drawings.

PRICING

Base Bid

Item/s	Description	Price Each	Quantity	Extended Price
3.1.1- 3.1.4	NDC Breaker Retrofill (HWD) Equpment	\$90,219	6	\$541,314
3.1.5	Field Service Scope See Attachment B.	\$366,007	1	\$366,007
3.1.6	Spare DC Feeder Breaker	\$35,168	3	\$105,505
3.1.7	Training	\$5,299	11	\$5,299
			Total	\$1,018,125

Options

Tr.						
Item	Description	Price Each	Quantity	Extended Price		
3.2.1	Extended Warranty (Six Months)	\$5,762	1	\$5,762		

3.2.2	Freight-FCA Factory (Prepay and Add, Cost Plus 20%) Estimate Only	\$17,365	1	\$17,365
3.2.3	FAT, Demonstration	\$4,078	1	\$4,078
3.2.4	Removed			
3.2.5	Spare CBCM	\$7,798	1	\$7,798

CLARIFICATIONS, DEVIATIONS, AND EXCEPTIONS

Clarifications, Deviations, and Exceptions: Commercial and technical clarifications, deviations, and exceptions will be detailed in either

- 1. Powell's standard Clarification Log (SAE-FO-0037) or
- 2. Customer supplied Clarification Log which was provided with the RFP/RFQ.
- 3. Note: The applicable Clarification Log will accompany this proposal as an attachment and shall be included as a part of any resulting contract or purchase order.

POWELL VALUE ADDED FEATURES

BriteSpot™ Thermal Monitoring

Ask Powell about this amazing thermal monitoring technology. No more IR cameras, real time temperature monitoring of cable connections and bus joints. Now you can monitor the main bus and other live parts without exposing personnel. The future of thermal monitoring is here.

Each year, thousands of dollars are spent for electrical equipment downtime and repair expenses are spent due to electrical hot spots. Because electrical currents generate heat, temperature monitoring has become an efficient way to predict potential equipment failure. The BriteSpot Thermal Monitoring Kit is a fiber-optic based temperature system, which is a most effective solution for accurate and consistent recording of electrical equipment temperatures. When mounted on bus bars, splices, circuit breaker disconnects or cable connections, you shall know immediately if thermal issues are rising. With this field proven fiberoptic technology, temperatures are logged 24 hours a day, 7 days a week. Please contact us for more information.

EcoVisor™ Environmental Monitor

Ask Powell about this technology that will keep a close eye on environmental conditions of your switchgear.

Ambient environmental conditions are major factors associated with the safe operation and long duration of your electrical assets.

In fact, non-optimal environmental conditions can often be the triggers for Partial Discharge issues and tracking failures.

Although often not monitored, these parameters are critical to ensuring your investment is protected.

To provide visibility on this, Powell has developed the EcoVisor™ system which provides continuous (24/7) real-time monitoring of temperature, relative humidity and settled dust contaminants. If any abnormality is detected, EcoVisor™ will alert you so that proactive remedial efforts can be taken to avoid problems in the long run.

STANDARD CONDITIONS OF SALE

Sale of any of the equipment or services described or referred to in any quotation at the quoted prices is expressly conditioned upon the terms and conditions set forth below. Any purchase order for or any statement of intent to purchase any such equipment or services, or any direction to proceed with engineering, procurement, manufacture or shipment, shall constitute assent to these terms and conditions and a representation that the Purchaser is solvent. Powell Electrical Systems, Inc. (the "Company") will accept orders submitted on the Purchaser's purchase order form or other communication containing terms or conditions in addition to, different from or inconsistent with the terms and conditions contained herein only upon the condition that together with the price and payment information, the identification of the equipment or services involved and any technical specifications for the equipment agreed upon by the Company, the terms and conditions contained herein shall nevertheless be the sole commercial terms and conditions of the agreement between the parties. The Company objects to and rejects any inconsistent, additional or different terms or conditions set forth in any purchase order or other communication from the Purchaser and those additional, different and inconsistent terms shall not be included in any agreement between the parties or binding on Company unless expressly and specifically agreed to in writing by a duly authorized representative of the Company.

WARRANTY

The Company warrants to the Purchaser that Purchaser will have good title to the equipment delivered hereunder, that the equipment to be delivered hereunder is new, unless otherwise stated, and that subject to the conditions below, the equipment will be free from defects in material or workmanship and will conform to specifications as separately approved in writing by Company. The Company warrants to the Purchaser that services, if any, will be performed in a good and workmanlike manner.

The warranty of performance, if any, and against defects in equipment and/or for services shall apply only to issues for which the Company receives written notice of during the applicable warranty period that appear during proper operation in normal use and service and which are due to causes other than those excluded below. For equipment that is not installed by the Company, this warranty period is eighteen (18) months from the date of shipment by the Company or twelve (12) months from first energization, whichever comes first. For equipment installed by the Company and/or service work, if any, this warranty period is twelve (12) months from the completion of installation or the services, as applicable, provided same is not unreasonably delayed by the Purchaser. The date and conditions of any tests shall be mutually agreed upon by Company and Purchaser.

Provided that the Company has timely received written notice of a valid warranty claim, the Company shall thereupon correct any defect or remedy any performance failure, either (at its option) by repairing any defective or damaged parts of the equipment at the Company plant or at the location of the equipment, or by making available at the Company's plant necessary repaired or replacement parts. The Purchaser shall be responsible for providing "free and clear" access to the affected portion of the equipment and any required costs for shipping the equipment or the parts to the Company plant for all Company corrective work. The liability of the Company under this warranty (except as to title), or for any loss or damage to the equipment whether the claim is based on contract or tort (including negligence), shall not in any case exceed the cost of correcting defects in the equipment and for services the Company's cost of reperforming the services, as herein provided and upon the expiration of the warranty period all such liability shall terminate.

These warranties and remedies are applicable only to the extent Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the equipment are in accordance with the recommendations of the Company; and, such equipment shall not have been operated in excess of limitations specified by Company and not have been subjected to accident, alteration, abuse or misuse. Company expressly excludes any warranty for defect or failure of performance caused by erosion, corrosion or normal wear and tear. With respect to equipment or parts delivered under the agreement, Purchaser agrees to accept responsibility for (i) their use of the item and their non-use of any feature thereof, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs or services not provided by Company and used in connection with items delivered hereunder.

THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY (EXCEPT AS TO TITLE). THE COMPANY DISCLAIMS AND MAKES NO OTHER WARRANTIES TO PURCHASER, PURCHASER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY REGARDING THE EQUIPMENT, WORK, GOODS, ENGINEERING AND DESIGN SERVICES, FIELD INSTALLATION SERVICES OR ANY OTHER GOODS OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS AND EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION: (1) THE IMPLIED WARRANTIES OF FITNESS FOR APARTICULAR PURPOSE, MERCHANTABILITY, PERFORMANCE, SUITABILITY AND THE ABSENCE OF REDHIBITORY DEFECTS; (2) ANY WARRANTIES RELATING TO PURCHASER-SPECIFIED THIRD-PARTY

PARTS,

COMPONENTS, PRODUCTS, SOFTWARE OR SERVICES; (3) ANY WARRANTIES RELATING TO LATENT DEFECT(S) AND/OR (4) ANY WARRANTIES THAT THE SERVICES, FIRMWARE OR SOFTWARE, IF ANY, WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.

INTELLECTUAL PROPERTY

Except as set forth below, the Company shall defend any suit or proceeding brought against the Purchaser to the extent based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and costs awarded therein against the Purchaser. In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or parts is enjoined, the Company shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or part; or replace same with non-infringing equipment; or modify it so it

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Tel: 330.966.1750 • Fax: 330.966.2225 www.powellind.com becomes non-infringing; or remove said equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Company for patent infringement by said equipment or any part thereof.

The preceding paragraph shall not apply to any equipment or part thereof provided by the Purchaser or manufactured according to the Purchaser furnished or specified design and/or third party parts or goods to be incorporated into the Equipment by Company. As to any such design, product, part, or use in such combination, the Company assumes no liability whatsoever for patent infringement and the Purchaser shall indemnify, defend, and hold Company harmless against any damages, expenses, costs, reasonable attorney's fees, or losses resulting from any legal action or claim made against Company, either severally or jointly with Purchaser, or any suit or proceeding based thereon, for infringement (either direct or contributory) of patents, trademarks, or for unfair competition or misappropriation of trade secrets based upon or arising from (1) compliance with Purchaser 's designs, specifications, or instructions; (2) the use of any item furnished hereunder, in combination with goods not supplied by Company, or (3) in connection with a manufacturing or other process utilizing any item, or part thereof.

Equipment or any parts thereof sold hereunder may be protected by intellectual property rights of the Company, including but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of items or any parts thereof hereunder nor the provision by Company of any supporting or related documentation, technical information or advice shall confer on Purchaser any license, express or implied, under any intellectual property rights of Company covering or relating to (1) apparatus or circuits in which the items or parts thereof may be used; (2) a process, machine, use or application in connection with which the items or parts thereof may be used; (3) the process of their manufacture; or (4) a combination in which the items or parts hereof may be used. COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE USE OF ITS EQUIPMENT OR PRODUCTS WILL NOT INFRINGE ITS INTELLECTUAL PROPERTY RIGHTS OR THE RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY PARTICULAR USE OR APPLICATION AND SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF ANY SUCH USE OR APPLICATION, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

DELIVERY

Shipping dates are approximate and are based upon prompt receipt of all payments due and necessary information from the Purchaser. Unless otherwise specified by the Company and at additional cost to the Purchaser, delivery will be made in accordance with Incoterms 2010 FCA Company's facility. Risks of loss or damage and title shall pass to the Purchaser upon delivery.

The Company shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, or (2) acts of God, acts or inactions of the Purchaser, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, storms, severe weather events, epidemics, war, riot, delays in transportation, or railcar or vessel shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components, or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay plus a reasonable number of days to remobilize.

PAYMENTS

Pro rata payments shall become due as shipments are made and/or agreed milestones are reached. If shipments are delayed by the Purchaser, payments based on shipments shall become due on the date when the Company is prepared to make shipment. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser

If the financial condition of the Purchaser at any time does not, in the judgment of the Company, justify continuance of the work to be performed by the Company hereunder on the terms of payment agreed upon, the Company may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. In the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the Company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. The rights of the Company under this paragraph are cumulative and in addition to all rights available to the Company at law or in equity.

SALES AND SIMILAR TAXES

The Company's prices do not include sales, use, excise or similar taxes. Purchaser shall be responsible for all sales, use, excise and similar taxes and shall promptly reimburse Company for any such taxes it is required to pay or advance; provided, however, Company's invoices shall separately itemize all sales and use taxes included in any amounts due from Purchaser, and Company will not collect or remit such taxes (to the extent Company is legally able to do) if Purchaser presents Company with valid exemption or direct payment certificates or other appropriate documentation evidencing that Purchaser will itself pay taxes directly to the appropriate authority(ies) or its exempt from payment of taxes.

DISCLOSURE OF INFORMATION

Any information, suggestions or ideas transmitted by Purchaser to the Company in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of the Company.

Purchaser agrees not to use or disclose drawings, specifications, technical information or other data furnished by Company and identified by Company as confidential or proprietary data without the prior written consent of Company. Purchaser agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of Company, regardless of whether any such improvement or modification was the creation of Purchaser. Purchaser further

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agrees to use all appropriate copyright and proprietary notices on all items delivered hereunder regardless of their intended use. Purchaser recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of these provisions. Nothing in this clause, however, shall restrict

Purchaser's right to use or disclose drawings, specifications, technical information or other data which are to become generally known to the public without the breach of this clause by Purchaser, or are rightfully obtained from other sources.

CANCELLATION

The Purchaser may only cancel this order for convenience upon ten (10) days written notice, and upon payment by Purchaser to Company of the cancellation charges specified in the Company's quotation or proposal. If no cancellation charges are specified in the Company's quotation or proposal, then the Purchaser shall pay reasonable and proper cancellation charges, which shall include, without limitation, cancellation charges the Company incurs to its suppliers and subcontractors, costs of materials incurred through to the date of cancellation, charges for labor for work done through the date of cancellation (both of which shall include work in progress), and reasonable absorbed overhead and profit on all such materials and labor.

INDEMNITY

COMPANY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND PURCHASER, AT ITS OWN EXPENSE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND COMPANY FROM AND AGAINST, ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY (I) THE FAILURE OR DEFECTIVENESS OF ANY ITEM FURNISHED BY COMPANY HEREUNDER, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF COMPANY, OR (II) THE USE OR MISUSE OR NONUSE BY PURCHASER, PURCHASER'S EMPLOYEES, PURCHASER'S CUSTOMERS OR OTHERS OF ANY ITEM OR ANY FEATURE THEREOF FURNISHED BY COMPANY HEREUNDER. THESE PROVISIONS ARE INTENDED TO INDEMNIFY THE COMPANY AGAINST THE RESULTS OF ITS OWN NEGLIGENCE.

LIMITATION OF LIABILITY

Unless otherwise agreed in writing by a duly authorized representative of the Company, products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used, the Company disclaims any liability for any nuclear damage, injury or contamination, and Purchaser shall indemnify the Company against any such liability, whether as a result of breach of the contract, warranty, tort (including negligence) or otherwise.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL THE COMPANY OR ITS SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED FACILITIES, DAMAGE TO ANY FACILITIES, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN-TIME COSTS, OR CLAIMS OF PURCHASER'S CUSTOMERS FOR SUCH DAMAGES. Any additional or different terms specifically relating to or addressing the subject matter of this paragraph shall be deemed material alterations within the meaning of Section 2.207(b)(2) of the Texas Business and Commerce Code.

EXCEPT FOR COMPANY'S OBLIGATION TO DELIVER TO PURCHASER FULL LEGAL TITLE TO AND OWNERSHIP OF ALL OR ANY PORTION OF THE EQUIPMENT AND SERVICES, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL CONDUCT OR STRICT

LIABILITY) OR OTHERWISE, SHALL THE COMPANY'S TOTAL AGGREGATE LIABILITY TO PURCHASER FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM, THIS CONTRACT, OR FROM THE COMPANY'S PERFORMANCE OR BREACH, OR FROM THE EQUIPMENT OR SERVICES FURNISHED HEREUNDER, EXCEED THE PRICE OF THE SPECIFIC EQUIPMENT OR SERVICE WHICH GIVES RISE TO THE CLAIM.

If the Company furnishes Purchaser with advice or other assistance which concerns any products supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject the Company to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

ANTI-CORRUPTION

Purchaser acknowledges that the Foreign Corrupt Practices Act of the United States ("FCPA""), the Corruption of Foreign Public Officials Act ("CFPOA") of Canada, and the Bribery Act ("BA") of the United Kingdom will or may) apply to transactions conducted under this agreement and agrees to comply with the FCPA, CFPOA and BA and any other applicable anti-bribery and/or anti-corruption rules as required. Purchaser agrees that it will not engage in any of the following activities in connection with this agreement: (A) offer, promise, or give any financial or other advantage to any persons (public or private); (i) in order to induce a person to improperly perform a relevant function or duty, or (ii) to reward a person for such improper activity, or (iii) where the person knows or believes that the acceptance of the advantage is itself an improper performance of a function or duty; or (B) offer, promise, or give any financial or other advantage to a public official, either directly or through a third party intermediary, with the intent to obtain or retain business or an advantage in the conduct of business by either; (i) influencing the official in his/her official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of his/her lawful duties, (iii) securing any improper advantage, or (iv) inducing the official to use his/her influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

Purchaser shall (a) maintain, throughout the duration of dealings between the parties, its own anti-corruption policies and procedures, including without limitation, adequate procedures designed to ensure that the party complies with the FCPA, CFPOA and BA, (b) provide a copy of such policies and procedures to the other party on request, and (c) monitor and enforce such policies and procedures as appropriate.

Purchaser shall maintain true, accurate, and complete accounting books and records relating to all of its activities under this agreement. Purchaser shall provide information, documentation and reasonable assistance to Company to support an inquiry or investigation of a suspected violation of the FCPA, CFPOA and/or BA.

Company may immediately terminate this contract or suspend its performance under this contract if it has reasonable belief that the other party has breached its compliance with these anti-corruption policies.

GENERAL

The Company represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. The Company represents that it will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.

Any assignment of this agreement or any rights hereunder, by the Purchaser (other than to its customer) without written consent of the Company shall be void.

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Purchaser agrees that, with respect to the resale or any other disposition of items sold hereunder, Purchaser shall comply fully with the export control laws and regulations of the United States Government and any applicable laws and regulations of any other country including, but not limited to, the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("TTAR").

The provisions of this agreement are for the benefit of the parties hereto and not for any other person. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon the Company unless agreed to in writing by an authorized representative of the Company. The invalidity, in whole or part, of any of the provisions in these terms and conditions will not affect the remainder of such paragraph or any other paragraph contained herein

The purchase order price is based on steel, aluminum, copper and third party material buyout prices in effect on the date of Company's quotation. In the event the prices for any of these materials increases in excess of five percent (5%) from the price for them in effect on the date of quotation, then Company shall be entitled to increase the purchase order price to cover same.

GOVERNING LAW

The agreement, including any Purchase Order, sales confirmation, Company quotation, all aspects of the transactions referenced in the Company's invoice to Purchaser, and any dispute related to any the foregoing, shall be governed by, and interpreted in accordance with the laws of the state of Texas (USA) which shall be the applicable law, without regard to its principles of conflict of laws. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

DISPUTE RESOLUTION

Any dispute arising out of or related to the agreement shall be brought exclusively in federal or state court within Houston, Harris County, Texas. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE LAWS OF THE STATE OF TEXAS, ANY CLAIM OR OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE, THAT VENUE OR PERSONAL JURISDICTION IS NOT PROPER WITH RESPECT TO ANY SUCH DISPUTE. THIS WAIVER SHALL INCLUDE, BUT IS NOT LIMITED TO, ANY CLAIM THAT SUCH DISPUTE BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Purchaser agrees that valid service of process of any legal action against it shall be considered in all respects and for all purposes complete and binding on it if copies of all such process are mailed to it at the address appearing on Company's invoice, quotation or sales confirmation by registered mail, return receipt requested.

WAIVER OF JURY TRIAL

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE ARISING UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND TECHNICAL ISSUES AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.



Engineering Technical Bulletin: 0015 (Notice of Obsolescence)

Product Line: DC Breaker

Models: NC-4 and NC-6 (HWD Style)

Date: June 22, 2018

Since 2007 Powell has not manufactured the HWD Style DC Circuit Breakers as an active product line but has continued support of the product line with new breakers and spare parts. Due to the low demand for the HWD Style breakers over the last ten years, the difficulty and expense of obtaining parts, and the availability of the more modern Model NDC breakers the HWD Style breakers manufactured by Powell have been declared obsolete. Powell understands that establishing a framework for obsolescence management and planning a cost effective obsolescence management process through all phases of the product lifecycle is a critical activity of our customers. For this reason Powell has generated this notice of product obsolescence to clearly communicate to our customers what they can expect from Powell for the HWD Style DC Breakers which will allow them to properly plan for managing their obsolete equipment. Powell remains committed to supporting our customers and maintaining our relationships while remaining transparent with our plans for product obsolescence.

Effective immediately Powell has implemented an obsolescence schedule for the DC Breaker Models NCD4 (4000A) and NCD6 (6000A). The schedule is as follows:

Effective Date: June 22, 2018

New NCD4 and NCD6 complete breakers are no longer available for purchase.

Effective Date: December 22, 2018

Low criticality spare parts no longer available. Recommended spare parts still available for purchase (See Table 1) as after-market purchase. Breaker inspections available via Powell Service.

Effective Date: June 22, 2019

Recommended spare parts no longer available. Product and Models completely obsolete and no new or spare parts are supported by Powell. Breaker inspections available via Powell Service.

All new DC Breaker requests will be provided with the Model NDC breaker. In an effort to support the transition of Powell customers to the Model NDC breaker Powell has included information on this breaker in this notice. Model NDC Breakers are available as completely new breakers and switchgear. Please contact Powell for additional information on the readily available Model NDC Breaker and Switchgear which has an expected manufacturing life of over 25 years.

Powell is available to assist the customer in developing their own replacement program for the HWD Style breakers with the Model NDC Breakers. Powell's service group is also available to inspect any existing HWD Style breakers, which will include a report recommending repair or replacement, prior to the end of the final obsolescence date.

Table 1: Recommended Spare Parts (Excerpt from IB-25000)

Part Name	Old Part Number	New Part Number	Rating/Comment
Closing Contactor	A1321-4-2-48	A1321-4-2-48	All Ratings
Control Relays	KRPA-11DG-125	KRPA-11DG-125	125VDC
Stationary Main Contacts	8206C62G04	22208H00003001	4000A Breaker
Stationary Main Contacts	8206C68G04	22208H00003002	6000A Breaker
Stationary Arcing Contact	1804926	22208H00002001	4000A/6000A Breaker
Hold/Trip Coil	300P885G01	22203P00000004	All Voltages
Main Closing Coil	300P849G02	22203P00000002	48VDC
Main Closing Coil	300P849G01	22203P00000001	125VDC
Main Closing Coil	300P849G03	22203P00000003	220VDC
Contact Arm Assembly	6386C50G03	22209G00000001	4000A Breaker
Contact Arm Assembly	6386C50G04	22209G00000002	6000A Breaker
Arc Chute Assembly	3D51073G01	22202G00000001	Up to 1200V
Rocking Beam Relay	684C069G01-A	22307P00000001	4000A Breaker (100400%)
Rocking Beam Relay	684C069G01-B	22307P00000002	6000A Breaker (100400%)
Rocking Beam Relay	684C069G01-C	22307P00000003	2000A Breaker (100400%)
Rocking Beam Relay	684C069G01-D	22307P00000004	2500A Breaker (100400%)
Rocking Beam Relay	684C069G01-E	22307P00000005	1600A Breaker (100400%)
Primary Finger Clusters	679C711G08	22212G00000001	All Ratings
Lubrication Kit	POWLUBE-102	POWLUBE-104	All Ratings

Please contact Powell for any questions you have about this product obsolescence and to plan any spare parts orders while they are still available.

Regards,

Mut Zerolgh Matt Zeedyk Technical Manager

Electrical Division - North Canton

Powell Electrical Systems, Inc.

Email: matt.zeedyk@powellind.com Phone: 330.572.2543 Cell: 330.340.2778

Attachments: Powell NDC Breaker/Switchgear Brochure



Engineering Technical Bulletin: 0015 (Notice of Obsolescence)

Product Line: DC Breaker

Models: NC-4 and NC-6 (HWD Style)

Form 01: Users List

This Users List summarizes the customers effected by ETB-0015, Notice of Obsolescence for HWD Style DC Breakers.

Table 1: Users List

User	Project or Substation
DFW Airport	Dallas/Ft. Worth APM
Shanghai Metro	GongHe and XinMin Line Extension
Chicago Transit Authority (CTA)	Grace and Clark Substations
Bombardier	Neihu Test Track
Metro (Minneapolis)	Hiawatha Line
Bay Area Rapid Transit (BART)	Extension, TPSS and Gap Stations, WSS
Baltimore MTA	Monument Substation
Miami Airport	APM
Dallas Area Rapid Transit (DART)	Contract C-98000041, Light Rail Extension
Denver RTD	Substation Upgrades
MARTA	Yard and Shop Replacement
Dulles Airport	APM
Coast Mountain Bus Company	Vancouver Transit Centre, Project 0204-14
Metra (Chicago)	Brookdale Substation
LA Metro	Goldline Extension
New Orleans Regional Transit Authority (NORTA)	St. Charles Avenue Streetcar Line
Translink	Canada Line Extension
Atlanta Airport	APM (PDS-1, PDS-2, PDS-3)

Regards,

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Matt Zeedyk Technical Manager

Electrical Division - North Canton

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ETB-0015 Rev00 June 22, 2018 Powell Electrical Systems, Inc. • 8967 Pleasantwood Avenue NW, North Canton, Ohio 44720 • Tel: 330.966.1750 • www.powellind.com













Powell Type NDC-DC Switchgear

DC switChgear inCorporating the hawker siDDeley nDC high speeD CirCuit breaker



INTroDuCTIoN

Powell DC Switchgear incorporating the Hawker Siddeley NDC High Speed DC Circuit breaker provides a reliable product with proven technology for application in your transit project. Building on the 80 year track record of DC design this switchgear solution offers optimal safety and the high speed performance you require.

Key FeaTureS

- Proven technology and minimal maintenance
- A long service life designed to exceed 30 years
- Superior compact design concept
- High speed operation
- Unidirectional direct acting overload
- Bi-directional direct acting overload
- Simple and reliable mechanism no mechanical
- Ergonomic, intuitive truck isolation and interlocking
- Enhanced electrical and mechanical endurance
- Patented arc transfer coil
- Fully bi-directional current interruption

- Silver tungsten carbide main contacts
- Hard-wearing and long-life main contacts
- Selectable UV trip for control power
- Integral racking handle on breaker
- Common spare parts for 4kA, 6kA and 8kA

raTINGS			
rated Voltage (VDC)	800VDC	1200VDC	1600VDC
rated Service Current (a)	4000/6000/8000	4000/6000/8000a	4000/6000
Nominal Voltage (VDC)	750	1200	1500
Power Frequency Withstand Level (kV)	3.7kVac or 5.2kVdc	4.5kVac or 6.8kVdc	5.4kVac or 7.6kVdc
rated Short Circuit Current(ka,/ka)	200/120	132/180	100/60
Mechanical endurance	20,000 operations	20,000 operations	20,000 operations
Breaking Characteristic	High Speed	High Speed	High Speed
auxilliary operating Supply (VDC)	1251	1251	125¹

1-other voltages available











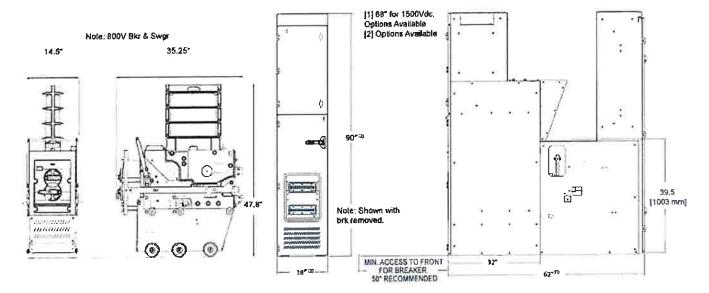
STaNDarDS/TeSTING

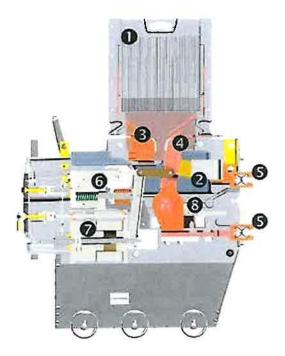
The equipment has been designed and tested to IEEE C37.14:2002, IEEE C37.16:2009, IEE C37.20.1:2002, and IEE 693:2005.

DIMeNSIONS aND FeaTureS

Typical Weights Including Circuit Breaker (lbs)

	800Vdc Breaker and Cell	800Vdc Breaker and Cell	1600Vdc Breaker and Cell	1600 Vdc Breaker and Cell
4000A	1460	585	1530	655
6000A	1560	610	1625	675
8000A	1600	630	N/A	N/A





- The arc transfer system prevents internal contamination of the circuit breaker compartment and cubicle. The Cold Cathode Arc Chute Assembly (1) dissipates all arc while the transfer coil (2) provides additional magnetic flux across the contact gap, assisting with the interruption of low currents that would lead to long arcing times.
- 3 Fixed Contacts
- Moving Contact Assembly
- 5 Primary Disconnects
- 6 The patented Magnetic Latch mechanism provides the primary means of "high speed" tripping of the circuit breaker. Working in conjunction with the Magnetic Actuator, the latch directly holds the circuit breaker contacts closed.
- 7 The Magnetic Actuator is based on a solenoid plunger, and provides the motion required to close the main contacts and to reset the latch device on tripping.
- 8 The uni-directional Direct Acting Release trips the circuit breaker when the current in the main circuit exceeds the overload setting.

POWELL

Standard Conditions of Sale

Sale of any of the equipment or services described or referred to in any quotation at the quoted prices is expressly conditioned upon the terms and conditions set forth below. Any purchase order for or any statement of intent to purchase any such equipment or services, or any direction to proceed with engineering, procurement, manufacture or shipment, shall constitute assent to these terms and conditions and a representation that the Purchaser is solvent. Powell Electrical Systems, Inc. (the "Company") will accept orders submitted on the Purchaser's purchase order form or other communication containing terms or conditions in addition to, different from or inconsistent with the terms and conditions contained herein only upon the condition that together with the price and payment information, the identification of the equipment or services involved and any technical specifications for the equipment agreed upon by the Company, the terms and conditions contained herein shall nevertheless be the sole commercial terms and conditions of the agreement between the parties. The Company objects to and rejects any inconsistent, additional or different terms or conditions set forth in any purchase order or other communication from the Purchaser and those additional, different and inconsistent terms shall not be included in any agreement between the parties or binding on Company unless expressly and specifically agreed to in writing by a duly authorized representative of the Company.

WARRANTY

The Company warrants to the Purchaser that Purchaser will have good title to the equipment delivered hereunder, that the equipment to be delivered hereunder is new, unless otherwise stated, and that subject to the conditions below, the equipment will be free from defects in material or workmanship and will conform to specifications as separately approved in writing by Company. The Company warrants to the Purchaser that services, if any, will he performed in a good and workmanlike manner.

The warranty of performance, if any, and against defects in equipment and/or for services shall apply only to issues for which the Company receives written notice of during the applicable warranty period that appear during proper operation in normal use and service and which are due to causes other than those excluded below. For equipment that is not installed by the Company, this warranty period is eighteen (18) months from the date of shipment by the Company or twelve (12) months from first energization, whichever comes first. For equipment installed by the Company and/or service work, if any, this warranty period is twelve (12) months from the completion of installation or the services, as applicable, provided same is not unreasonably delayed by the Purchaser. The date and conditions of any tests shall be mutually agreed upon by Company and Purchaser.

Provided that the Company has timely received written notice of a valid warranty claim, the Company shall thereupon correct any defect or remedy any performance failure, either (at its option) by repairing any defective or damaged parts of the equipment at the Company plant or at the location of the equipment, or by making available at the Company's plant necessary repaired or replacement parts. The Purchaser shall be responsible for providing "free and clear" access to the affected portion of the equipment and any required costs for shipping the equipment or the parts to the Company plant for all Company corrective work. The liability of the Company under this warranty (except as to title), or for any loss or damage to the equipment whether the claim is based on contract or tort (including negligence), shall not in any case exceed the cost of correcting defects in the equipment and for services the Company's cost of reperforming the services, as herein provided and upon the expiration of the warranty period all such liability shall terminate.

These warranties and remedies are applicable only to the extent Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the equipment are in accordance with the recommendations of the Company, and, such equipment shall not have been operated in excess of limitations specified by Company and not have been subjected to accident, alteration, abuse or misuse, Company expressly excludes any warranty for defect or failure of performance caused by erosion, corrosion or normal wear and tear. With respect to equipment or parts delivered under the agreement, Purchaser agrees to accept responsibility for (i) their selection to achieve Purchaser's intended results, (ii) their use of the item and their non-use of any feature thereof, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs of services not provided by Company and used in connection with items delivered hereunder.

THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY (EXCEPT AS TO TITLE). THE COMPANY DISCLAIMS AND MAKES NO OTHER WARRANTIES TO PURCHASER, PURCHASER'S CUSTOMERS OR ANY OTHER PERSON OR ENTITY REGARDING THE EQUIPMENT, WORK, GOODS, ENGINEERING AND DESIGN SERVICES, FIELD INSTALLATION SERVICES OR ANY OTHER GOODS OR SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS AND EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION: (1) THE IMPLIED WARRANTIES OF FITNESS FOR A

PARTICULAR PURPOSE, MERCHANTABILITY, PERFORMANCE, SUITABILITY AND THE ABSENCE OF REDHIBITORY DEFECTS; (2) ANY WARRANTIES RELATING TO PURCHASER-SPECIFIED THIRD-PARTY PARTS, COMPONENTS, PRODUCTS, SOFTWARE OR SERVICES; (3) ANY WARRANTIES RELATING TO LATENT DEFECT(S) AND/OR (4) ANY WARRANTIES THAT THE SERVICES, FIRMWARE OR SOFTWARE, IF ANY, WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR

INTELLECTUAL PROPERTY

Except as set forth below, the Company shall defend any suit or proceeding brought against the Purchaser to the extent based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Company's expense) for the defense of same, and the Company shall pay all damages and costs awarded therein against the Purchaser. In case said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or parts is enjoined, the Company shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or part; or replace same with non-infringing equipment; or modify it so it becomes non-infringing; or remove said equipment and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability of the Company for patent infringement by said equipment or any part thereof.

The preceding paragraph shall not apply to any equipment or part thereof provided by the Purchaser or manufactured according to the Purchaser furnished or specified design and/or third party parts or goods to be incorporated into the Equipment by Company. As to any such design, product, part, or use in such combination, the Company assumes no liability whatsoever for patent infringement and the Purchaser shall indemnify, defend, and hold Company harmless against any damages, expenses, costs, reasonable attorney's fees, or losses resulting from any legal action or claim made against Company, either severally or jointly with Purchaser, or any suit or proceeding based thereon, for infringement (either direct or contributory) of patents, trademarks, or for unfair competition or misappropriation of trade secrets based upon or arising from (1) compliance with Purchaser's designs, specifications, or instructions; (2) the use of any item furnished hereunder, in combination with goods not supplied by Company, or (3) in connection with a manufacturing or other process utilizing any item, or part thereof.

Equipment or any parts thereof sold hereunder may be protected by intellectual property rights of the Company, including but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of items or any parts thereof hereunder nor the provision by Company of any supporting or related documentation, technical information or advice shall confer on Purchaser any beense, express or implied, under any intellectual property rights of Company covering or relating to (1) apparatus or circuits in which the items or parts thereof may be used; (2) a process, machine, use or application in connection with which the items or parts thereof may be used; (3) the process of their manufacture; or (4) a combination in which the items or parts hereof may be COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT THE USE OF ITS EQUIPMENT OR PRODUCTS WILL NOT INFRINGE ITS INTELLECTUAL PROPERTY RIGHTS OR THE RIGHTS OF THIRD PARTIES WITH RESPECT TO ANY PARTICULAR USE OR APPLICATION AND SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF ANY SUCH USE OR APPLICATION, INCLUDING BUT NOT LIMITED TO, CONSEQUENTIAL OR INCIDENTAL DAMAGES.

DELIVERY

Shipping dates are approximate and are based upon prompt receipt of all payments due and necessary information from the Purchaser. Unless otherwise specified by the Company and at additional cost to the Purchaser, delivery will be made in accordance with Incoterms 2010 FCA Company's facility. Risks of loss or damage and title shall pass to the Purchaser upon delivery.

The Company shall not be liable for delays in delivery or in performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, or (2) acts of God, acts or inactions of the Purchaser, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, storms, severe weather events, epidemics, war, riot, delays in transportation, or railcar or vessel shortages, or (3) inability on account of causes beyond its reasonable control to obtain necessary labor, materials, components, or manufacturing facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay plus a reasonable number of days to remobilize.

PAYMENTS

Pro rata payments shall become due as shipments are made and/or agreed milestones are reached. If shipments are delayed by the Purchaser, payments based on shipments shall become due on the date when the Company is prepared to make shipment. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser.

If the financial condition of the Purchaser at any time does not, in the judgment of the Company, justify continuance of the work to be performed by the Company hereunder on the terms of payment agreed upon, the Company may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. In the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, the Company shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges as set forth below. The rights of the Company under this paragraph are cumulative and in addition to all rights available to the Company at law or in equity.

SALES AND SIMILAR TAXES

The Company's prices do not include sales, use, excise or similar taxes. Purchaser shall be responsible for all sales, use, excise and similar taxes and shall promptly reimburse Company for any such taxes it is required to pay or advance; provided, however, Company's invoices shall separately itemize all sales and use taxes included in any amounts due from Purchaser, and Company will not collect or remit such taxes (to the extent Company is legally able to do) if Purchaser presents Company with valid exemption or direct payment certificates or other appropriate documentation evidencing that Purchaser will itself pay taxes directly to the appropriate authority(ies) or its exempt from payment of taxes.

DISCLOSURE OF INFORMATION

Any information, suggestions or ideas transmitted by Purchaser to the Company in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of the Company.

Purchaser agrees not to use or disclose drawings, specifications, technical information or other data furnished by Company and identified by Company as confidential or proprietary data without the prior written consent of Company. Purchaser agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of Company, regardless of whether any such improvement or modification was the creation of Purchaser. Purchaser further agrees to use all appropriate copyright and proprietary notices on all items delivered hereunder regardless of their intended use. Purchaser recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of these provisions. Nothing in this clause, however, shall restrict

Purchaser's right to use or disclose drawings, specifications, technical information or other data which are to become generally known to the public without the breach of this clause by Purchaser, or are rightfully obtained from other sources.

CANCELLATION

The Purchaser may only cancel this order for convenience upon ten (10) days written notice, and upon payment by Purchaser to Company of the cancellation charges specified in the Company's quotation or proposal. If no cancellation charges are specified in the Company's quotation or proposal, then the Purchaser shall pay reasonable and proper cancellation charges, which shall include, without limitation, cancellation charges the Company incurs to its suppliers and subcontractors, costs of materials incurred through to the date of cancellation, charges for labor for work done through the date of cancellation (both of which shall include work in progress), and reasonable absorbed overhead and profit on all such materials and labor.

INDEMNITY

COMPANY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND PURCHASER, AT ITS OWN EXPENSE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND COMPANY FROM AND AGAINST, ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS' FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY (I) THE FAILURE OR DEFECTIVENESS OF ANY ITEM FURNISHED BY COMPANY HEREUNDER, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF COMPANY, OR (II) THE USE OR MISUSE OR NONUSE BY PURCHASER, PURCHASER'S EMPLOYEES, PURCHASER'S CUSTOMERS OR OTHERS OF ANY ITEM OR ANY FEATURE THEREOF FURNISHED BY COMPANY HEREUNDER. THESE PROVISIONS ARE INTENDED TO INDEMNIFY THE COMPANY AGAINST THE RESULTS OF ITS OWN NEGLIGENCE.

LIMITATION OF LIABILITY

Unless otherwise agreed in writing by a duly authorized representative of the Company, products sold hereunder are not intended for use in connection with any nuclear facility or activity. If so used, the Company disclaims any liability for any nuclear damage, injury or contamination, and Purchaser shall indemnify the Company against any such liability, whether as a result of breach of the contract, warranty, tort (including negligence) or otherwise.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL THE COMPANY OR SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED FACILITIES, DAMAGE TO ANY FACILITIES, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWN-TIME COSTS, OR CLAIMS OF PURCHASER'S CUSTOMERS FOR SUCII DAMAGES. Any additional or different terms specifically relating to or addressing the subject matter of this paragraph shall be deemed material alterations within the meaning of Section 2.207(b)(2) of the Texas Business and Commerce Code,

EXCEPT FOR COMPANY'S OBLIGATION TO DELIVER TO PURCHASER FULL LEGAL TITLE TO AND OWNERSHIP OF ALL OR ANY PORTION OF THE EQUIPMENT AND SERVICES, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL CONDUCT OR STRICT

LIABILITY) OR OTHERWISE, SHALL THE COMPANY'S TOTAL AGGREGATE LIABILITY TO PURCHASER FOR ANY LOSS OR DAMAGE ARISING OUT OF, OR RESULTING FROM, THIS CONTRACT, OR FROM THE COMPANY'S PERFORMANCE OR BREACH, OR FROM THE EQUIPMENT OR SERVICES FURNISHED HEREUNDER, EXCEED THE PRICE OF THE SPECIFIC EQUIPMENT OR SERVICE WHICH GIVES RISE TO THE CLAIM.

If the Company furnishes Purchaser with advice or other assistance which concerns any products supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject the Company to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

ANTI-CORRUPTION

Purchaser acknowledges that the Foreign Corrupt Practices Act of the United States ("FCPA" "), the Corruption of Foreign Public Officials Act ("CFPOA") of Canada, and the Bribery Act ("BA") of the United Kingdom will or may) apply to transactions conducted under this agreement and agrees to comply with the FCPA, CFPOA and BA and any other applicable antibribery and/or anti-corruption rules as required. Purchaser agrees that it will not engage in any of the following activities in connection with this agreement: (A) offer, promise, or give any financial or other advantage to any persons (public or private); (i) in order to induce a person to improperly perform a relevant function or duty, or (ii) to reward a person for such improper activity, or (iii) where the person knows or believes that the acceptance of the advantage is itself an improper performance of a function or duty; or (B) offer, promise, or give any financial or other advantage to a public official, either directly or through a third party intermediacy, with the intent to obtain or retain business or an advantage in the conduct of business by either, (i) influencing the official in his/her official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of his/her lawful duties, (iii) securing any improper advantage, or (iv) inducing the official to use his/her influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

Purchaser shall (a) maintain, throughout the duration of dealings between the parties, its own anti-corruption policies and procedures, including without limitation, adequate procedures designed to ensure that the party complies with the FCPA, CFPOA and BA, (b) provide a copy of such policies and procedures to the other party on request, and (c) monitor and enforce such policies and procedures as appropriate.

Purchaser shall maintain true, accurate, and complete accounting books and records relating to all of its activities under this agreement. Purchaser shall provide information, documentation and reasonable assistance to Company to support an inquiry or investigation of a suspected violation of the FCPA, CFPOA and/or BA.

Company may immediately terminate this contract or suspend its performance under this contract if it has reasonable belief that the other party has breached its compliance with these anti-corruption policies.

GENERAL

The Company represents that any goods to be delivered hereunder will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. The Company represents that it will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.

Any assignment of this agreement or any rights hereunder, by the Purchaser (other than to its customer) without written consent of the Company shall be void Purchaser agrees that, with respect to the resale or any other disposition of items sold hereunder. Purchaser shall comply fully with the export control laws and regulations of the United States Government and any applicable laws and regulations of any other country including, but not limited to, the Export Administration Regulations ("EAR") and the International Traffic in Arms Regulations ("ITAR").

The provisions of this agreement are for the benefit of the parties hereto and not for any other person. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon the Company unless agreed to in writing by an authorized representative of the Company. The invalidity, in whole or part, of any of the provisions in these terms and conditions will not affect the remainder of such puragraph or any other puragraph contained herein.

The purchase order price is based on steel, aluminum, copper and third party material buyout prices in effect on the date of Company's quotation. In the event the prices for any of these materials increases in excess of five percent (5%) from the price for them in effect on the date of quotation, then Company shall be entitled to increase the purchase order price to cover same

GOVERNING LAW

The agreement, including any Ptirchase Order, sales confirmation, Company quotation, all aspects of the transactions referenced in the Company's invoice to Ptirchaser, and any dispute related to any the foregoing, shall be governed by, and interpreted in accordance with the laws of the state of Texas (USA) which shall be the applicable law, without regard to its principles of conflict of laws. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this agreement,

DISPUTE RESOLUTION

Any dispute arising out of or related to the agreement shall be brought exclusively in federal or state court within Houston, Harris County, Texas, EACH PARTY HEREBY IRREVOCABLY CONSENTS TO PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE LAWS OF THE STATE OF TEXAS, ANY CLAIM OR OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE, THAT VENUE OR PERSONAL JURISDICTION IS NOT PROPER WITH RESPECT TO ANY SUCH DISPUTE. THIS WAIVER SHALL INCLUDE, BUT IS NOT LIMITED TO, ANY CLAIM THAT SUCH DISPUTE BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. Purchaser agrees that valid service of process of any legal action against it shall be considered in all respects and for all purposes complete and binding on it if copies of all such process are mailed to it at the address appearing on Company's invoice, quotation or sales confirmation by registered mail, return receipt requested

WAIVER OF JURY TRIAL

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE ARISING UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND TECHNICAL ISSUES AND IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

RTA	

Regional Transit Authority

New Orleans Regional Transit Authority

Ву:	Hapi B	
Name:	Floyal Bailey	
Title:	Director of Rail	_
Date: _	9/28/23	

V	POWELL Powered by Safety	
Ву		-
Name:	Suso Blanchad	-
Title: _	DIRECTOR	_
Date:	9/28/23	

EXHIBIT B

RTA's General Provisions

RTA's GENERAL PROVISIONS

1. WRITTEN CHANGE ORDERS/AMENDMENTS

This contract may be changed/ amended in any particular allowed by law upon the written mutual agreement of both parties.

2. CHANGE ORDER/AMENDMENT PROCEDURE

Within ten (10) calendar days after receipt of the written change order to modify the contract, the Contractor shall submit to the RTA a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the RTA. At that time, a detailed modification shall be executed in writing by both parties. In the event that federal funds are used in this procurement, the FTA may reserve the right to concur in any change order or any dispute arising under such change order. Disagreements that cannot be resolved by negotiation shall be resolved in accordance with the contract disputes clauses. Regardless of any disputes, the Contractor shall proceed with the work ordered, if the RTA has obtained the concurrence of FTA, should such concurrence be required. Regardless of any other requirement herein, RTA shall negotiate profit as a separate element of cost for any change order or amendment to any contract awarded pursuant to this solicitation.

3. OMISSIONS

Notwithstanding the provision of drawings, technical specifications or other data by the RTA, the Contractor shall supply all resources and details required to make the supplies complete and ready for utilization even though such details may not be specifically mentioned in the drawings and specifications.

4. PRIORITY

In the event of any conflicts between the description of the supplies and/or services in the Technical Specifications and drawings and other parts of this Invitation for Bids, the Technical Specifications and drawings shall govern.

5. COMMUNICATIONS

All official communications in connection with this contract shall be in writing. Solicitation or persons acting on their behalf may not contact, between the release of the solicitation and award, any employee or officer of Transdev or the Regional Transit Authority, including the Board of Commissioners, concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

6. INTEREST OF MEMBERS OF, OR DELEGATES TO CONGRESS

In accordance with 18 U.S.C. Subsection 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this contract or to any benefit arising there from.

7. CONFLICT OF INTEREST

No Board Member, employee, officer or agent, or employee of such agent of the RTA shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The Board Member, employee, officer or agent, or employee of such agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization that employs, or is about to employ any of the above, has a direct or indirect, present or future financial or other interest in the firm selected for award.

The RTA's Board Members, officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties of sub agreements.

Each entity that enters into a contract with the RTA is required, prior to entering into such contract, to inform the RTA of any real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the contractor is unable or potentially unable to provide objective assistance or advice to the RTA due to other activities, relationships, contracts, or circumstances; when the contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract; and during the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents, in accordance with Chapter VI, 2.a.(4)(h) of FTA C 4220.1F.

8. EQUAL EMPLOYMENT OPPORTUNITY

The Contractor shall comply with Executive Order No. 11246 as amended, entitled "Equal Employment Opportunity" as supplemented in Department of Labor Regulations (41 C.F.R. Paragraph 60). In connection with the execution of this Agreement, the Contractor shall not discriminate against any employees or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, or national origin. Such actions 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. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

9. PRIVACY REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor 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, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understand 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 the underlying contract.
- (2) The Contractor 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.

10. INDEMNIFICATION

The Contractor covenants and agrees to fully defend, protect, indemnify and hold harmless the RTA, their directors, officers, employees, agents, and assigns from and against all liability, including strict liability, claims, demands, and causes of action brought by others against RTA, and expenses, including but not limited to reasonable attorney's fees; and expense incurred in defense of RTA, arising out of, or in any way incidental to, or in connection with the work hereunder, and other activities by contractor; provided, however, that such indemnification shall apply only to the extent permitted by applicable law, and except and to the extent such liability, claim, demand or cause of action results from RTA's negligence.

11. PERFORMANCE

Contractor shall perform all work diligently, carefully and in a good and workmanlike manner and shall furnish all labor, supervision, machinery, equipment, material and supplies necessary therefore. Contractor shall obtain and maintain all permits and licenses required by public authorities in connection with performance of the work, and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. Contractor shall conduct all operations in Contractor's own name and as an independent contractor, and not in the name of, or agent for RTA.

12. STATUS OF CONTRACTOR AND ITS EMPLOYEES

For all purposes specified under the terms of this Agreement the Contractor shall be considered an independent contractor as defined in R.S. 23:1021 (5), and as such, the RTA shall not be liable to the Contractor for benefits or coverage provided by the Workers' Compensation Law of the State of Louisiana (R.S. 23:1021 et seq.), and further, under the provisions of R.S. 23:1034, no person employed by the Contractor shall be considered an employee of the RTA for the purpose of Workers' Compensation coverage.

13. INSURANCES AND LICENSES

The contractor shall, upon request by the RTA, submit a copy of their standard insurance certificates for this project.

14. SUBCONTRACTORS

No portion of this contract may be, reassigned, transferred, or sublet without the written approval of the RTA. If allowed to subcontract, no subcontractor may be replaced without the written approval of the RTA.

15. SHIPPING

The goods shall be delivered by the Contractor to the RTA's selected project site located in New Orleans. The RTA's Project Manager will coordinate the delivery address with the Contractor prior to the shipment. The goods shall be delivered in excellent condition ready for utilization and/or installation.

16. CERTIFICATE OF CONFORMANCE

The Contractor shall submit with each shipment a Certificate of Conformance signed by an authorized Contractor's Representative, stating that the materials furnished to Regional Transit Authority (RTA) are in conformance with applicable requirements of the Contract, drawings and specifications, and that supporting documentation is on file and will be made available to RTA or Federal Transit Representatives upon request. Certifications shall include name of Contractor for materials being supplied, quantity shipped, lot number, and Contract Number. An example of an acceptable statement of conformance is as follows:

"This is to certify that all items are noted in conformance with the Contract, drawings, specifications, and other applicable documentation."

17. ACCEPTANCE

Within 7 days after delivery, the RTA, its agents or assigns will conduct acceptance inspection. Acceptance shall be conditioned upon satisfactory results of such inspection, promptly

communicated in writing to the Contractor, subject however, to revocation upon discovery of defects.

18. QUALITY INSPECTION

All goods and services installed and supplied shall be good quality and free from any defects and shall at all times be subject to RTA's inspection; but neither RTA's inspection nor failure to inspect shall relieve Contractor of any obligation hereunder. If, in RTA's opinion, any goods or service (or component thereof) fails to conform to specifications or is otherwise defective, Contractor shall promptly replace or correct same at Contractor's sole expense. No acceptance or payment by RTA shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any warranties implied by law.

19. CORRECTION BY CONTRACTOR

After non-acceptance of the work, the Contractor shall begin implementing correction procedures within five (5) calendar days after receiving notification from the RTA. The RTA will make the site timely with Contractor's correction schedule. The Contractor shall bear all expense incurred to complete correction of the work after non-acceptance, and Contractor shall diligently implement correction procedures.

20. MATERIALS/ACCESSORIES RESPONSIBILITY

The Contractor shall provide and warranty all parts materials, equipment and workmanship associated with the supplies and related materials and equipment used, whether the same are manufactured by the Contractor or purchased from suppliers.

21. UNAVOIDABLE DELAYS

If completion of the work furnished under this contract should be unavoidably delayed, the RTA may extend the time for satisfaction of the Contractor's obligations pursuant thereto for a number of days determined by RTA to be excusable due to unavoidability. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, and was not caused directly of substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents and was substantial and in fact caused the Contractor to miss completion dates and could not adequately have been guarded against by contractual or legal means.

22. NOTIFICATION OF DELAY

The Contractor shall notify the RTA as soon as the Contractor has, or should have, knowledge that an event has occurred or will occur which will delay progress or completion. Within five (5) days there from, the Contractor shall confirm such notice in writing furnishing as much detailed information as is available.

23. REQUESTS FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any/all reasonable proof required by the RTA to make a decision relative to any request for extension. The RTA shall examine the request and any documents supplied by the Contractor, and RTA shall determine if the Contractor is entitled to an extension and the duration of such extension. The RTA shall notify the Contractor of this decision in writing. It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

24. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. sections 12101 et seq.; 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:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) 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;
- (c) U.S. DOT regulations, "American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provision of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(i) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. Part 609.

25. APPLICATION OF FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

(a) Federal Laws and Regulations

The Federal requirements (laws, regulations policies, and related administratively) contained in this contract may change (from time to time) after the date the contract has been executed. Any changes in federal requirements shall apply to this contract and be incorporated therein.

(b) State or Territorial Law and Local Law

This contract shall be entered into in the State of Louisiana and shall be governed and/or construed in accordance with the laws and jurisprudence of the State of Louisiana, except to the extent that a Federal Statute or regulation preempts State or territorial law.

26. CONTRACT PERIOD

THE OF THIS CONTRACT SHALL BE FROM THE DATE THE CONTRACT IS ISSUED UNTIL ALL GOODS AND ITEMS ARE RECEIVED AND APPROVED BY RTA, UNLESS THE CONTRACT PERFORMANCE PERIOD IS EXTENDED BY WRITTEN AMENDMENT/CHANGE ORDER AND EXECUTED BY THE PARTIES.

27. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- (1) The Purchaser 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 the Purchaser, 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.

28. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between RTA and FTA, as they may be

amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

29. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RTA requests which would cause RTA to be in violation of the FTA terms and conditions": https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance

30. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by federal statute or regulations, the RTA will comply with the requirements of 49 U.S.C. § 5323(h) (2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

31. GEOGRAPHIC RESTRICTIONS

Except as expressly mandated, encouraged or permitted by FTA or Federal statute, RTA will refrain from using state or local geographic preferences.

32. PROMPT PAYMENT

The prime contractor payment terms will be set forth in the contract agreement. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than five (5) days from the receipt of each payment the prime contractor receives from the RTA. The prime contractor further agrees to return retainage payment to each subcontractor within five (5) days after the subcontractors work is satisfactorily completed and accepted by RTA, and all lien delay's under applicable laws have expired. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both DBE and non-DBE subcontractors.

Identification of subcontractors: All prime contractors submitting offers in response to this Invitation for Bids must provide the following information for All subcontractors whether the firm is identified as a Disadvantaged Business Enterprise or not. The required information is:

(1) Firm Name

- (2) Firm Address
- (3) Firm's status as a DBE or non DBE
- (4) The age of the firm
- (5) The annual gross receipts of the firm

Additionally, each contract RTA enters into with a contractor (and each subcontract) the prime contractor signs with a subcontractor shall include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the RTA deems appropriate.

Further, each contract RTA enters into with a contractor (and each subcontract the prime contractor signs with a subcontractor shall include the following assurance:

The contractor, sub recipient or subcontractor shall make prompt payments for all satisfactory work performed under this agreement. The contractor shall within thirty (30) days of receipt of payment from RTA make all payments due subcontractors and suppliers. This requirement shall flow down to all levels including subcontractors making payments to sub subcontractors and suppliers, etc. Additionally, upon release of retainage(s) by RTA, Contractor shall in turn within thirty (30) days release retainage(s) it holds. The requirement for release of retainage(s) within thirty (30) days shall flow down to all subcontractors, etc. performing under this contract. Contractor or any of its subcontractors, etc. may not delay or postpone payments or release of retainage without prior RTA written approval. RTA may delay, or withhold up to twenty-five percent of Contractor's payments, retainage, etc. if there is evidence that Contractor is not complying with any provision hereunder. RTA may withhold monies due Contractor until such time as Contractor by its actions or assurances has, to RTA satisfaction, proven that it will or has complied with all the requirements hereunder.

33. CONFIDENTIALITY

Contractor agrees that any and all information, in oral or written form, whether obtained from RTA, its agents or assigns, or other sources, or generated by Contractor pursuant to this contract shall not be used for any purpose other than fulfilling the requirements of this contract. Contractor further agrees to keep in absolute confidence all data relative to the business of RTA and Transdev, their agents or assigns. No news release, including but not limited to photographs and film, public announcement, denial or confirmation of any part of the subject matter of any phase of any program hereunder shall be made by Contractor without written approval of RTA.

34. DISPUTES

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Director of Procurement. The decision of the Director of Procurement shall be final and conclusive unless within [seven (7)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Vice President-Transdev. In connection with any such appeal, the Contractor may be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Vice President-Transdev shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute. Unless otherwise directed by RTA, Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages. Should either party to the Contract 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 therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the RTA and the Contractor 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 of Louisiana.

Rights and Remedies. The duties and obligations imposed by the Contract Documents 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 the RTA, (its agents or assigns) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, 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.

35. OWNERSHIP OF DOCUMENTS

Any documents, drawings, specifications, reports or data generated by the Contractor in connection with this project shall become the sole property of the RTA, subject to any rights asserted by FTA of the U.S. Department of Transportation. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports or data from this project without prior written permission from the RTA.

36. STATE AND LOCAL LAW DISCLAIMER

The use of many of the Clauses herein are not governed by federal law, many of the clauses contained herein contain FTA suggested language in certain instances these clauses may be affected by State Law.

37. PARTICIPANT INFORMATION FORM

All participants and their subcontractors are required to submit a completely executed, Participant Information Form available on http://www.norta.com.

38. NON-COLLUSION AFFIDAVIT

The Non-Collusion Affidavit is a required submittal. The necessary form is available on http://www.norta.com.

39. REGIONAL TRANSIT AUTHORITY GENERAL PROVISIONS

The Regional Transit Authority's General Provisions shall apply to this solicitation and resulting contract.

EXHIBIT C

Federal Requirements

FEDERAL REQUIREMENTS

1. ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

- (1) RTA is a grantee of the FTA and as such in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the RTA, 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 the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor'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.
- Where the Purchaser is a State and is the RTA or a subgrantee of RTA in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including PMP Contractor, access to Contractor'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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (3) Where the RTA enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, an hospital or other non-profit organization and is the FTA grantee or a subgrantee of the RTA in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the RTA, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (4) Where RTA or a subgrantee of the RTA in accordance with 49 U.S. C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S. C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to the RTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination of expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the RTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions thereto. Reference 49 CFR 18.39(i) (11).

2. BUY AMERICA

This Contract is subject to the Federal Transit Administration Buy America Requirements in 49 CFR 660. The bidder is required to submit a signed Buy America certification with the bid. If the bidder takes exception to the Buy America requirements a certificate of non-compliance must be signed and submitted with the bid as it applies to the IFB request. The necessary forms are available on http://www.norta.com. A waiver from the Buy America Provision may be sought by the RTA if grounds for the waiver exist. Section 165(a) of the Surface Transportation Act of 1982 permits FTA participation on this contract only if steel, and manufactured products used in the contract are produced in the United States.

3. PRE-AWARD AND POST-DELIVERY AUDITS

Federal funds may not be obligated unless steel, iron, and manufactured products used in the projects are produced in the United States, unless FTA has granted a waiver, or the product is subject to a general waiver. Rolling stock must have sixty-five percent domestic content and final assembly must take place in the United States. Metropolitan Transportation Services 15 Dec. 09 v. 2 3 2 1 4. Buy America 5 6 9 8 7 12 10 13 11 FTA Requirement Subrecipient Responsibility Final assembly. The final assembly of rolling stock must take place in the United States. The Buy America Requirements, 49 CFR Part 661.11(r), define final assembly as "the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes."

4. CARGO PREFERENCE

The Contractor Agrees:

- a. 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;
- b. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo

- described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to the RTA (through the prime contractor in the case of subcontractor's bills-of-lading).
- c. To include these requirements in all subcontracts issued pursuant to this contract when the contract may involve the transportation of equipment, material or commodities by ocean vessel.

5. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Contractor 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. The Contractor agrees to report each violation to the RTA and understands and agrees that the RTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- (3) The Contractor agrees to comply with applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the RTA and understands and agrees that the RTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (4) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
- (5) 14 CFR § 1274.926 Clean Air-Water Pollution Control Acts.

 If this contract or supplement thereto is in excess of \$100,000, the Recipient agrees to notify the Agreement Officer promptly of the receipt, whether prior or subsequent to the Recipient 's acceptance of this agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of agreement in excess of \$100,000, the Recipient
 - (a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;
 - (b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (<u>42 U.S.C. 1857</u>et seq. as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act, as amended (<u>33 U.S.C. 1251</u>et seq. as amended by Public Law 92-500) relating to inspection, monitoring, entry,

reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the contract; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of \$100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.

6. CIVIL RIGHTS ACT

The following requirements apply to the underlying contract:

- (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, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:
 - (a) 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, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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 construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, disability or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (c) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S. C. § 12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor 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.

7. EMPLOYEE PROTECTION

Construction Activities. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the following Federal laws and regulations providing protections for construction employees: (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 et seq., pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; (2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and (3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 3145, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3. b. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, and other participant at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in FTA Master Agreement MA(17), 10-1-2010 58 particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5. c. Activities Involving Commerce. The Recipient agrees to comply with the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., to the extent that it applies to employees performing Project work involving commerce. d. Public Transportation Employee Protective Arrangements. If the Contract Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the following requirements:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and to the extent required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), in accordance with U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215, and any amendments thereto.

8. 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 (42 U.S.C. 6321 et seq.).

9. FLY AMERICA

Contractor and all subcontractors at every tier shall comply with the requirements of 49 U.S.C. 40118 and 4 CFR Part 52. Specifically, whenever work under this agreement may involve international transportation of goods, equipment or personnel by air, only U.S. flag air carriers shall be utilized, to the extent service by these carriers is available. Additionally, Contractor and any subcontractors at every tier shall include this requirement in all subcontracts. Further, in every instance where Contractor or any subcontractor(s) cannot comply with the requirements herein, a certification, in proper form, stating the reasons for non-compliance shall accompany the request for reimbursement or payment.

10. GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Certification Regarding Debarment, Suspension, and other Responsibility Matters -Lower Tier Covered Transactions (Third Party Contracts over \$100,000)

The following language and Debarment certificates (http://www.norta.com) must be completed and submitted as a prerequisite for consideration for award. This language and certification must also be included for all sub-contracts issued pursuant to any contract awarded hereunder.

Instructions for Certification

- 1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
- 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transactions was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, RTA may pursue available remedies, including suspension and/or debarment.

- 3. The prospective lower tier participant shall provide immediate written notice to RTA if at any time the prospective lower tier participant learns that it certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "persons", "lower tier covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29].
- 5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by RTA.
- 6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitation for lower tier covered transaction.
- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier coveted transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- 8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, RTA may pursue available remedies including suspension and/or Debarment.

11. RESTRICTIONS ON LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR parts 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has

not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the RTA. The necessary form is available on http://www.norta.com.

12. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party Contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of this contract. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including the third-party Contractor.

13. PATENT AND RIGHTS IN DATA

These following requirements apply to each contract involving experimental, developmental or research work: 1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration. 2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added: a. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government 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. b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, 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 in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "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. (1). Any subject data developed under that contract, whether or not a copyright has been obtained; and (2). Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part provided by FTA. c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention

to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added 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 that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects. d. Unless prohibited by state law, upon request by the Federal Government, the Contractor agree 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 Contractor 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. Contractor shall not 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. e. 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. f. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Contractor identifies that data in writing at the time of delivery of the contract work. g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA. 3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), Contractor agrees 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 Agreements," 37 C.F.R. Part 401. 4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

14. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTSUPPER AND LOWER TIER TRANSACTIONS

- (1) 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 Project. Upon execution of the underlying 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 underlying contract or the FTA assisted project for which this contract work is being performed. 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 on the Contractor to the extent the Federal Government deems appropriate.
- (2) 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.
- (3) 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.

15. RECYCLED PRODUCTS

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.

16. SAFE OPERATION OF MOTOR VEHICLE

The Recipient agrees as follows: a. Seat Belt Use. In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient 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, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar documents in connection with the Project. b. Distracted Driving, Including Text Messaging While Driving. In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT

Order 3902.10, "Text Messaging While Driving," December 30, 2009, the Recipient is encouraged to comply with the terms of the following Special Provision: (1) Definitions. As used in this Special Provision: (a) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does FTA Master Agreement MA(17), 10-1-2010 67 not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary. (b) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law. (2) Safety. The Recipient is encouraged to: (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving— (b) Recipient-owned or Recipient-rented vehicles or Government-owned, leased or rented vehicles; (c) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or (d) Any vehicle, on or off duty, and using an employer supplied electronic device. (3) Recipient Size. The Recipient is encouraged to conduct workplace safety initiatives in a manner commensurate with the Recipient's size, such as: (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving. (4) Extension of Provision. The Recipient is encouraged to include this Special Provision in its subagreements with its subrecipients, its leases, and its third party contracts, and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

17. SUBSTANCE ABUSE REQUIREMENTS

To the extent applicable, the Recipient agrees to comply with the following Federal regulations and guidance: a. Drug-Free Workplace. U.S. OMB guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 C.F.R. Part 182, and U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §§ 702 et seq., including any amendments to these U.S. DOT regulations when they are promulgated. b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

18. TERMINATION

a. Termination for Convenience (General Provision) The RTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the RTA's and/or the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly

submit its termination claim to RTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the RTA, the Contractor will account for the same, and dispose of it in the manner the RTA directs.

- b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the RTA may terminate this contract for default. Termination shall be affected by serving a 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. If it is later determined by the RTA 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, the RTA, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) The RTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short 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. If Contractor fails to remedy to RTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from RTA setting forth the nature of said breach or default, (RTA) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (RTA) from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach. In the event that RTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by RTA shall not limit RTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

19. CONTRACT WORK HOURS AND SAFETY STANDARD ACT

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6). The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work" with a value greater than \$100,000. These nonconstruction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12) Flow down Requirements: Applies to third party contractors and sub-contractors. (1) Overtime requirements - No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in

any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek. (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States 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 the clause set forth in paragraph (1) of this section, 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 (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section. (3) Withholding for unpaid wages and liquidated damages - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) Subcontracts - The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section. overtime wages required by the clause set forth in paragraph (1) of this section. (3) Withholding for unpaid wages and liquidated damages - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) Subcontracts - The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.