



Request for Qualifications (RFQ) for Architectural & Engineering Services

PROJECT SUMMARY SHEET

Project Name: Architectural & Engineering Services

Solicitation Issuance Date: Thursday, July 25, 2013

Project Description: Provide various architectural and engineering services to MTD as described in the enclosed scope of work on an as needed basis.

Project Location(s): MTD Olive Terminal, 550 Olive Street, Santa Barbara, CA 93101; MTD Transit Center, 1020 Chapala Street, Santa Barbara, CA 93101; other MTD facilities located in the Santa Barbara area.

Pre-Submittal Meeting Date/Time: Wednesday, August 7, 2013, at 10:00 AM (**Non-Mandatory**)

Pre-Submittal Meeting Location: MTD, 550 Olive Street, Santa Barbara, CA 93101

Requests/Clarifications Deadline: Monday, August 12, 2013, at 5:00 PM

Submittal Due Date/Time: Tuesday, August 20, 2013, at 5:00 PM

Submittal Due Location: MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101 Reception Desk on 2nd Floor

Submittal Contents: Statement of Qualifications (including SF330); and Bidder Information, References & Suppliers, Lobbying Certification, and Acknowledgement of Addenda forms. Submittals without these completed items, signed and dated where specified, may be considered non-responsive & may be rejected.

Contract Award Date: Tuesday, September 10, 2013 (projected)

Solicitation Contact: Ken Mills, Project Manager, (805) 832-3024, kccmills@dslextreme.com

Type of Solicitation: Negotiated procurement based on evaluation of qualifications to perform the scope of work and negotiation of fair and reasonable pricing.

Type of Contract: Indefinite Delivery-Indefinite Quantity with Fixed Price Delivery Orders

Estimated Contract Amount: \$120,000

Contract Period: Three (3) years projected to begin in October, 2013

Licenses Required: Current licenses as required by the State of California for each person (e.g. architect, engineer, surveyor) performing under a contract based on this RFQ.

Other Requirements: Architect office must be located within 75 road miles of MTD.

Check MTD website at <http://www.sbmtd.gov/business-and-employment/active.html> for updates.

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications for Architectural & Engineering Services
SOLICITATION INSTRUCTIONS

1. PRE-SUBMITTAL ACTIVITIES

1.1 RFQ CONTENTS & CONTRACT DOCUMENTS

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Request for Qualifications (RFQ) for Architectural & Engineering Services* to engage the services of a qualified architectural firm on an as-needed basis for a three-year period beginning in October, 2013. These *Solicitation Instructions* provide direction on preparing submittals and describe the evaluation, review and contract award process. Attached are required forms and certifications to be completed and included as part of the submittal. The attached [Scope of Work](#) specifies the type of services and projects that MTD anticipates during the contract term. Additional terms and conditions are included in the [MTD Master Agreement](#) and [Federal Transit Administration Contract Provisions](#) (all solicitation documents are included herein and available on MTD's website at <http://www.sbmtd.gov/business-and-employment/active.html>).

1.2 PRE-SUBMITTAL MEETING (NON-MANDATORY)

There is a non-mandatory pre-submittal meeting to review the RFQ process and tour MTD facilities. The meeting will be at 10:00 AM on Wednesday, August 7, 2013 and will start in the downstairs auditorium at MTD's Administrative Offices located at 550 Olive Street, Santa Barbara. A tour of that facility and MTD's Transit Center at 1020 Chapala Street in Santa Barbara will be included. This will be the only opportunity for bidders to examine the applicable facilities with cognizant MTD personnel.

1.3 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes to the RFQ until Monday, August 12, 2013, at 5:00 PM. To be considered, such communications must be via e-mail to Ken Mills at kccmills@dslextrreme.com. Change requests must be provided with sufficient information supporting the request to allow MTD to make a fair and reasonable determination.

1.4 RFQ MODIFICATIONS & ADDENDA

MTD reserves the right to amend this RFQ through written addenda. No other form of communication with any officer, employee or agent of MTD shall be binding upon MTD. Addenda will be posted to MTD's website and concurrently sent via e-mail to all parties known to have received the RFQ. However, MTD's e-mailing of addenda does not relieve the submitter of its responsibility to ensure that it has obtained any issued addenda by checking the MTD website.

1.5 RFQ & CONTRACT TERMINOLOGY

In this solicitation and the resultant contract, MTD may interchangeably use the terms "bid," "offer," "proposal" or "submittal" to mean your response to this solicitation. Also, MTD may interchangeably use the terms "bidder," "offeror," "submitter" or "proposer" meaning you as the responder to this solicitation. In addition, the terms "successful bidder," "successful offeror," "successful proposer," "successful submitter," "supplier," "vendor," "consultant," "architect" and "contractor" have the same meaning as the party to which a contract is awarded.

1.6 GEOGRAPHIC DISTANCE FROM MTD

To be considered for proposal evaluation, the offeror must have an office with client access within 75 miles of MTD's Administrative Office located at 550 Olive Street, Santa Barbara, CA 93101. Such

distance shall be determined using the **driving** distance calculated by the *Google Maps* public webpage using the specific address of the offeror's closest office.

2. SUBMITTAL PREPARATION & SUBMISSION

2.1 MTD FORMS

Bidder Information—Submittal shall include the fully completed [Bidder Information form](#) included in this RFQ.

References & Suppliers—Submittal shall include the [References & Suppliers form](#) included in this solicitation. Note that only the credit references, including the offeror's bank, are required for this solicitation. **Please be certain to list contact names and phone numbers that are accurate and current.**

Lobbying Certification—Submittal shall include the signed and dated [Lobbying Certification form](#) included in this RFQ.

Acknowledgement of Addenda—If there are any RFQ addenda, bidder shall acknowledge receipt of such in their submittal by including the [Acknowledgement of Addenda form](#) in this RFQ. Failure of a bidder to receive or acknowledge any addenda shall not relieve it of any requirements or information included in such addenda.

2.2 BIDDER-PREPARED DOCUMENTS

Statement of Qualifications—A submittal indicating the qualifications of the offeror to perform the attached Scope of Work is required. It shall include the information and be formatted as follows:

- Cover Letter. Letter shall be signed by an officer authorized to bind the offeror contractually and shall address the below matters (**Review of contract documents by legal counsel is advised**).
 - Offeror's interest and willingness to enter into a contract with MTD to perform as-needed A&E services as described in the attached [Scope of Work](#); and certify to the effect that the offeror would exert its "best efforts" in fulfilling its responsibilities therein.
 - Offeror's willingness to accept the contract terms and conditions included in the [MTD Master Agreement](#), the [Federal Transit Administration Contract Provisions](#), and the [Scope of Work](#). If there are any contract terms that the offeror will not accept or proposes modifications to, the specifics of such should also be addressed in the cover letter or an attachment thereto. MTD is limited in its ability to alter the terms and will assess whether it would be able to contract with the offeror under the offeror's proposed contract revisions.
 - Offeror's ability and willingness to obtain insurance meeting the requirements indicated in [Exhibit A to the Master Agreement](#). Note that Exhibit A does not presently contain specifics for professional liability insurance coverage, which will be required. The overall insurance terms are under review by legal counsel and, once finalized, a revised Exhibit A will be issued as an addendum to this solicitation.
- Architect-Engineer Qualifications, Standard Form 330 (SF 330). Complete both Parts I and II of SF 330, **attached** to this RFQ. Print or type the firm's name in the upper right corner of each page even though the name may be included in a pre-printed block elsewhere on the page. Do not include the Instruction pages in your submittal. Staple all pages of the SF 330 together. Specific guidance on particular sections of the SF 330 is as follows:
 - Part I, Section D—The "Organizational Chart" is not required.
 - Part I, Section E, Item 19—List **five** "Relevant Projects" to the extent feasible for each key person whether an employee of the offeror or a proposed subcontractor (e.g., engineer).

- Part I, Section F—List **five** example projects that are different than those listed in Part I, Section, Item 19.
- Part I, Section H—Additional information shall include, either by inclusion on the form or reference to an enclosure, the following which should be limited to no more than three pages in total using size 12 point font:
 - A brief narrative of the bidder's organization and history.
 - A description of how the bidder satisfies the four evaluation criteria listed in Section 3.1 below (without duplicating information provided elsewhere in the SF 330).
 - Any other information the bidder considers pertinent to this RFQ.

2.3 SUBMITTAL LOCATION & DEADLINE

One original and three complete copies of all required submittal documents shall be submitted in a non-transparent, sealed envelope plainly marked on the exterior with the name of the bidder and the following: "A&E Services Submittal." Submittals must be delivered to: Santa Barbara Metropolitan Transit District, 2nd Floor Reception Desk, 550 Olive Street, Santa Barbara, CA 93101. If using a delivery service, submittals must be enclosed in the specified envelope packaging within the delivery service packaging. Fax or e-mail submittals will not be considered. **Submittals will be accepted by MTD until Tuesday, August 20, 2013 at 5:00 PM (local time).** Unless due to the fault of MTD, submittals received after such time cannot be considered and will be returned to the submitter unopened. There will be no public opening of submittals at the deadline or otherwise.

2.4 WITHDRAWAL OF SUBMITTALS

A bidder may withdraw a submittal any time prior to the submittal deadline by submitting a written request executed by the bidder's authorized representative. Any such withdrawal does not prejudice the right to resubmit a submittal by the submittal deadline.

2.5 SUBMITTAL STIPULATIONS

Submittals submitted as a result of this solicitation become the property of MTD. MTD will not pay any cost incurred by a bidder resulting from preparation or delivery of its submittal. MTD reserves the sole right to review, accept, or reject submittals; or to cancel this solicitation in whole or in part if it is in MTD's best interest to do so.

3. EVALUATION & PRICE PROPOSAL

3.1 QUALIFICATIONS EVALUATION

MTD will evaluate submitted Statements of Qualifications to determine the most qualified offeror using the following criteria which are listed in relative order of importance:

- Demonstrated successful experience performing projects similar to those in the Scope of Work.
- Knowledge and experience of Santa Barbara city and county project review/approval processes.
- Experience and technical expertise of personnel proposed to work on anticipated MTD projects.
- Familiarity with federal and State of California funded projects and associated requirements.

As part of the evaluation process, MTD will call references and may conduct interviews with proposer(s) it determines as likely to be the most qualified. Such interviews are for information gathering and clarification only and will not involve price discussions or negotiations. MTD may conduct interviews in person or by phone. Any proposer requested to be interviewed shall make its best effort to be available within three (3) non-holiday weekdays of such request.

3.2 BIDDER RESPONSIBILITY

When MTD determines the most highly qualified offeror, MTD will assess its responsibility, which in this solicitation is defined as satisfactory performance in previous contracts and having the financial capacity to undertake the project. MTD will use the reference information provided in the submittal and other information, as needed, for this determination. If the most highly qualified firm is found not responsible, it will no longer be considered and the responsibility of the offeror determined as the next most qualified will be assessed. This process will continue until the firm with the most highly qualified submittal that is also responsible has been determined.

3.3 PRICE PROPOSAL

The most highly qualified responsible offeror will be requested to provide MTD with a price proposal which shall identify billable labor, service, and material classifications and unit rates during the contract period for both the offeror and the subcontractors identified in the SF 330. The price proposal will be subject to review by MTD to determine if it is fair and reasonable. The offeror may be requested to provide additional information to support the proposed unit pricing (applicable information would be kept confidential to the extent allowable by law). MTD may request revised price proposals or negotiate with the offeror if deemed necessary to obtain fair and reasonable pricing. If the offeror's best and final price proposal is determined by MTD to not be fair and reasonable, MTD will reject the offeror's price proposal and discontinue discussions. In such case, MTD will request the next most highly qualified, responsible offeror to submit a price proposal to determine its price reasonableness. This process will be repeated until a qualified, responsible offeror with a fair and reasonable price proposal is determined.

3.4 PRE-AWARD DELIVERABLES

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal and prior to consideration of contract award, MTD will request the following from the offeror:

Professional Licenses—Photocopies of currently valid professional licenses required by the State of California for individuals, including subcontractors, identified in the Statement of Qualifications or otherwise as potentially performing work under a contract resulting from this RFQ.

Insurance Certificate—A certificate of insurance showing the coverage types and dollar limits stipulated in [Exhibit A to the Master Agreement](#), which must name MTD as an additionally insured for applicable liability policies.

4. CONTRACT AWARD

Upon determination of the most qualified, responsible offeror with a fair and reasonable price proposal satisfactorily providing the items required in Section 3.4 above, staff will prepare a recommendation for contract award to be considered by either the MTD General Manager or the MTD Board of Directors.

If the award recommendation is approved, it is the intent of MTD to execute the contract documents as soon as practical after such award. The contract will be composed of the [MTD Master Agreement](#), the [Federal Transit Administration Contract Provisions](#), the [Scope of Work](#) and relevant portions of the Contractor's submittals and price proposal.

5. PROTEST PROCEDURES

MTD has established procurement protest procedures to ensure uniform, timely, and fair consideration of complaints received by MTD concerning its procurement activities. Such procedures are available on MTD's website at: <http://www.sbmtd.gov/business-and-employment/purchasing.html>

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications for Architectural & Engineering Services
REFERENCES & SUPPLIERS

Business Name of Bidder: _____

Credit References

Include your primary bank and two firms that you **currently** purchase materials or services from on credit:

Bank Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Work References

Include three recent clients for which you provided **similar services** to the project:

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Suppliers

Provide the following information for any **significant** suppliers to be used in the project:

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

Firm: _____ Contact: _____ Phone: _____

Description of Work: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications for Architectural & Engineering Services
LOBBYING CERTIFICATION

The undersigned Contractor certifies that to the best of his or her knowledge and belief:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

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

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

(Signer must match authorized official shown on Bidder Information Form)

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT
Request for Qualifications for Architectural & Engineering Services
ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges the Bidder's receipt of the following addenda to this RFQ and has incorporated information or changes in said addenda within its submittal (if no addenda were received, write "None" in the first blank):

Addendum No. _____ dated _____

Note: It is the Bidder's responsibility to ensure it receives all addenda which are posted on the MTD website at <http://www.sbmt.d.gov/business-and-employment/active.html>.

Authorized Official Signature

Date of Signature

Authorized Official Name

Authorized Official Title

Business Name of Bidder

(Signer must match authorized official shown on Bidder Information form)

Santa Barbara Metropolitan Transit District
Architectural & Engineering Services
Scope of Work

- I. Background Overview—The Santa Barbara Metropolitan Transit District (“MTD”) is a California special district providing public transportation to the South Coast of Santa Barbara County. MTD bus service is key to enabling thousands of people to get to and from work, school, medical facilities, etc. on a daily basis. As a public service provider, it is imperative that MTD facilities are maintained and upgraded as necessary in order that those services may be provided in an effective and efficient manner.
- II. General Description—The Architect shall provide architectural and engineering (A&E) services to MTD on an as-needed, project by project basis. MTD currently has active transit-related facilities at two locations within the city limits of Santa Barbara for which A&E services may be required: Olive Terminal, which is the administrative, dispatch, and maintenance facility at 550 Olive Street; and the Transit Center, MTD’s main passenger hub at 1020 Chapala Street. A&E services may also be required in connection with other MTD facilities on the South Coast.
- III. Anticipated Projects—Although specific projects are not determined with certainty nor guaranteed, it is anticipated that such projects will include or be similar to the following:
 - A. Transit Center Remodel—The Transit Center in downtown Santa Barbara serves as MTD’s main passenger transfer facility. Most MTD bus routes pass through the TC throughout the day. The TC was built in 1969 and has had two relatively minor remodels since that time. While a full replacement and expansion is under consideration, in the interim improvements to dilapidated facilities and equipment and a general “facelift” are considered priorities.
 - B. Bus Canopy Modification—MTD anticipates receipt of three 60 foot long buses in 2014. Because such length exceeds the depth of the shop bays at Olive Terminal, it would not be possible to raise the vehicles for servicing within the bays. As a covered area for servicing the buses is required, a structure must be erected in the yard elsewhere. While alternatives would be considered, the probable solution is to modify a portion of the existing bus canopy that is adjacent to the shop bays.
 - C. Photovoltaic System—MTD desires to implement a photovoltaic system at Olive Terminal to generate electricity for either onsite usage or sale to a public utility. Such a system would make use of it’s large flat roof areas for solar panels. The most likely roof areas include the bus canopy adjacent to the shop and the bus charging canopy structure in the southeast corner of the facility.
- IV. A&E Service Requirements—Architect shall provide, administer or arrange the following professional design and A&E services as required to carry out the scope of work for a particular project:
 - A. Work with MTD, the City of Santa Barbara, the County of Santa Barbara, the public, or other parties as necessary during applicable stages of the project.
 - B. Preliminary or Concept Design Phase
 1. Review existing concepts or plans and assess project objective opportunities and limitations.
 2. Develop conceptual design.
 3. Develop preliminary site and building designs.
 4. Provide preliminary construction cost estimate.
 - C. Construction Document & Bid Assistance Phase
 1. Develop A&E plans and specifications, including revisions.
 2. Provide assistance to MTD in developing construction bid package.

3. Provide revised construction cost estimate based on final plans.
4. Assist in assessing construction bids or proposals.

D. Construction Administration Phase

1. Review construction work for conformance with approved construction documents.
2. Provide information and/or clarification to contractor on approved construction documents.
3. Assist MTD in assessing any proposed or necessary construction change orders.
4. Develop and administer “punch list” for determining compliance with construction documents.
5. Assist MTD in determining final acceptance of construction work.

E. Additional Requirements

1. Review contractor requests for payment.
2. Provide value engineering recommendations as applicable.
3. Report construction status and progress to MTD.

V. MTD Responsibilities—MTD shall be responsible for the following tasks:

- A. Provide access to available and applicable MTD plans, drawings, and other site information.
- B. Pay or provide reimbursement for the cost of planning and permit fees associated with a project.
- C. Prepare construction solicitation instructions and contract documents for inclusion in solicitations.

VI. Procedure to Order Services—When A&E project services are needed, MTD will issue to the Architect a Request for Quotation (RFQ) which will include a description of the preliminary project scope of work. Such requests will typically be for a fixed price quote, although other contract types may be requested. In response, the Architect shall provide MTD with a quote for the project work that includes a price breakdown of: A&E professional services by labor category and hours; materials (e.g., plans) or other services by type and quantity; and a description and price for any other components of the quote. Other than the labor or material unit prices fixed by the A&E Services contract, components of the quote are subject to review by MTD. Additional information may be requested to assist MTD in evaluating that the quote is fair and reasonable.

VII. Changes—Any changes to the A&E Services contract and orders issued thereunder shall be supported by a change order. Change orders will include detailed costs and the rationale for the change and must be approved in advance by MTD prior to the Architect proceeding with the change.

VIII. Complete Projects—This Scope of Work does not include a complete description of all services or processes that may be required to carry out each ordered project or task. This Scope of Work is provided only for matters considered key to the project. Except as described herein, Architect shall provide all A&E services necessary to properly complete each ordered project.

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT ARCHITECTURAL & ENGINEERING SERVICES

MASTER AGREEMENT with [contractor name in caps]

THIS AGREEMENT is entered into by and between Santa Barbara Metropolitan Transit District, an incorporated transit district under Sections 95000, et seq. of the California Public Utilities Code ("MTD"), and [contractor name], a [state name] [business type] ("Architect" or "Contractor"), at Santa Barbara, California, as of the later date set forth below the signatures executing this Agreement.

WHEREAS:

- A. MTD desires to engage Contractor for Architectural & Engineering Services for a three-year period commencing with the effective date of this agreement (the "Project");
- B. Contractor represents that it has the knowledge and experience to carry out the Project, and desires to carry out the Project pursuant to the terms and conditions hereof, and;
- C. Based upon the representations made by Contractor, MTD desires to retain the services of Contractor to carry out the aforesaid Project, upon the within terms and conditions.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Effect of Recitals. The foregoing recitals are hereby made express provisions of this Agreement.
2. FTA Provisions. The Project is funded in part by the Federal Transit Administration of the U.S. Department of Transportation and, as such, this Agreement is subject to the terms and conditions contained in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year 12/13*, which is attached hereto as Exhibit "B" and incorporated herein by this reference.
3. CA Public Works Provisions. Not applicable to this agreement.
4. Scope of Work. MTD has heretofore issued on July 25, 2013 the scope of work contained in the Request for Qualifications for Architectural & Engineering Services, a true copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference. [if SOW amended, modify clause]
5. Submittal and Price Proposal. Contractor has heretofore submitted on August 20, 2013, its qualifications, including required forms and certifications; and on [date] its price proposal to carry out the Project, true copies of relevant parts of which are attached hereto as Exhibit "D" and incorporated herein by this reference. [modify clause if multiple proposals, BAFO, etc. submitted]
6. Order of Control. Contractor shall carry out the Project described in Exhibit "C" to this Agreement for the pricing quoted in Exhibit "D". All work and services shall be performed according to and controlled by the terms and provisions of this Agreement and the exhibits attached hereto. In the event of any conflict between the contract documents, the following order of control shall prevail: MTD Master Agreement, Exhibit "A" (Insurance Requirements), Exhibit "B", Exhibit "C", Exhibit "D".
7. Estimated Contract Amount and Delivery Order Pricing. The total estimated amount of this indefinite delivery/indefinite quantity contract is \$120,000. This amount is an estimate only and the actual amount may be more or less depending on actual services ordered by MTD and provided by the Architect. Individual orders for specific projects will be priced in accordance with Exhibits "B" and "C".
8. Payment Schedule. Architect shall submit monthly invoices to MTD for services rendered or approved expenses incurred for such month. Invoices shall indicate a breakdown for each project invoiced including a description of services provided, architect and subcontractor/sub-consultant labor hours by category or individual, materials and supplies, etc. Payment from MTD shall be made to Architect no later than thirty (30) days after receipt of a valid invoice which shall be sent to: Santa Barbara MTD, Attn: Brad Davis, 550 Olive Street, Santa Barbara, CA 93101.
9. Taxes. Not applicable to this agreement.

10. Project Schedule. To be established for each delivery order.
11. Delivery & Freight. Unless specified otherwise in Exhibit "B" or "C", any items sent to MTD shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101.
12. Title & Risk of Loss. Not applicable to this agreement.
13. Damages. All losses or damages arising from any unforeseen circumstances, either natural or artificial, which may be encountered by the Contractor during the performance of the Project under this Agreement, shall be sustained solely by the Contractor. This provision shall also apply to losses or damages resulting from any act or omission not authorized by this Agreement on the part of the Contractor or its subcontractors, sub-consultants, or agents.
14. Defective, Damaged or Noncompliant Work. Not applicable to this agreement.
15. Acceptance. Deliverables to be furnished by the Contractor to MTD pursuant to this Agreement may be subject to acceptance by MTD. If so, MTD shall inspect such deliverables to determine acceptability no later than ten (10) calendar days after said deliverables are received. Acceptance shall occur when it is determined by MTD that deliverables provided are in compliance with the terms of this agreement.
16. Warranty. Not applicable to this agreement.
17. Changes. Any changes or modifications to this Agreement must be in writing, and agreed to by both parties.
18. Insurance. Refer to Exhibit "A" for insurance requirements.
19. Bonding. Not applicable to this agreement.
20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year 12/13* which is attached as Exhibit "B".
21. Liquidated Damages. Not applicable to this agreement.
22. Infringement of Patents. Not applicable to this agreement.
23. Rights in Data. Definitions. The term "subject data" used in this clause means recorded or printed information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. Subject data includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents. Examples include, but are not limited to: 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. *MTD Rights*. MTD reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for MTD purposes, any subject data or copyright. As used in the previous sentence, "for MTD purposes," means use only for the direct purposes of MTD. Without the copyright owner's consent, MTD may not extend its license to any other party.
24. Indemnification. The Contractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by MTD and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the acts, errors or omissions of the Contractor, including acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the MTD and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each

party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The MTD shall not make any admission which might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The MTD shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The MTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense. The obligations of the Contractor under this clause shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the MTD, its officers, employees, agents or consultants, including negligence in the preparation of the Contract documents, or the giving of directions or instructions with respect to the requirements of the Contract by written order.

25. Notice. Notices in connection with this Agreement shall be made in writing and may be delivered either personally, by governmental postal service (regular, certified or registered), by private delivery service, or by electronic facsimile. Receipt shall be deemed to have occurred when actually made to the party or its designated agent. Such notices shall be properly addressed to the intended party as follows:

MTD:

Sherrie Fisher, General Manager
 Santa Barbara Metropolitan Transit District
 550 Olive Street
 Santa Barbara, CA 93101
 E-Mail: sfisher@sbtmd.gov
 FAX: (805) 963-3365

CONTRACTOR:

[insert authorized official name & title]
 [insert contractor name]
 [insert contractor street address]
 [insert contractor city, state & zip]
 [insert contractor e-mail]
 [insert contract fax number]

26. Attorneys' Fees and Costs. In the event of a controversy (including, but not limited to arbitration or a criminal or civil filing in a Federal Court or a court of any of the United States) between the parties with respect to the enforcement or interpretation of this Agreement, the prevailing party in such controversy shall be entitled to receive, in addition to such other award as the court may deem appropriate, full reimbursement for its court costs and reasonable attorneys' fees incurred therein.

27. Negation of Partnership. This Agreement creates a relationship between two independent contractors and does not, nor may it be interpreted to, create the relationship of joint venturers, partners, employee/employer, or any other business relationship.

28. No Assignment. This Agreement is not assignable by either party, and any attempt by either party to assign its obligations hereunder shall be void ab initio at the election of the other party, which election may be made by written notice within ten (10) days of the non-assigning party's receipt of actual knowledge of such attempted assignment. Notwithstanding the foregoing, however, at the election of the other party, the obligations and burdens of a party shall bind and apply to any permitted successor in interest or assignee of the business and/or operations of a party.

29. Partial Invalidity. In the event that any portion of this Agreement or any provision hereof shall be deemed as invalid as contrary to applicable law, the balance of this Agreement shall be enforced according to its term, and that portion found unenforceable shall be interpreted and enforced to the extent that it may be within said applicable laws.

30. Disputes. This Agreement shall be construed and all disputes arising therefrom shall be settled in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement shall be in Santa Barbara, California. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then pertaining (available at www.adr.org), except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrator shall be selected within twenty business days from commencement of the arbitration from

the AAA's National Roster of Arbitrators pursuant to agreement or through selection procedures administered by the AAA. Within 45 days of initiation of arbitration, the Parties shall reach agreement upon and thereafter follow procedures, including reasonable limits on discovery, assuring that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator or, failing agreement, procedures meeting such time limits will be designed by the AAA and adhered to by the Parties. The arbitration shall be held in Santa Barbara, California and the arbitrator shall apply the substantive law of California, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Prior to commencement of arbitration, emergency relief is available from any court to avoid irreparable harm. THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES. Prior to commencement of arbitration, however, the Parties must attempt to mediate their dispute using a professional mediator from AAA, the CPR Institute for Dispute Resolution, or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. Within a period of 45 days after the request for mediation, the Parties agree to convene with the mediator, with business representatives present, for at least one session to attempt to resolve the matter. In no event will mediation delay commencement of the arbitration for more than 45 days absent agreement of the Parties or interfere with the availability of emergency relief.

31. Prohibited Interest. The parties hereto covenant and agree that to their knowledge no board member, officer, or employee of MTD, during his/her tenure or for one year thereafter, has any interest, whether contractual, non contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than MTD. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

32. Compliance with Laws and Regulations. Contractor shall warrant that in the performance of work under contract to MTD that they shall comply with all applicable federal, state and local laws and ordinances, and all lawful orders, rules, and regulations thereunder.

33. Audit and Inspection of Records. The Contractor shall agree that all materials supplied and services performed under the Project, facilities used in connection therewith, and records and documentation thereunto appertaining shall be subject to inspection, test, or audit by duly authorized representatives of MTD and the State of California. The Contractor agrees to maintain all required records relating to the Project for at least three years after MTD makes final payment and all other pending matters are closed.

34. Equal Employment Opportunity. For applicable requirements, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration: Contract Provisions for Federal Fiscal Year 12/13* which is attached hereto as Exhibit "B".

35. Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and shall be deemed to supersede and cancel any and all previous representations, understandings, or agreements between MTD and Contractor as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties.

36. No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

37. Counterparts: Facsimile/E-mail. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile or scanned and e-mailed signature may substitute for and have the same legal effect as the original signature.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed.

SANTA BARBARA MTD

[insert contractor name in caps]

Sherrie Fisher, General Manager

[insert authorized official name & title]

Date

Date

DO NOT FILL IN OR SIGN

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Insurance Requirements for Professional Service Contracts

18. Insurance

18.1 Contractor's Insurance Representations to MTD.

- a) It is expressly understood and agreed that the insurance coverages required herein:
 - i. represent MTD's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and
 - ii. are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate, or waive any of the provisions of this Agreement.

- b) Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under this Contract. If Contractor shall fail to remedy such breach within five (5) business days after written notice by MTD, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to MTD from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by MTD. In the event of any failure to Contractor to comply with the provisions of this portion of the Agreement, MTD may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that MTD shall have no obligation to do so and if MTD shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

18.2 Conditions Affecting All Insurance Required Herein.

- a) Cost of Insurance. All insurance coverage shall be provided at Contractor's sole expense.

- b) Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement.

- c) Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies admitted to do business in California and with a Best's Financial Strength Rating of A- or better, as shown in the on-line version of Best's Rating & Criteria Center.

- d) Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to Contractor Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage in any manner without the prior express written approval of MTD.

- e) Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

- f) Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. In the event of cancellation, nonrenewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail, return receipt requested, except in the event of cancellation for nonpayment, in which event fifteen (15) days prior written notice shall be given. If insurer will not include in its coverage such written notifications, it shall be incumbent upon Contractor to comply with such written notification requirements.

Insurance requirements are currently under review by legal counsel and a revision will be issued as an addendum to the RFQ.

- g) Additional Insured Status. Additional insured status shall be provided in favor of MTD and its officers, employees and agents, including consultants, on all liability insurance required herein except workers' compensation/employer's liability and the certificate of insurance shall reflect same. Such additional insured coverage shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing.
- h) Waiver of Subrogation. All insurance coverage carried by Contractor required herein shall provide a waiver of subrogation in favor of MTD for all loss covered by such insurance, and Contractor waives all rights of action against MTD for such loss.
- i) Primary Liability. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to MTD, with MTD's insurance being excess, secondary, and noncontributing. Where necessary, coverage shall be endorsed to provide such primary liability, and the certificate of insurance shall reflect same.
- j) Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.
- k) Claims Against Aggregate. MTD must be notified in writing by Contractor at MTD's address set forth herein immediately upon knowledge of possible claims against Contractor that might cause a reduction below seventy-five (75%) of any aggregate limit of any primary policy.

18.3 Commercial General Liability Insurance.

- a) Coverage: Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under this Agreement (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.
- b) Form: Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.
- c) Amount of Insurance: Coverage shall be provided with limits of not less than:
 - i. Each Occurrence Limit \$1,000,000
 - ii. General Aggregate Limit \$2,000,000
 - iii. Product-Completed Operations Aggregate Limit \$2,000,000
 - iv. Personal and Advertising Injury Limits \$1,000,000
 - v. Fire Damage (any one fire) \$50,000
 - vi. Medical Expense (any one person) \$5,000
- d) Required Endorsements:
 - i. Additional Insured status as required in 18.2(g), above.
 - ii. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18.2(f), above.
 - iii. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.
 - iv. Primary Liability, as required in 18.2(i), above.
 - v. Waiver of Subrogation, as required in 18.2(h), above.
 - vi. Continuing Commercial General Liability Insurance: Contractor shall maintain such insurance in identical coverage, form, and amount, including required endorsements, for at least three (3) years following the date of acceptance by MTD of the last bus built pursuant to this Agreement.

18.4 Auto Liability Insurance.

- a) Coverage: Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

Insurance requirements are currently under review by legal counsel and a revision will be issued as an addendum to the RFQ.

- b) Form: Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).
- c) Amount of Insurance: Coverage shall be provided with a limit of not less than:
 - i. \$1,000,000, combined single limit
- d) Required Endorsements:
 - i. Additional Insured status as required in 18.2(g), above.
 - ii. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18.2(f), above.
 - iii. Waiver of Subrogation, as required in 18.2(h), above.

18.5 Workers' Compensation/Employer's Liability Insurance.

- a) Coverage: Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.
- b) Amount of Insurance: Coverage shall be provided with a limit of not less than:
 - i. Workers' Compensation: Statutory limits
 - ii. Employer's Liability: \$1,000,000 each accident and disease.
- c) Required Endorsements:
 - i. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18.2(f), above.
 - ii. Waiver of Subrogation, as required in 18.2(h), above.

18.6 Excess Liability Insurance.

- a) Coverage: Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision.
- b) Form: This policy shall have the same inception and expiration dates and the commercial general liability insurance required above.
- c) Amount of Insurance: Coverage shall be provided with a limit of not less than \$5,000,000.

18.7 Professional Liability Insurance.

Language under review by legal counsel; will likely have \$2 to 5\$ million coverage requirement.

18.8 Other Insurance. MTD shall have the right, exercisable in its sole judgment at any time by giving prior written notice thereof to Contractor, to require Contractor to increase the limit and coverage amount of any insurance Contractor is required to maintain pursuant to this Agreement to an amount that MTD may, in its sole judgment, deem reasonably sufficient; and purchase other insurance and/or endorsement in such amounts or types as MTD may reasonably require from time to time.

FEDERAL TRANSIT ADMINISTRATION
CONTRACT PROVISIONS FOR FEDERAL FISCAL YEAR 12/13

Architectural & Engineering Services

TABLE OF CONTENTS

1.	Fly America Requirements—Not applicable to this contract.....	1
2.	Buy America Requirements—Not applicable to this contract	1
3.	Charter Bus & School Bus Requirements—Not applicable to this contract	1
4.	Cargo Preference Requirements—Not applicable to this contract	1
5.	Seismic Safety Requirements	1
6.	Energy Conservation Requirements.....	1
7.	Clean Water Requirements	1
8.	Bus Testing—Not applicable to this contract.....	1
9.	Pre-Award & Post-Delivery Audit Requirements—Not applicable to this contract.....	1
10.	Lobbying.....	1
11.	Access to Records & Reports	2
12.	Federal Changes.....	2
13.	Bonding Requirements—Not applicable to this contract	2
14.	Clean Air	2
15.	Recycled Products—Not applicable to this contract.....	3
16.	Davis-Bacon & Copeland Anti-Kickback Acts—Not applicable to this contract	3
17.	Contract Work Hours & Safety Standards Act—Not applicable to this contract	3
18.	[Reserved].....	3
19.	No Government Obligations to Third Parties.....	3
20.	Program Fraud & False or Fraudulent Statements & Related Acts	3
21.	Termination	3
22.	Government-Wide Debarment & Suspension	4
23.	Privacy Act—Not applicable to this contract.....	4
24.	Civil Rights Requirements	4
25.	Breaches & Dispute Resolution.....	5
26.	Patent & Rights in Data—Not applicable to this contract.....	5
27.	Transit Employee Protective Agreements—Not applicable to this contract.....	5
28.	Disadvantaged Business Enterprise (DBE)	5
29.	[Reserved].....	5
30.	Incorporation of Federal Transit Administration (FTA) Terms	5
31.	Drug & Alcohol Testing—Not applicable to this contract	6
32.	Intelligent Transportation System (ITS) —Not applicable to this contract.....	6

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1. **FLY AMERICA REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
2. **BUY AMERICA REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
3. **CHARTER BUS & SCHOOL BUS REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
4. **CARGO PREFERENCE REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
5. **SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. **ENERGY CONSERVATION REQUIREMENTS**

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. The Contractor agrees to include the requirements of this section in all subcontracts.

7. **CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000.

8. **BUS TESTING—NOT APPLICABLE TO THIS CONTRACT**

9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**

10. **LOBBYING**

The Contractor certifies, to the best of his or her knowledge and belief, that:

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

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(c) The Contractor shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.] Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure.

[Note: The Contractor shall have previously submitted to MTD a separately signed Lobbying Certification containing the above language for itself and any subcontracts exceeding \$100,000 as a condition of contract award.]

11. ACCESS TO RECORDS & REPORTS

(a) The Contractor agrees to provide MTD, 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 CFR 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.

(b) If contract is 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 MTD, 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.

(c) 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.

(d) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or 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 MTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

The 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 Master Agreement between MTD 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.

13. BONDING REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT

14. CLEAN AIR

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 Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. 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.

15. RECYCLED PRODUCTS—NOT APPLICABLE TO THIS CONTRACT

16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS—NOT APPLICABLE TO THIS CONTRACT

17. CONTRACT WORK HOURS & SAFETY STANDARDS ACT—NOT APPLICABLE TO THIS CONTRACT

18. [RESERVED]

19. NO GOVERNMENT OBLIGATIONS TO THIRD PARTIES

(a) MTD 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 MTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) 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.

20. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS

a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR 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.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

21. TERMINATION

(a) MTD may terminate this contract in whole or in part, for MTD's convenience or because of the failure of the Contractor to fulfill the contract obligations. MTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

- (b) If the termination is for the convenience of MTD, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- (c) If the termination is for failure of the Contractor to fulfill the contract obligations, MTD may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by MTD.
- (d) If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of MTD.

22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by MTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to MTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT—NOT APPLICABLE TO THIS CONTRACT

24. CIVIL RIGHTS REQUIREMENTS

(a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the 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.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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 CFR 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, 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.

(2) 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.

(3) 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor 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.

25. BREACHES & DISPUTE RESOLUTION

Paragraph 30 of the *MTD Master Agreement* regarding disputes shall be deemed satisfactory to meet the federal requirements for dispute resolution. The Contractor agrees to include the requirements of said Paragraph 30 in all subcontracts.

26. PATENT & RIGHTS IN DATA—NOT APPLICABLE TO THIS CONTRACT

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS—NOT APPLICABLE TO THIS CONTRACT

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. MTD's overall goal for DBE participation is 1.2%. A separate contract goal of 0.0 % DBE participation has been established for this procurement.

(b) The Contractor 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 this DOT-assisted contract. 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 MTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

(c) The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(d) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the MTD. In addition, the Contractor may not hold retainage from its subcontractors.

(e) Contractor must promptly notify MTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MTD.

29. [RESERVED]

30. 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 4220.1E, 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 MTD requests which would cause MTD to be in violation of the FTA terms and conditions. The Contractor agrees to include the requirements of this section in all subcontracts.

31. DRUG & ALCOHOL TESTING—NOT APPLICABLE TO THIS CONTRACT

32. INTELLIGENT TRANSPORTATION SYSTEM (ITS) —NOT APPLICABLE TO THIS CONTRACT