



## Invitation for Bids for Bus Parts Inventory

### *SOLICITATION INSTRUCTIONS*

#### Project Summary Sheet

**Solicitation Issuance Date:** Tuesday, March 15, 2016

**Project Description:** Provide next 3 annual inventory counts of public transit agency bus parts.

**Project Locations:** MTD Maintenance Department at 550 Olive Street, Santa Barbara, CA 93101

**Pre-Bid Meeting Date/Time:** Tuesday, March 29, 2016, at 10:00 AM (**Mandatory**)

**Pre-Bid Meeting Location:** MTD Olive Terminal, 550 Olive Street, Santa Barbara, CA 93101

**Requests/Clarifications Deadline:** Friday, April 1, 2016, at 5:00 PM

**Bid Due Date/Time:** Tuesday, April 12, 2016, at 2:00 PM

**Bid Due Location:** MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101  
Reception Desk on 2<sup>nd</sup> Floor (bids opened in downstairs auditorium)

**Bid Contents:** Include the following forms: Price Bid, Bidder Information, References & Suppliers, Noncollusion Declaration & Compensation Certification, and Acknowledgement of Addenda

**Contract Award Date:** Tuesday, April 19, 2016 (anticipated)

**Solicitation Contact:** Ken Mills, Project Manager, (805) 832-3024, [kccmills@dslextreme.com](mailto:kccmills@dslextreme.com)  
During the period March 18-25, 2016, contact Ryan Gripp, Procurement Specialist, (805) 883-4241, [rgripp@sbmtd.gov](mailto:rgripp@sbmtd.gov)

**Type of Solicitation:** Sealed invitation for bids with award to low responsive, responsible bidder

**Type of Contract:** Fixed price

**Licenses Required:** City of Santa Barbara Business License

**Bonding Required:** Employee Dishonesty/Fidelity Bond (no bid or performance bond)

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

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# SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

## Invitation for Bids for Bus Parts Inventory

### *SOLICITATION INSTRUCTIONS*

#### 1. PRE-BID SUBMITTAL ACTIVITIES

##### 1.1 IFB CONTENTS & CONTRACT DOCUMENTS

The Santa Barbara Metropolitan Transit District (MTD) is issuing this *Invitation for Bids (IFB) for Bus Parts Inventory* to engage the services of a single contractor to fully carry out all aspects of the project. This document provides direction on preparing bids and describes the bid review and contract award process. Specifications are contained in the attached *Statement of Work*. Additional terms and conditions are included in the *MTD Master Agreement* and the *Federal Transit Administration Contract Provisions* included with this IFB. They can also be viewed as part of this IFB which is available on the MTD website at <http://www.sbmtd.gov/business-and-employment/active.html>.

##### 1.2 PRE-BID MEETING (MANDATORY)

There is a mandatory pre-bid meeting for reviewing the project conditions with bidders at 10:00 AM on Tuesday, March 29, 2016. The meeting will begin at MTD's administrative offices in the downstairs auditorium at 550 Olive Street in the City of Santa Barbara. The parties will then review the parts inventory locations. This meeting will be the only opportunity for bidders to examine the project conditions. **Failure of a party to arrive at the pre-bid meeting by 10:15 AM may disqualify such party from submitting a bid.**

##### 1.3 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes until Friday, April 1, 2016, at 5:00 PM. To be considered, such communications must be via e-mail to Ken Mills at [kccmills@dslexreme.com](mailto:kccmills@dslexreme.com). Requests for changes must be provided with sufficient information to allow MTD to make a determination. Notification of requests for clarification responses, accepted changes and/or approved equals will be provided by written addenda to all bidders.

##### 1.4 IFB MODIFICATIONS & ADDENDA

MTD reserves the right to amend this IFB 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 email to all parties known to have received the IFB. Failure of a bidder to receive any addendum shall not relieve it from any obligation under its bid or under the IFB as clarified or modified.

#### 2. BID PREPARATION & SUBMITTAL

##### 2.1 MTD FORMS

**Price Bid**— Bids shall include the fully completed and signed *Price Bid* form included in this IFB. Failure to fully and correctly complete and sign the *Price Bid* form will result in rejection of the bid. Bidder shall include the amount for each annual inventory, which shall determine the contract amount. The amount for each annual inventory shall include any overtime that may be necessary to complete each inventory. For determining the low bid, MTD shall look at the total fixed price for all three years (see *Price Bid* form for clarification).

**Bidder Information**—Bid shall include the fully completed *Bidder Information* form included in this IFB.

**References & Suppliers**—Bid shall include the *References & Suppliers* form included in this solicitation. Note that for this Project, it is not necessary to provide credit references or supplier information. These sections have

been noted as not necessary on the form. Completion of the "Work References" section is required. **Please list contact names and phone numbers that are CURRENT.**

**Noncollusion Declaration and Compensation Certification**—The enclosed *Noncollusion Declaration* form, the lower part of which includes the *Compensation Certification* regarding compliance with Workers' Compensation requirements, requires signatures in two places on the form which shall be included with the bid.

**Acknowledgement of Addenda**—Bidder shall acknowledge either receipt of each Addendum or that there were no addenda by including in its bid the **fully completed and signed Acknowledgement of Addenda** form in this IFB. **Failure to include the signed Acknowledgement of Addenda form will render the bid non-responsive and it will be rejected.**

## 2.2 BONDS

Bid, performance, or payment bonds are not required for this project. The insurance requirements included in paragraph 18 of the *MTD Master Agreement* do require an employee dishonesty/fidelity bond.

## 2.3 BID SUBMISSION & OPENING

One (1) original and two (2) complete copies of the bid shall be submitted in a non-transparent, sealed envelope or appropriate packaging plainly marked on the exterior with the name of the bidder and the following: "Bus Parts Inventory Bid." If using US Mail or a delivery service, bids must still be enclosed in the specified packaging within any delivery service packaging. Bids shall be delivered to:

Santa Barbara Metropolitan Transit District  
Olive Fence Replacement Bid  
550 Olive Street  
Santa Barbara, CA 93101

If hand delivered anytime up to 15 minutes prior to the bid opening, bid should be taken upstairs to the reception desk. After such time, bids should be brought to the 1<sup>st</sup> floor auditorium.

**Bids will be accepted until 2:00 PM, local time, on Tuesday, April 12, 2016.** Unless due to the fault of MTD, bids received after such time will not be considered. All bids received by the bid submission deadline will be opened and read aloud at an open public meeting immediately after the submission deadline.

## 2.4 WITHDRAWAL OF BIDS

A bidder may withdraw a bid prior to the bid opening by submitting a written request signed by the bidder's authorized representative. Such withdrawal does not prejudice the right to resubmit a bid by the deadline. After the bid submission deadline, a bid may be withdrawn only if MTD fails to award the contract within the validity period stipulated on the *Price Bid* form or an agreed upon extension thereof.

## 2.5 BID STIPULATIONS

Bids submitted as a result of this solicitation become the property of MTD. Bids submitted in response to this IFB will remain valid for 60 calendar days following the bid due date. MTD will not pay any cost incurred by bidder for preparation or delivery of its bid; reserves the sole right to review, accept or reject bids received; and reserves the right to cancel this solicitation in whole or in part if in its best interests to do so.

## 3. REVIEW & AWARD

### 3.1 BID DEFECTS OR COLLUSION

MTD may reject any bid that includes deviations or is not prepared in accordance with the instructions and requirements of this solicitation. MTD reserves the right to waive any defects, or minor informalities or irregularities in any bid which do not materially affect the bid or prejudice other bidders. If there is any

evidence indicating that two or more bidders are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the bids of all such bidders shall be rejected and such evidence may be a cause for disqualification of the participants in future MTD solicitations.

### 3.2 RESPONSIVENESS

MTD shall examine the low bid to determine its responsiveness to the provisions of this solicitation. Such process may involve requesting additional or clarifying information from the bidder. Bids that do not contain all required materials, information or forms; or where such materials, information or forms are substantially incomplete may be considered non-responsive and rejected by MTD. In such case, MTD shall notify the bidder in writing of its rejection and the basis thereof. This process shall continue until a low responsive bidder is determined.

### 3.3 RESPONSIBILITY

MTD shall assess the low responsive bidder's "responsibility," which is defined as satisfactory performance in previous contracts and having the financial and technical capacity to undertake the project. MTD will use the reference information provided in the bid and other information, as needed, for this determination. Any bidder not found to be responsible shall be rejected. In such case, MTD shall notify the bidder in writing of its rejection and the basis thereof. This process shall continue until such time as the low responsive and responsible bidder is determined.

### 3.4 SINGLE BID ANALYSIS

If only one bid is received in response to this solicitation, a detailed price and/or cost analysis of the bid may be required in order to determine if the price is fair and reasonable. A price analysis involves comparison to other similar procurements with similar quantities, specifications and time frames. Where it is impossible to determine price reasonableness through price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the bidder's proposal. It is conducted to form an opinion as to the degree to which the proposed costs represent what the bidder's performance should cost. A cost analysis is generally conducted to determine whether the bidder is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable. Any such analyses and the results therefrom shall not obligate MTD to accept such a single bid, which may be rejected at MTD's sole discretion.

### 3.5 CONTRACT AWARD & EXECUTION

MTD intends to award the contract to the low responsive, responsible bidder upon receipt of the following:

Insurance Certificate—A certificate of insurance showing the coverage types and dollar limits required in the *MTD Master Agreement* in paragraph 18. Such certificate must show MTD as an additionally insured.

Business License— To carry out the project within Santa Barbara, a City of Santa Barbara business license is required. Provide a photocopy of the bidder's City business license. If one is not currently held, a business license will be obtained and a copy provided to MTD prior to award.

The contract will be executed as soon as practicable after contract award and the satisfactory receipt of the preceding items. The contract will be composed of the *MTD Master Agreement*, the *Federal Transit Administration Contract Provisions*, the *Statement of Work*, and relevant portions of the Contractor's bid.

## 4. PROTEST PROCEDURES

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

**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Bus Parts Inventory**

**PRICE BID**

Description	Price
2016 Fixed Price Inventory Services	\$
2017 Fixed Price Inventory Services	\$
2018 Fixed Price Inventory Services	\$
<b>Total Fixed Price Contract Amount:</b>	\$

The Bidder hereby represents and warrants that:

1. It has sufficiently informed itself in all matters affecting the performance of the work, or the furnishing of the labor, services, software, supplies, material, or equipment called for in carrying out the project.
2. It has reviewed the contract documents including the *MTD Master Agreement*, the *Federal Transit Administration Contract Provisions*, and the *Statement of Work*, and agrees to the terms and conditions thereof.
3. Its bid has been thoroughly checked for errors and omissions and the costs, prices, hours, rates, and any other constituents of this Price Bid are a complete and correct statement of its price for performing all project work required by the contract documents.
4. Its bid is genuine, not sham or collusive, nor made in the interest of any person not herein named; that it has not in any illegal manner sought to secure for itself any advantage over any other bidder.
5. Its bid, including this Price Bid, is valid for 60 days following the bid due date and time.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

\_\_\_\_\_  
Business Name of Bidder



**SANTA BARBARA METROPOLITAN TRANSIT DISTRICT**

**Invitation for Bids for Bus Parts Inventory**

**REFERENCES & SUPPLIERS**

Business Name of Bidder: \_\_\_\_\_

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***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: \_\_\_\_\_

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***Work References***

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

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Client Name: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

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***Suppliers***

Provide the following information for any **significant** suppliers or subcontractors 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**

**Invitation for Bids for Bus Parts Inventory**

**NONCOLLUSION DECLARATION**

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_,  
(title) (business name of bidder)

the party making the included bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(date) (city) (state)

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Authorized Official Name (printed)

**COMPENSATION CERTIFICATION**

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Authorized Official Name

\_\_\_\_\_  
Authorized Official Title

***SANTA BARBARA METROPOLITAN TRANSIT DISTRICT***

**Invitation for Bids for Bus Parts Inventory**

***ACKNOWLEDGEMENT OF ADDENDA***

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

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

\_\_\_\_\_  
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***

## **Invitation for Bids for Bus Parts Inventory**

### ***STATEMENT OF WORK***

*Issued March 15, 2016*

About MTD—The Santa Barbara Metropolitan Transit District (MTD) is a public transit agency (a CA special district) providing transportation services by bus and electric shuttle in the South Coast of Santa Barbara County from Goleta to Carpinteria.

Location—All parts to be counted are located at 550 Olive Street in Santa Barbara, which is the administrative, dispatch and maintenance facility for MTD. There is a main parts room adjacent to the shop and several other locations and containers on the property containing parts to be counted. See Appendix A to this Statement of Work for a site map indicating current parts locations. These locations are subject to change within the MTD facility without affecting the scope of work or price.

Inventory Description—Items include diesel, electric and hybrid bus and service vehicle parts, and electric vehicle tires. These range from tiny washers to body parts to coiled hoses—which must be counted by the foot—to diesel engines. As of March 2016, MTD's parts inventory database showed approximately 5,700 distinct part numbers of which about 4,700 actually had a quantity on-hand totaling about 41,100 individual countable items. MTD estimates that the number of distinct part numbers will be the same in mid-2016 and increase by about 4.0% in both 2017 and 2018.

Dates & Times—The inventory counts will take place in 2016, 2017 and 2018 on the last full weekend of MTD's fiscal year, which ends June 30. See Appendix B for calendars showing exact dates. On Saturdays, contractor personnel shall be at MTD at 8:00 AM until the count is completed. Training will be provided the first 15 to 30 minutes and it is anticipated the workday will exceed 8 hours on Saturdays. On Sundays, contractor personnel shall be at MTD at 8:00 AM until counts of missed parts and recounts are completed. Breaks shall be provided as required by law, including an uncompensated half-hour meal break at an appropriate time. It is recommended that contractor personnel bring their lunches.

Services—Contractor personnel shall physically count inventory items that contain MTD-generated bar code labels and record such counts electronically via four (4) MTD-provided Motorola portable handheld scanning devices (see Appendix C for photo of device). If a part number bar code cannot be read by the scanning device, contractor personnel shall manually enter the part number into the device to record the count. The count process will require the use of common sense, such as opening unsealed boxes to determine counts. Contractor personnel shall also place a small adhesive "dot" (provided by MTD) next to one bar code label for each part number and write down the count for that part on the dot.

Contractor Resources—Contractor shall provide eight persons for the count on Saturday (including a supervisor that actively participates in the count) and two persons on Sunday. The anticipated process is for one person to count parts and a partner to scan and enter the count. Contractor shall provide step ladders adequate for its personnel to safely access all storage locations, and may provide and use its own counting scales as it deems necessary.

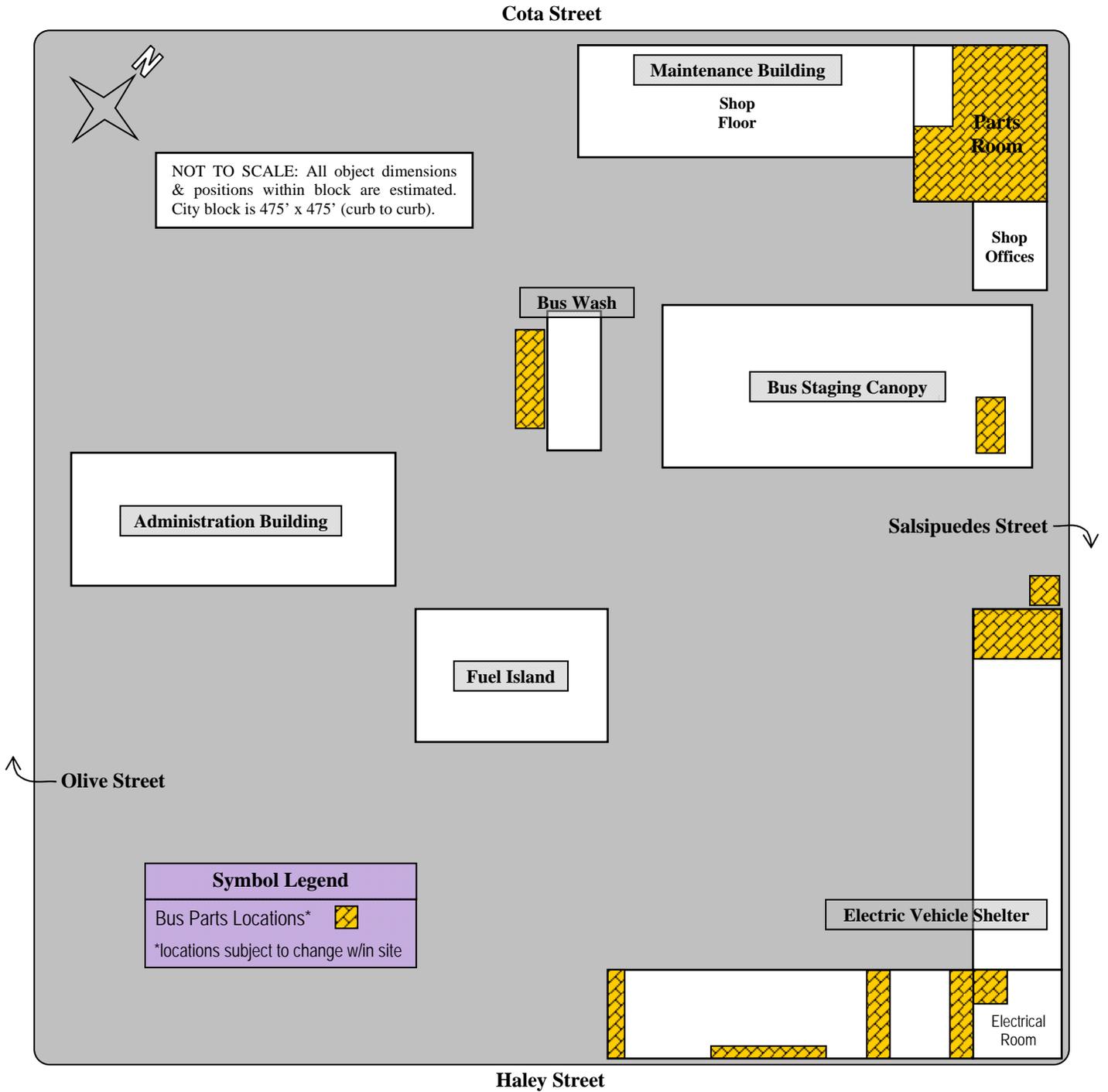
Conditions—MTD will organize and clean up the parts locations to a reasonable extent beforehand. Regardless, Contractor should be prepared for warehouse environment that includes lead as well as grease and other hydrocarbon products in, around, and on much of the inventory being counted and handled. Appropriate dress, including no open footwear, is required. MTD will provide disposable latex gloves for contractor personnel, which shall be mandatory to wear. MTD will not be responsible for the cleaning or replacement of any clothing or other personal items of Contractor or its employees due to inventory environment or conditions.

Compensation—Contractor shall be compensated for these services, including any overtime incurred, at the fixed price for each year included in its bid. For services beyond those covered in the Statement of Work, if any, rate shall be negotiated prior to commencement of such work.

*Issued March 15, 2016*

# Appendix A

## Bus Parts Location Map



## Appendix B Inventory Calendar

<i>June 2016</i>						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>
<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>		

<i>June 2017</i>						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
				<b>1</b>	<b>2</b>	<b>3</b>
<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>
<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>
<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	

<i>June 2018</i>						
<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					<b>1</b>	<b>2</b>
<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>
<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>

Scheduled Inventory Days:

**Appendix C**  
**Motorola Handheld Scanner**



# Santa Barbara Metropolitan Transit District

## *Bus Parts Inventory*

### **MASTER AGREEMENT with [insert 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 [insert contractor name], a [insert state name] [insert business type] ("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 inventory counts of MTD's bus parts (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* which is attached hereto as Exhibit "A" and incorporated herein by this reference.
3. Public Works Provisions. Not applicable to this agreement.
4. Statement of Work. MTD has heretofore issued on March 15, 2016 the statement of work contained in Invitation for Bids (IFB) for Bus Parts Inventory Services, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.
5. Bid. Contractor has heretofore submitted on [insert date] a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "C" and incorporated herein by this reference
6. Order of Control. Contractor shall carry out the Project described in Exhibit "B" to this Agreement for the price quoted in Exhibit "C". 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", Exhibit "B", Exhibit "C".
7. Contract Price. Contractor shall carry out the Project for a fixed price of [insert price] which is in accordance with Exhibit "C".
8. Payment. Contractor shall submit invoice to MTD upon completion of the Project for each year. Payment from MTD shall be made to Contractor no later than thirty (30) days after receipt of a valid invoice which shall be sent to: Santa Barbara MTD, Attn: Accounts Payable, 550 Olive Street, Santa Barbara, CA 93101.
9. Taxes. MTD is exempt from the payment of Federal Excise and Transportation taxes. Unless specified otherwise in the Agreement, MTD is subject to applicable California Sales Tax for Santa Barbara County which shall have been included in the Contractor's bid price and shall be included on the Contractor's invoice.
10. Project Schedule. See Exhibit "B" and Appendix "B" thereto.
11. Delivery & Freight. Unless specified otherwise in the statement of work, any item provided under this Agreement shall be delivered FOB Santa Barbara to 550 Olive Street, Santa Barbara, CA 93101. Any Project freight and delivery charges shall have been already included in the Contractor's bid price and shall not be paid otherwise by MTD.

12. Title & Risk of Loss. The Contractor shall have title to and bear the risk of any loss of or damage to any item provided hereunder until delivered and, if applicable pursuant to this Agreement or standard industry practice, installed or otherwise set up for usage. Upon such delivery and applicable installation and setup, title shall pass from the Contractor to MTD, and the Contractor's responsibility for loss or damage shall cease, except for loss or damage resulting from the Contractor's negligence. Such passing of title shall not constitute acceptance of an item by MTD. The Contractor shall further warrant that the title to any item provided hereunder is free from all claims, encumbrances and liens.

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 any agent or person employed by the Contractor.

14. Defective, Damaged or Noncompliant Work. Any items, services, work or systems acquired pursuant to this Agreement found to be defective, damaged or non-compliant with the statement of work at the time of delivery or installation shall be replaced by the Contractor without additional cost to MTD. If the Contractor should fail to promptly comply with any order to replace or repair any defective items, services, work or systems, MTD shall have the authority to deduct the cost of such replacement or repair from any compensation due or to become due to the Contractor. Nothing in this section shall limit or restrict any warranty provisions of this Agreement or any exhibits hereto.

15. Acceptance. All items, services, work or systems to be furnished by the Contractor pursuant to this Agreement shall be subject to acceptance by MTD. MTD shall inspect such deliverables to determine acceptability no later than five (5) calendar days after said deliverables are received and, if applicable under the Agreement or standard industry practice, installed or otherwise set up for usage. Acceptance shall occur when it is determined by MTD that all items, services, work or systems provided pursuant to this Agreement are in compliance with the statement of work or any other applicable contract documents. Upon acceptance, formal notification thereof shall be made by MTD via notice to the Contractor.

16. Warranty. Not applicable to this contract.

17. Changes. Any changes or modifications to this Agreement must be in writing, and agreed to by both parties.

18. Insurance.

a. Contractor's Insurance Representations to MTD.

i. It is expressly understood and agreed that the insurance coverages required herein:

A. 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

B. 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.

ii. 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.

b. Conditions Affecting All Insurance Required Herein.

- i. Cost of Insurance. All insurance coverage shall be provided at Contractor’s sole expense.
  - ii. 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.
  - iii. 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.
  - iv. 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.
  - v. 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.
  - vi. 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.
  - vii. 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.
  - viii. 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.
  - ix. 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.
  - x. Deductible/Retention. All insurance required for this project shall have a maximum deductible or self-insured retention of \$10,000 per policy.
  - xi. 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.
- c. Commercial General Liability Insurance.
- i. 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.
  - ii. Form. Commercial General Liability Occurrence form, at least as broad as an unmodified ISO CG 00 01 10 93 or its equivalent.
  - iii. Amount of Insurance. Coverage shall be provided with limits of not less than:
 

A. Each Occurrence Limit	\$1,000,000
B. General Aggregate Limit	\$2,000,000
C. Product-Completed Operations Aggregate Limit	\$2,000,000
D. Personal and Advertising Injury Limits	\$1,000,000
E. Fire Damage (any one fire)	\$50,000

F. Medical Expense (any one person) \$5,000

iv. Required Endorsements.

A. Additional Insured status as required in 18(b)(vii), above.

B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Personal Injury Liability: The personal injury contractual liability exclusion shall be deleted.

D. Primary Liability, as required in 18(b)(ix), above.

E. Waiver of Subrogation, as required in 18(b)(viii), above.

F. 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 pursuant to this Agreement.

d. Auto Liability Insurance.

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

ii. Form. Business Auto Form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

iii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000, combined single limit.

iv. Required Endorsements.

A. Additional Insured status as required in 18(b)(vii), above.

B. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

C. Waiver of Subrogation, as required in 18(b)(viii), above.

e. Workers' Compensation/Employer's Liability Insurance.

i. 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.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than:

A. Workers' Compensation: Statutory limits

B. Employer's Liability: \$1,000,000 each accident and disease.

iii. Required Endorsements.

A. Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage, as required in 18(b)(vi), above.

B. Waiver of Subrogation, as required in 18(b)(viii), above.

f. Employee Dishonesty Insurance (Fidelity Bond).

i. Coverage. Such insurance shall include a Third Party Fidelity/Crime Bond covering MTD property in the care, custody or control of the Contractor.

ii. Amount of Insurance. Coverage shall be provided with a limit of not less than \$25,000.

g. 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.

19. Bonding. Not applicable to this contract.

20. Termination. For applicable terms, refer to Paragraph 21 (Termination) in *Federal Transit Administration: Contract Provisions* which is attached hereto as Exhibit "A".

- 21. Liquidated Damages. Not applicable to this contract.
- 22. Infringement of Patents. Not applicable to this contract.
- 23. Rights in Data. Not applicable to this contract.

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 email. 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:

<p><u>MTD:</u>                  Jerry Estrada, General Manager                  Santa Barbara Metropolitan Transit District                  550 Olive Street                  Santa Barbara, CA 93101                  Email: <a href="mailto:jestrada@sbmtd.gov">jestrada@sbmtd.gov</a></p>	<p><u>CONTRACTOR:</u>                  [insert authorized official name &amp; title]                  [insert contractor name]                  [insert contractor street address]                  [insert contractor city, state &amp; zip]                  [insert contractor email]</p>
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26. Attorney Fees and Costs. In the event of a controversy (including, but not limited to arbitration or an 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 attorney 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](http://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 terms, refer to Paragraph 24 (Civil Rights Requirements) in *Federal Transit Administration Contract Provisions* which is attached hereto as Exhibit "A".

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 & Email. 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 scanned and emailed signature may substitute for and have the same legal effect as the original signature.

38. Qualifications. Contractor or Contractor’s representative (Contractor) certifies that Contractor is qualified to do business and is in good standing in the State of California, and that Contractor has authority to enter into and perform its obligations under this Agreement, which constitutes a valid and binding obligation of Contractor.

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

SANTA BARBARA MTD

[insert contractor name in caps]

\_\_\_\_\_  
Jerry Estrada, General Manager

\_\_\_\_\_  
[insert authorized official name & title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

DO NOT FILL IN OR SIGN

# FEDERAL TRANSIT ADMINISTRATION CONTRACT PROVISIONS

*Bus Parts Inventory - [Contractor Name]*

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1. **FLY AMERICA REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
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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—NOT APPLICABLE TO THIS CONTRACT**
8. **BUS TESTING—NOT APPLICABLE TO THIS CONTRACT**
9. **PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS—NOT APPLICABLE TO THIS CONTRACT**
10. **LOBBYING—NOT APPLICABLE TO THIS CONTRACT**
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—NOT APPLICABLE TO THIS CONTRACT****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) Termination for Convenience: MTD, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, MTD shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(b) Termination for Default

(1) If the Contractor fails to perform the services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, MTD may terminate this contract for default. MTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

(2) If this contract is terminated while the Contractor has possession of MTD goods, the Contractor shall, upon direction of MTD, protect and preserve the goods until surrendered to MTD or its agent. The Contractor and

MTD shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

(3) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of parties shall be the same as if the termination had been issued for the convenience of MTD.

## **22. GOVERNMENT-WIDE DEBARMENT & SUSPENSION—NOT APPLICABLE TO THIS CONTRACT**

## **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—NOT APPLICABLE TO THIS CONTRACT****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 2.9%. A separate contract goal has not 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 successful bidder/offeror 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**