MTD Santa Barbara
Metropolitan Transit District
550 Olive Street
Santa Barbara, CA 93101
p (805) 963-3364
f (805) 962-4794
www.sbmtd.gov

Invitation for Bids for Bus Stop Shelter(s) Installation

SOLICITATION INSTRUCTIONS

Summary Sheet

Project Name: Bus Stop Shelter(s) Installation

Solicitation Issuance Date: Wednesday, December 4, 2013

Project Description: Pick up, deliver and install (4) LNI bus shelters and photo voltaic illumination systems.

Project Location(s): Bus stop locations located within the City of Santa Barbara and at the following cross streets: (1) Haley & Santa Barbara, (1) Cota & Quarantina (1) Cota & Ortega Park (1) Micheltorena & Almond (south side of street in front of 621 Micheltorena)

Pre-Bid Meeting Date/Time: Wednesday, December 11, 2013, at 2:30 PM (**mandatory to submit bid**)

Pre-Bid Meeting Location: MTD Administrative Office 550 Olive Street, Santa Barbara, CA 93101

Requests/Clarifications Deadline: Thursday, December 12, 2013, at 5:00 PM

Bid Due Date/Time: Wednesday, December 18, 2013, at 4:00 PM

Bid Due Location: MTD Administrative Offices, 550 Olive Street, Santa Barbara, CA 93101
Reception Desk on 2nd Floor (take stairs or elevator at public entrance)

Bid Contents: Price Bid form; Bidder Information form; References, Suppliers & Subcontractors form; Acknowledgement of Addenda form; bid bond; copy of City of Santa Barbara business license; copy of contractor's license; insurance certificate (**bids submitted without these items, completed, signed & dated if applicable, may be considered non-responsive & rejected**).

Contract Award Date: Friday, December 27, 2013 (anticipated)

Solicitation Contact: Jerry Estrada, Assistant General Manager/Controller, (805) 963-3364 ext. 232, jestrada@sbmtd.gov

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

Type of Contract: Fixed price

Licenses Required: City of Santa Barbara Business License; "A" or "C10" Contractors License

Bonding Required: Bid bond (5% of bid amount); 100% performance & payment bond if bid amount exceeds $25,000.

Other Requirements: Subject to State of California public works prevailing wage requirements.

This is a federally-assisted project and Davis- Bacon and Related Acts (DBRA) requirements will be enforced. Federal Labor Standards provisions HUD-4010 shall

be incorporated into the contract and attached as Attachment E. Contractors, including subcontractors, must be eligible to participate. Federal Wage Determination Number CA130023 Mod. 17, 11/15/2013 shall be incorporated into the contract and attached as Attachment F. If construction has not begun within 90 days of the execution of this contract, any modifications to the wage decision must be determined. Contractor must adhere to the modified wage decision, if any.

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

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Invitation for Bids for Bus Stop Shelter Installation

SOLICITATION INSTRUCTIONS

PROJECT DESCRIPTION

The Santa Barbara Metropolitan Transit District (MTD), a California special district, is issuing this *Invitation for Bids (IFB) for Bus Stop Shelter Installation* to engage the services of a contractor to pick up, deliver and install (4) LNI bus shelters and photo voltaic illumination systems. It is MTD's intent to award a contract to the responsive and responsible party submitting the lowest price bid.

PRE-BID SUBMITTAL ACTIVITIES

IFB CONTENTS & CONTRACT DOCUMENTS

These *Solicitation Instructions* provide direction on preparing bids and describe the bid review and contract award process. Attached are various required forms and certifications to be completed and included within the bid submittal. Detailed work specifications are contained in the attached *Statement of Work*. Additional contractual terms and conditions are included in the *MTD Master Agreement* and the *State of California Provisions for Public Works Projects*, which are available through the preceding hyperlinks or at http://www.sbmtd.gov/business-and-employment/purchasing.html.

Bidders should be certain to read all documents in this IFB in order to prepare bids correctly and be fully aware of the contractual terms and conditions. Failure of a bidder to follow instructions may result in rejection or disqualification of its bid, and lack of knowledge of the contract terms shall not excuse it from its obligations.

PRE-BID MEETING (MANDATORY TO SUBMIT BID)

There is a mandatory pre-bid meeting for reviewing the site conditions with bidders at 2:30 PM on Wednesday, December 11, 2013. The meeting will begin at MTD's Administrative office located at 550 Olive Street in the City of Santa Barbara. This tour of the bus stops will be the only opportunity for bidders to fully examine the locations, take photos and measurements and collect other information necessary to determine their bid price. Bids received from parties that did not attend the pre-bid meeting or did not complete the sign-in sheet at such meeting shall not be accepted and shall be returned unopened to the bidders.

COMMUNICATIONS, REQUESTS & CLARIFICATIONS

At any time during this solicitation until Thursday, December 12, 2013, at 5:00 PM, bidders may request a clarification, interpretation, or change to any aspect or requirement of the IFB or any addenda thereto. All such communications must be in writing to Jerry Estrada, the Project Manager:

E-Mail:	jestrada@sbmtd.gov (**strongly preferred**)	Hand:	550 Olive Street, Santa Barbara, CA
Fax:	(805) 963-3365	Mail:	550 Olive Street, Santa Barbara, CA 93101

IFB MODIFICATIONS & ADDENDA

MTD reserves the right to amend this IFB at any time. Any such changes shall be provided through formal written addenda; no other forms of communication with any officer, employee or agent of MTD regarding the IFB shall be binding on MTD. Addenda will be posted to MTD's website at http://www.sbmtd.gov/business-and-employment/active.html and concurrently sent via e-mail to all parties known to have received the IFB

(following a mandatory pre-bid meeting, such e-mail shall be limited to eligible bidders). Failure of a bidder to receive any addendum shall not relieve it from any obligation under its bid or the IFB as clarified or modified.

BID PREPARATION & SUBMITTAL

The bid to be submitted under this IFB includes both bidder-completed forms provided by MTD and bidder-prepared documents. To allow a quick award turnaround, it is important that bidders provide all required information in their bids and fully and accurately complete the required forms.

MTD FORMS

Price Bid—Bid shall include the *Price Bid* form included in this IFB showing the total compensation for carrying out the project under the terms of the contract. Do **NOT** include the cost of building permits in your bid. Contractor will pay for permits when picked up, but will be reimbursed by MTD for such costs.

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

References—Bids shall include the *References* form included in this solicitation. Note that only the work references are required for this solicitation. **Please be certain to list contact names and phone numbers that are CURRENT.**

Acknowledgement of Addenda—If there are any IFB addenda, bidder shall acknowledge receipt of such in their bid by including the *Acknowledgement of Addenda* form included in this IFB. Failure of a bidder to receive any addendum shall not relieve it from any obligation under its bid or the IFB as clarified or modified.

U.S. Department of Housing and Urban Development – Community Development Block Grant – City of Santa Barbara "Bidder's Certification" – Bids shall include the *Bidder's Certification* form included in this solicitation

Bidder Questionnaire– Bids shall include the *Bidder Questionnaire* form included in this solicitation

Contractor's/Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements– Bids shall include the *Contractor's/Subcontractor's* form included in this solicitation

Certification by Proposed Contractor/Subcontractor Regarding Equal Employment Opportunity– Bids shall include the *EEO Certification* form included in this solicitation

(**bids submitted without these items, completed, signed & dated if applicable, may be considered non-responsive & rejected**).

BIDDER-PREPARED DOCUMENTS

Bid & Other Bonds—A bid bond of 5% of the bid price is required and shall be included in the bidder's bid submittal. Cash or a cashier's or certified check made payable to MTD may be substituted for the bond. Personal checks, company checks or money orders will **not** be accepted.

Business License—To carry out the project within Santa Barbara city limits, a City of Santa Barbara business license is required, a copy of which shall be included in the bidder's bid submittal.

Contractors License—Bid shall include a photocopy of bidder's currently valid contractors license issued by the California State License Board. Such license shall, at a minimum, show an "A" or "C10" classification.

Insurance Certificate—Bid shall include a certificate of insurance showing the coverage types and dollar limits required in the *MTD Master Agreement* in paragraph 18. For this project, the professional liability coverage and fidelity bond listed in the paragraph are not required. Such certificate need not show MTD as an additionally insured at the time of bid submission, although MTD will need to be added following contract award,

BID SUBMISSION & OPENING

One (1) original and one (1) complete copy 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 Stop Shelter Installation Bid" If using a delivery service, bids must still be enclosed in the specified packaging within the delivery service packaging. These requirements also apply to any bid modifications (described in the next section). If not brought by hand to bid opening, bids shall be delivered to: Santa Barbara Metropolitan Transit District, 2nd Floor Reception Desk, 550 Olive Street, Santa Barbara, CA 93101.

Bids will be accepted until 4:00 PM, local time, on Wednesday, December 18, 2013. Regardless of circumstances or fault, bids received after that time will not be considered or opened. All bids received by the bid submission deadline will be opened and read aloud at an open public meeting immediately after the submission deadline.

WITHDRAWAL OF BIDS

A bidder may withdraw a bid anytime prior to the bid opening by submitting a written request for such withdrawal executed by the bidder's authorized representative. The withdrawal of a bid prior to the bid submission deadline does not prejudice the right of a bidder to resubmit a bid by the bid acceptance deadline.

BID STIPULATIONS

The following stipulations apply to this solicitation:

- All bids 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 bid
- MTD reserves the sole right to review, accept or reject bids received as a result of this solicitation
- MTD reserves the right to cancel this solicitation in whole or in part if in its best interests to do so

REVIEW & AWARD

RESPONSIVENESS

MTD shall examine the low bid to determine its completeness and 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 it's rejection and the basis thereof. This process shall continue until such time as the low responsive bidder is determined.

RESPONSIBILITY

MTD shall make an assessment of the low responsive bidder's "responsibility," which is defined as evidence of adequate financial and technical capacity to undertake the project and satisfactory performance in previous contracts. MTD will use the reference information provided in the bid for this determination. However, MTD

may utilize other information within and outside of the bid to assist in the determination. Such process may involve requesting additional or clarifying information from a bidder. The bid of any bidder not found to be responsible shall be rejected. In such case, MTD shall notify the bidder in writing of it's rejection and the basis thereof. This process shall continue until such time as the low responsive and responsible bidder is determined.

CONTRACT AWARD & EXECUTION

The contract will be executed as soon as practical after contract award and receipt of any required bidder bonding, insurance or other documents. The contract will be composed of the *MTD Master Agreement*, the *State of California Provisions for Public Works Projects*, the *Statement of Work* and relevant portions of the Contractor's bid. In all cases, the most recent versions of the preceding documents—including any addenda thereto—shall be used in the final and binding agreement.

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 Stop Shelter Installation

PRICE BID

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, supplies, material, or equipment called for in carrying out the project.
2. It has reviewed the contract documents including the *Statement of Work*, the *MTD Master Agreement*, and the *State of California Provisions for Public Works Projects* 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 (do **not** include the cost of building permits).
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 30 days following the bid due date and time.

Qty Location	**Bid Amount**
(1) Haley & Santa Barbara	$ .00
(1) Cota & Quarantina	$ .00
(1) Cota & Ortega Park	$ .00
(1) Micheltorena & Almond	$ .00
TOTAL BID:	**$ .00**

_____ _____
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 Stop Shelter Installation

BIDDER INFORMATION

General Information

Business Name of Bidder: _____

Business Type: ☐ Corporation (State of Incorporation: _____) ☐ Partnership
☐ Sole Proprietorship ☐ Other:

Business Federal Tax ID Number: _____ (provide SSN if sole proprietorship)

Corporate Headquarters

Street Address: _____
City:_____State:_____Zip Code:_____

Local Office ☐ (check box at left & leave below blank if the local office is the HQ or there is no local office)

Street Address: _____

City: _____State:_____Zip Code:_____

Authorizing Contact (person authorized to bind the firm contractually, including change orders)

Name: _____Title:_____Location: _____

Telephone: _____FAX:_____E-Mail:_____

Project Manager (primary contact during project implementation)

Name: _____ Title:_____

Location: ☐ HQ ☐ Local Office ☐ Other:

Telephone: _____ Cell: _____ E-Mail: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Invitation for Bids for Bus Stop Shelter Installation

REFERENCES

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: _____

Credit references not necessary for this solicitation.

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: _____

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Invitation for Bids for Bus Stop Shelter Installation

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:

Addendum No. _____ dated _____

Addendum No. _____ dated _____

Addendum No. _____ dated _____

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)

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Development Block Grant – City of Santa Barbara

P.O. Box 1990/630 Garden Street
Santa Barbara, CA 93101
(805) 564-5461

Bidder's Certification

Bidder hereby certifies (s)he has reviewed all bid documents for HUD-funded construction projects, and fully understands all obligations if the project is award to him/her. Bidder further certifies that the proposal or bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of project or of any other bidder or to fix any overhead profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the City of Santa Barbara, or any person interested in the proposed contract, and that all statements in said proposal or bid are true.

_____ _____
Date Bidder

By_____

_____
Title

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

BIDDER QUESTIONNAIRE

Bidder's Name: _____

Address: _____

_____

Telephone #: _____

Number of years engaged in the contracting business under present business name _____

List the last three contracts performed which show experience in work of a nature similar to that covered in this proposal. If none, so indicate.

Year	Type of Work	Contract Amount	Location	For Whom Performed

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Development Block Grant – City of Santa Barbara
Davis Bacon and Related Acts (DBRA)

Project Name: _____ Project Number:_____

1. The undersigned, having executed a contract with _____
(Agency Name)

for _____ in the amount of $_____
(Nature of Work)

for the above-identified project, certifies that:

(a) The Labor Standards Provisions of The Contract for Construction (HUD form 4010) are included in the aforesaid contract.

(b) Neither he nor any firm, corporation, partnership or association in which he has a substantial interest is designated as an ineligible contractor by the Comp General of the United States pursuant to Section 5.12(a)(1) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5), or pursuant to Section 3(a) the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).

(c) No part of the aforementioned contract has been or will be subcontracted to a subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest in or is designated as an ineligible contractor pursuant to the aforesaid regulatory or statutory provisions.

2. The undersigned agrees to obtain and forward to the contractor, for transmittal to the recipients within ten days after the execution of any lower subcontract, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirement, executed by the lower tier subcontractor, in duplicate.

(a) The workers will report for duty on or about _____(Date)

3. The undersigned certifies that:

(a) The legal name and the business address of the undersigned are:
(b) The undersigned is (check one):

☐ A Single Proprietorship ☐ A Partnership
☐ A Corporation Organized in the State ☐ Other - Describe:_____

_____ _____
Signature Date

U.S. Department of Housing and Urban Development

CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as in initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

CERTIFICATION BY BIDDER

Name and Address of Bidder (include zip code):

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause

   ☐ YES ☐ NO

2. Compliance Reports were required to be filed in connection with such contract or subcontract.

   ☐ YES ☐ NO

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.

   ☐ YES ☐ NO ☐ NOT REQUIRED

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?

   ☐ YES ☐ NO

Name and Title of Signer (please type)

Signature	Date

Santa Barbara Metropolitan Transit District

Bus Stop Shelter Installation

Statement of Work

Issued December 4, 2013

Project Description—Contractor shall pick up, deliver, and install up to 4 LNI bus stop shelters and any included photovoltaic illumination systems. Such project work shall be based on this Statement of Work (SOW).

Location, Service & Load—The pre-fabricated bus stop shelters shall be obtained from LNI Custom Manufacturing, located at 12536 Chadron Avenue, Hawthorne, CA and delivered and installed at the following locations in the City of Santa Barbara:

- (1) Haley & Santa Barbara
- (1) Cota & Quarantina
- (1) Cota & Ortega Park
- (1) Micheltorena & Almond (south side of street in front of 621 Micheltorena)

Bus Stop Shelters—Hip roof shelter dimensions are 15' long x 6' deep x 9'-8¼" high and weigh 827lbs. Shelters must be securely affixed with surface plate mount to provided (pre-installed) foundation hardware.

Photovoltaic Illumination Systems—Contractor shall install LNI Solar Photovoltaic Illumination System on each shelter. Illumination system components that must be installed may include some or all of the following: photovoltaic solar module with mounting frame, LED security light fixtures, 12 volt photovoltaic gell battery, and aluminum constructed system enclosure box. The photovoltaic solar module must be affixed to the back side of the shelter roof, as viewed from the street, and the panel must be oriented to maximize solar exposure.

Changes—Any changes to project work that will result in an increase to the project cost shall be supported by a Contractor-submitted change order detailing the costs. The change order must be approved in advance by MTD prior to the Contractor proceeding with the additional work. This process does not include work otherwise specified in this SOW.

Permits—MTD will work with the City of Santa Barbara to acquire the necessary permits for work in the City's right of way. Contractor will provide Traffic Control Plan to City per shelter for approval for work within City right of way.

Work Restrictions—MTD will close the bus stops while installation is being performed, but as these are important passenger facilities, the Contractor must place public safety at the forefront and work with MTD staff to minimize passenger inconvenience.

Complete Project—This SOW does not include a complete description of all required equipment, services, or processes required to carry out the project. Specifications are provided only for items, material, procedures, locations, and values considered key to the project. Contractor shall provide all materials, equipment, supervision, and labor necessary to properly complete the project. All materials and equipment shall be new. Contractor is expected to be experienced in, and adhere to, the customs of the industry or trade.

Exhibit A

FEDERAL TRANSIT ADMINISTRATION

CONTRACT PROVISIONS FOR FEDERAL FISCAL YEAR 2013/14

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1. FLY AMERICA REQUIREMENTS

Not applicable

2. BUY AMERICA REQUIREMENTS

Not applicable

3. CHARTER BUS & SCHOOL BUS REQUIREMENTS

Not applicable

4. CARGO PREFERENCE REQUIREMENTS

Not applicable

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

Not applicable

8. BUS TESTING

Not applicable

9. PRE-AWARD & POST-DELIVERY AUDIT REQUIREMENTS

Not applicable

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

14. Clean Air

Not applicable

15. Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40

CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON & COPELAND ANTI-KICKBACK ACTS

(a) Minimum Wages

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of work in a prominent and accessible place where it can be easily seen by workers.

(2) Untitled

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(5) Untitled

(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(b) Withholding: MTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the MTD may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of

the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) Compliance

(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) Apprentices and Trainees

(1) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees: Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal Employment Opportunity: The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(e) Compliance with Copeland Act Requirements: The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(g) Contract Termination and Debarment: A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes Concerning Labor Standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of Eligibility

(1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. Contract Work Hours & Safety Standards Act

Not applicable

18. 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.

19. 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.

20. Termination

(a) Termination for Convenience: MTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MTD to be paid the Contractor. If the Contractor has any property in its possession belonging to MTD, the Contractor will account for the same, and dispose of it in the manner MTD directs.

(b) Termination for Default

(1) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, 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 the default. In this event, MTD may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor & its sureties shall be liable for any damage to MTD resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by MTD in completing the work.

(2) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

(A) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of MTD, acts of another Contractor in the performance of a contract with MTD, epidemics, quarantine restrictions, strikes, freight embargoes; and

(B) The Contractor, within 10 days from the beginning of any delay, notifies MTD in writing of the causes of delay. If in the judgment of MTD, the delay is excusable, the time for completing the work shall be extended. The judgment of MTD shall be final, but subject to appeal under the Disputes clause.

(3) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of MTD.

21. GOVERNMENT-WIDE DEBARMENT & SUSPENSION

Not applicable

22. PRIVACY ACT

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

23. 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.

24. Breaches & Dispute Resolution

Paragraph 29 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 29 in all subcontracts.

25. Patent & Rights in Data

Not applicable

26. Transit Employee Protective Agreements

Not applicable

27. 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 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 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, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

(d) 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.

28. 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.

29. DRUG & ALCOHOL TESTING

Not applicable

30. INTELLIGENT TRANSPORTATION SYSTEM (ITS)

Not applicable

Exhibit B

Santa Barbara Metropolitan Transit District

State of California Provisions For Public Works Projects Fiscal Year 2013/2014

Public Contract Code Provisions

Subcontractor Listing in Bid—In compliance with Section 4104 of the California Public Contract Code, Bidders shall provide with their bid:

(a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

Contractor as Subcontractor Violation—In compliance with Section 4105 of the California Public Contract Code, circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this provision and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

Failure to Specify a Subcontractor—In compliance with Section 4106 of the California Public Contract Code, if a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to penalties named in Section 4111.

Subcontractor Substitution—In compliance with Section 4107 of the California Public Contract Code, a prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that MTD, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
(2) When the listed subcontractor becomes bankrupt or insolvent.
(3) When the listed subcontractor fails or refuses to perform his or her subcontract.
(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.
(7) When MTD determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.
(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.
(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution MTD shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, MTD shall give notice in writing of at least five working days to the listed subcontractor of a hearing by MTD on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of MTD.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

No Carpet Contractor Subletting—In compliance with Section 4107.2 of the California Public Contract Code, no subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

Subcontractor Listing Error—In compliance with Section 4107.5 of the California Public Contract Code, 4107.5, the prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by MTD give written notice to the MTD and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening. Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to MTD and to the prime contractor written objection to the prime contractor' s claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made. MTD shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to MTD along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to MTD and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to MTD and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, MTD shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. MTD may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of MTD.

Subcontractor Bonding Requirements—In compliance with Section 4108 of the California Public Contract Code:

(a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c)(1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds. (2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids. (3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

Subcontracting in Emergency—In compliance with Section 4109 of the California Public Contract Code, subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of MTD setting forth the facts constituting the emergency or necessity.

Public Contract Code Violations—In compliance with Section 4110 of the California Public Contract Code, a prime contractor violating any of the preceding Public Contract Code provisions violates his or her contract and MTD may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

Contractors State License Board Violation—In compliance with Section 4111 of the California Public Contract Code, violation of the preceding Public Contract Code provisions by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110.

No Defense by Provisions—In compliance with Section 4112 of the California Public Contract Code, the failure on the part of a contractor to comply with the preceding Public Contract Code provisions does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor.

Family Support Obligations—In compliance with Section 7110 of the California Public Contract Code, the Contractor shall recognize and acknowledge the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code. Furthermore, the Contractor shall recognize and acknowledge that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department. Contractor recognition and acknowledgement is signified by its signature upon the Project Agreement.

Retention Rate Limitation—In compliance with Section 7200 of the California Public Contract Code, for any contract for this Project between the Contractor and any Subcontractor, and between a Subcontractor and any Subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between MTD and the Contractor. This requirement shall not apply to the Contractor if a Subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the Contractor. This requirement shall not apply to a Subcontractor if a Subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the Subcontractor. No party identified herein shall require any other party to waive any provision of this section. In the event that the Contractor elects to substitute securities in lieu of retentions, the Contractor may withhold from its Subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

California Labor Code Provisions

Prevailing Wages—In compliance with Section 1771 of the California Labor Code, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Division 2, Part 7, Chapter 1 of the Labor Code, shall be paid to all workers employed on this public work. In compliance with Section 1774 of the California Labor Code, the Contractor and any Subcontractor thereunder shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

Per Diem Wages—In compliance with Section 1773.1 of the California Labor Code, per diem wages shall include employer payments for health and welfare, pension, vacation, travel, subsistence, apprenticeship or other training programs, worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, industry advancement and collective bargaining agreements administrative fees, or other similar purposes when the term “per diem wages” is used in these State of California Provisions.

Payroll Records—In compliance with Section 1776 of the California Labor Code:
(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct. (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis: (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request. (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2) , the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).
(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.
(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual' s name, address, and social security number. The name and address of the

contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.
(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a) .In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Legal Day's Work—In compliance with Section 1810 of the California Labor Code, eight (8) hours constitutes a legal day's work under this Contract.

Workman Hours Limitations—In compliance with Section 1811 of the California Labor Code, the time of service of any workman employed under this Contract is limited and restricted to eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week, except as provided for under Section 1815.

Hours Records—In compliance with Section 1812 of the California Labor Code, the Contractor and every Subcontractor thereunder shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Project. The record shall be kept open at all reasonable hours to the inspection of MTD and the State of California.

Work Hours Violations—In compliance with Section 1813 of the California Labor Code, the Contractor or any Subcontractor shall, as a penalty to MTD, forfeit twenty-five dollars ($25) for each worker employed in execution of this Contract by the respective Contractor or Subcontractor for each calendar day during which Section 1810 or 1811 are violated.

Overtime Pay—In compliance with Section 1815 of the California Labor Code, notwithstanding the provisions of Sections 1810 to 1813, work performed by employees under this Project in excess of 8 hours per day and 40 hours during any one week, shall be permitted at not less than one and one half (1½) times the basic rate of pay.