



Invitation for Bids for LiFePO₄ Battery Cells

SOLICITATION SUMMARY SHEET

Solicitation Issuance Date: Tuesday, August 5, 2014

Project Description: Provide Lithium Iron Phosphate (LiFePO₄) Battery Cells and related items as specified in the enclosed Technical Specifications. A bid is for a base quantity of two sets of 92 cells and related items plus an option quantity of four sets of 92 cells and related items which may be issued later at MTD's discretion.

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

Pre-Bid Meeting Date/Time: None

Requests/Clarifications Deadline: Tuesday, August 12, 2014 at 5:00 PM

Bid Due Date/Time: Tuesday, August 19, 2014 at 2:00 PM

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

Bid Contents: Price Bid; Bidder Information; References, Suppliers & Subcontractors; and Acknowledgement of Addenda forms. LiFePO₄ Battery Cell Specification Sheet.

Contract Award Date: Tuesday, August 26, 2014 (anticipated)

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

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: None

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 LiFePO₄ Battery Cells
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 LiFePO₄ Battery Cells* 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 *Technical Specifications* which include a project schedule. Additional terms and conditions are included in the *MTD Master Agreement* attached hereto.

1.2 PRE-BID MEETING

There will be no pre-bid meeting for this procurement.

1.3 COMMUNICATIONS, REQUESTS & CLARIFICATIONS

MTD will consider requests for clarifications or changes until Tuesday, August 12, 2014, at 5:00 PM. To be considered, such communications must be via e-mail to Ken Mills at kccmills@dslextrreme.com. Requests for changes must be provided with sufficient information to allow MTD to make a determination.

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 e-mail to all parties known to have received the IFB.

2. BID PREPARATION & SUBMITTAL

2.1 MTD FORMS & OTHER REQUIRED INFORMATION

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. In addition to providing prices for the base requirement of two sets of LiFePO₄ cells and related items for those cells (Items 1 and 2 respectively on the *Price Bid* form), a complete bid **must** include bid prices for the option items (Items 5 and 6 on the *Price Bid* form) which may be exercised later solely at MTD's discretion. Sales tax and freight pricing is also required. A full bid includes prices for all items including the option items.

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

References, Suppliers & Subcontractors—Bid shall include the *References, Suppliers & Subcontractors* form included in this solicitation. **Please 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 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.

Battery Cell Specification Sheet—A complete bid must include a specification sheet that identifies all characteristics of the cells for which a bid is submitted so that SBMTD can determine compliance with the *Technical Specifications*.

2.2 BONDS

None required.

2.3 BID SUBMISSION & OPENING

One original and one complete copy of required bid documents shall be submitted in a non-transparent, sealed envelope plainly marked on the exterior with the name of the bidder and "LFP Battery Cells IFB." If **not** brought by hand to the bid opening at MTD's administrative offices (downstairs auditorium) at 550 Olive Street, Santa Barbara, bids shall be delivered to: Santa Barbara Metropolitan Transit District, 2nd Floor Reception Desk, 550 Olive Street, Santa Barbara, CA 93101. If using delivery service, bids must still be enclosed in a sealed envelope within the delivery service packaging. **Fax or e-mail bids will not be considered. Bids will be accepted until 2:00 PM on Tuesday, August 19, 2014.** 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 following 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.

2.5 BID STIPULATIONS

Bids submitted as a result of this solicitation become the property of MTD. 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 RESPONSIVENESS

MTD shall examine the low bid to determine its responsiveness to the provisions of this solicitation. Bids that do not contain all required items or where such documents are substantially incomplete may be considered non-responsive and rejected by MTD. This process shall continue until a low responsive bidder is determined.

3.2 RESPONSIBILITY

MTD shall assess the low responsive bidder's "responsibility," which is defined as satisfactory performance in previous contracts. MTD will use references provided in the bid and other available information for this determination. A bidder not found to be responsible shall be rejected. This process shall continue until the low responsive and responsible bidder is determined.

3.3 CONTRACT AWARD & EXECUTION

If considered in MTD's best interest, MTD staff will recommend to the General Manager that a contract be awarded to the responsive and responsible bidder providing the lowest bid. It is anticipated that such recommendation will be considered by the General Manager by Tuesday, August 26, 2014.

Upon award of the contract for the project, the winning bidder shall promptly supply a certificate of insurance showing the coverage types and dollar limits required in paragraph 18 of the *MTD Master Agreement*. Such certificate must show MTD as an additionally insured.

The contract will be executed as soon as practical after contract award and the satisfactory receipt of the preceding item. The contract will be composed of the *MTD Master Agreement*, the *Technical Specifications*, and relevant portions of the Contractor's bid.

4. PROTEST PROCEDURES

MTD has established procurement protest procedures to ensure equitable consideration of complaints concerning MTD's procurement activities. The procedures are available at <http://www.sbmtd.gov/business-and-employment/purchasing.html>.

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Invitation for Bids for LiFePO₄ Battery Cells

PRICE BID

Item	Description	Qty	Unit Price	Extended Price
1	Set of LiFePO ₄ cells as described in the Technical Specifications under "Specific Requirements" item 1.	2	\$	\$
2	Set of related items (connectors, bolts and washers) for cells as described in the Technical Specifications under "Specific Requirements" item 2.	2	\$	
3	Sales Tax at 8% on Items 1 and 2 above	---	\$	
4	Freight on Items 1 & 2 above	---	\$	
	Fixed Price Amount for Items 1-4:			\$

5	Option Item: Set of LiFePO ₄ cells as described in the Technical Specifications under "Specific Requirements" item 1. (This item may or may not be exercised as stated in the IFB.)	4	\$	\$
6	Option Item: Set of related items (connectors, bolts and washers) for cells as described in the Technical Specifications under "Specific Requirements" item 2. (This item may or may not be exercised as stated in the IFB.)	4	\$	
7	Sales Tax at 8% on Items 5 and 6 above	---	\$	
8	Freight on Items 5 and 6 above.	---	\$	
	Total Fixed Price Amount for Items 1-8:			\$

Note: **For low bid price determination only the "Total Fixed Price Amount for Items 1-8" will be used.** The base contract will be for the "Fixed Price Amount for Items 1-4" with an option which may be exercised later at MTD's sole discretion for items 5-8 at the prices bid for item 5-8. **Bids submitted without pricing for all items, including option items, will be rejected.**

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* and the *Technical Specifications*, 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, taxes, 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 SIGNATURE REQUIRED ON FOLLOWING PAGE

Authorized Signature of the Bidder:

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 LiFePO₄ Battery Cells

REFERENCES, SUPPLIERS & SUBCONTRACTORS

Business Name of Bidder: _____

Credit References

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

Bank Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Vendor Name: _____ Contact: _____ Phone: _____

Work References

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

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Client Name: _____ Contact: _____ Phone: _____

Suppliers & Subcontractors

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 LiFePO₄ Battery Cells

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 LiFePO₄ Battery Cells
Technical Specifications

Background: SBMTD operates electric shuttle buses which are powered by Ni-Cd modules which are being replaced with Lithium Iron Phosphate (LiFePO₄) Cells. The cells will be located in battery trays positioned in compartments under the seating area of the bus. This project is to provide new LiFePO₄ cells which will be installed by MTD.

Specific Requirements.

1. Provide LiFePO₄ cells in accordance with the following specifications:
 - a. A set of cells is 92 cells using the dimensions in “1d” below to fit in two compartments. The resultant quantity for one set will be enough cells for one bus.
 - b. Cells shall have a rated capacity of 400 Ah at nominal 22 degrees centigrade temperature conditions.
 - c. The total calculated electric power at 3.2 volts per cell shall not be less than 117 kilowatt-hours.
 - d. Nominal cell dimensions are as follows:
 - i. Length: 450 mm +/- 2 mm
 - ii. Width: 72 mm +/- 2 mm
 - iii. Height: 286 mm +/- 2mm
 - e. Cells shall be available for bulk and replacement purchase in a quantity of as few as one cell.
2. Provide with each set of LiFePO₄ cells the following set of related items: 100 inter-cell 400 Amp rated copper connectors, 100 14 mm stainless steel terminal bolts, 100 14 mm flat washers and 100 14 mm stainless steel split lock washers.
3. The LiFePO₄ cells shall be warranted for 2,000 charge cycles at 80% depth of discharge (DOD) wherein one cycle is for discharge from 100% charge to 20% charge remaining.

Schedule & Options. “Days” below means “calendar days.”

- Base Contract Quantity – Two sets of cells and two sets of related items shall be delivered within 10 days after receipt of contract award.
- Optional Contract Quantity – Four sets of cells and four sets of related items shall be delivered within 10 days after receipt of MTD notice that the option is being exercised. The option may be exercised solely at MTD’s discretion and must be done for all four sets unless Contractor approves a lesser quantity.
- Exercise of Option – MTD shall have the right to exercise the option for 90 days following formal acceptance of the first two sets of cells.

Delivery Location. All items shall be delivered FOB to the following address:

Santa Barbara Metropolitan Transit District, 550 Olive Street, Santa Barbara, CA 93101

Santa Barbara Metropolitan Transit District
LiFePO₄ Battery Cells

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 [insert project description](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. Not applicable to this agreement.
- 3. Public Works Provisions. Not applicable to this agreement.
- 4. Technical Specifications. MTD has heretofore issued on August 5, 2014 the technical specifications contained in Invitation for Bids (IFB) for LiFePO₄ Battery Cells, a true copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.
- 5. Bid. Contractor has heretofore submitted on August 19, 2014, a bid to carry out the Project, true copies of relevant parts that are attached hereto as Exhibit "B" and incorporated herein by this reference.
- 6. Order of Control. Contractor shall carry out the Project described in Exhibit "A" to this Agreement for the price quoted in Exhibit "B". 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".
- 7. Contract Price. Contractor shall carry out items 1-4 of the Project for a fixed price of [insert price] which is in accordance with Exhibit "B". In addition, if MTD exercises its option for items 5-8, as indicated in Exhibit "A", the fixed price for the option will be [insert price] which is in accordance with Exhibit "B".
- 8. Payment. Contractor shall submit invoice to MTD upon completion of items 1-4 of the Project. Payment from MTD shall be made to Contractor no later than thirty (30) days after acceptance by MTD (see paragraph 15) and receipt of a valid invoice, which shall be sent to: Santa Barbara MTD, Attn: Brad Davis, 550 Olive Street, Santa Barbara, CA 93101. If MTD exercises its option for items 5-8 of the Project, as identified in Exhibit "A", Contractor shall submit another invoice to MTD upon completion. Payment time, acceptance terms and invoice mailing address are the same as for the initial invoice.
- 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. Included in the Technical Specifications included in Exhibit "A".
- 11. Delivery & Freight. Unless specified otherwise in the technical specifications, 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 technical specifications 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 ten (10) 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 technical specifications or any other applicable contract documents. Upon acceptance, formal notification thereof shall be made by MTD via notice to the Contractor.

16. Warranty. Pursuant to the warranty provisions contained in the technical specifications, the Contractor shall warrant to MTD that, for the specified period after MTD's full acceptance of items, services, work or systems, each shall conform with the requirements hereof and be free of defects. The rights of MTD hereunder are in addition to, and not limited by, the Contractor's standard warranties. Acceptance of items, services, work or systems by MTD, or payment therefor, shall not relieve the Contractor of its obligations thereunder.

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.

19. Bonding. Not applicable to this agreement.

20. Termination. *Termination for Convenience.* MTD may terminate this Agreement, in whole or in part, upon ten (10) calendar days written notice to the Contractor when it is in MTD's best interest, at MTD's sole discretion. Upon the effective date of the written notice of termination, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice. MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination, plus any costs deemed reasonably necessary to effectuate such termination. The Contractor shall promptly submit to MTD its termination claim for such costs. *Termination for Default.* If the Contractor shall breach any covenant, term or condition of this

Agreement, MTD may, by written notice, notify the Contractor setting forth the manner in which the Contractor is in default. MTD's right to terminate this Agreement, in whole or in part, for default may be exercised if the Contractor does not cure the condition(s) constituting the breach within ten (10) calendar days after receipt of such written notice. In such case, the Contractor shall cease performance of the Project or the applicable portion thereof to the extent specified in the notice, and MTD shall pay the Contractor allowable costs and applicable profit thereon incurred to the specified date of termination. The Contractor shall promptly submit to MTD its termination claim for such costs. If it is later determined by MTD that the Contractor did not breach the Agreement and had an excusable reason for not performing, MTD may at its sole discretion set up a revised delivery or performance schedule for the Agreement or applicable portion thereof and allow the Contractor to continue work, or treat the termination as a termination for convenience. *Excess Costs.* MTD may acquire, under terms and in the manner MTD considers appropriate, equivalent Project services and, if the Agreement or an applicable portion thereof was terminated for default, the Contractor shall be liable to MTD for any excess costs for such Project services. *Waiver of Remedies for any Breach.* In the event that MTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by MTD shall not limit MTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement. *MTD Property.* If, at termination, the Contractor has in its possession any property, whether completed or in progress, associated with the Project belonging to MTD, the Contractor shall return such property to MTD or otherwise dispense with in the manner MTD directs.

21. Liquidated Damages. Not applicable to this agreement.

22. Infringement of Patents. The Contractor agrees that it will, at its own expense, defend all suits and proceedings instituted against MTD and pay any award of damages assessed against MTD in such suits or proceedings, insofar as the same are based upon any claim that the items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, constitutes an infringement of any legal United States copyright or patent. MTD agrees that it will give the Contractor prompt notice in writing of the institution of the suit or proceeding and permits the Contractor through its counsel to defend the same and gives the Contractor all information, assistance and authority necessary for the Contractor to do so. In case said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, is in such suit held to constitute infringement and use of same is enjoined, the Contractor shall, at its own expense and at its option, either procure for the MTD the right to continue using said items, services, work, systems, or any part thereof, or any tool, or process used in or for the Project, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

23. Rights in Data. Not applicable to this agreement.

24. Indemnification. The Contractor shall, to the extent permitted by law protect, indemnify, defend, and hold MTD and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by MTD and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the acts, errors or omissions of the Contractor, including acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against the MTD and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The MTD shall not make any admission which might be materially prejudicial to the Contractor unless the Contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The MTD shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The MTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense. The obligations of the Contractor under this clause shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the MTD, its

officers, employees, agents or consultants, including negligence in the preparation of the Contract documents, or the giving of directions or instructions with respect to the requirements of the Contract by written order.

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

MTD:

Jerry Estrada, Interim General Manager
 Santa Barbara Metropolitan Transit District
 550 Olive Street
 Santa Barbara, CA 93101
 E-Mail: jestrada@sbmtd.gov

CONTRACTOR:

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

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

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

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

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

30. Disputes. This Agreement shall be construed and all disputes arising therefrom shall be settled in accordance with the laws of the State of California. Venue for any dispute arising under this Agreement shall be in Santa Barbara, California. Any controversy or claim arising out of or relating to this Agreement shall be resolved by binding arbitration before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then pertaining (available at www.adr.org), except where those rules conflict with this provision, in which case this provision controls. Any court with jurisdiction shall enforce this clause and enter judgment on any award. The arbitrator shall be selected within twenty business days from commencement of the arbitration from the AAA's National Roster of Arbitrators pursuant to agreement or through selection procedures administered by the AAA. Within 45 days of initiation of arbitration, the Parties shall reach agreement upon and thereafter follow procedures, including reasonable limits on discovery, assuring that the arbitration will be concluded and the award rendered within no more than eight months from selection of the arbitrator or, failing agreement, procedures meeting such time limits will be designed by the AAA and adhered to by the Parties. The arbitration shall be held in Santa Barbara, California and the arbitrator shall apply the substantive law of California, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. Prior to commencement of arbitration, emergency relief is available from any court to avoid irreparable harm. THE ARBITRATOR SHALL NOT AWARD EITHER PARTY PUNITIVE, EXEMPLARY, MULTIPLIED OR CONSEQUENTIAL DAMAGES. Prior to commencement of arbitration, however, the Parties must attempt to mediate their dispute using a professional mediator from AAA, the CPR Institute for Dispute Resolution, or like organization selected by agreement or, absent agreement, through selection procedures administered by the AAA. Within a period of 45 days after the request for

mediation, the Parties agree to convene with the mediator, with business representatives present, for at least one session to attempt to resolve the matter. In no event will mediation delay commencement of the arbitration for more than 45 days absent agreement of the Parties or interfere with the availability of emergency relief.

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

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

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

34. Equal Employment Opportunity. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and; selection for training, including apprenticeship. The Contractor shall agree to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the above paragraph. The Contractor shall insert a similar article to the above in all subcontracts entered into in connection with the contract governing this project, except subcontracts for standard commercial supplies or raw materials.

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

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

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

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, Interim General Manager

[insert authorized official name & title]

Date

Date

DO NOT FILL IN OR SIGN